Parties to Proceedings in Cases of Issuing Decisions on Environmental Determinants

Assistant professor **Przemysław ZDYB**[1]

Abstract

The aim of this study is to present rules on establishing the catalogue of parties to proceedings in cases for issuing decisions on environmental determinants. The analysis, based on investigation of the law in force and examination of the law in the historical angle, shows that entities that to whom an authority refuses to grant the status of a party in proceedings for issuing an environmental decision find it difficult to evidence their legal interest in these proceedings due to no access to relevant documents and case files.

Keywords: *decision on environmental determinants, party to administrative proceedings, administrative proceedings, environmental law.*

JEL Classification: K23, K32

DOI: 10.62768/PLPA/2024/13/3/11

Please cite this article as:	**Article History**
Zdyb, Przemysław, „Parties to Proceedings in Cases of Issuing Decisions on Environmental Determinants", *Perspectives of Law and Public Administration* 13, no. 3 (October 2024): 450-459.	Received: 18 May 2024 Revised: 20 July 2024 Accepted: 10 September 2024

1. Introduction

Correct establishment of parties to proceedings by a public administration authority is one of the indispensable elements of any administrative proceedings. Generally speaking, a party to administrative proceedings is a procedural institution understood as a set of legal norms that pertain to a legal situation distinguished due to its social and legal gravity[2]. Any jurisdictional administrative proceedings must be carried out for at least one party. There can be no proceedings without an entity that is party to them, and if such a case occurred, such proceedings would have to be deemed non-existent[3]. A judgement of whether an individual entity may be afforded the status of a party in such proceedings must be first made against the interpretation of Article 28 of the Act of 14 June 1960 – Code of Administrative Procedure (CAP)[4], pursuant to which each person whose legal interest or duty the proceedings concern or who requests the authority's action due to his legal interest or duty, shall be a party.

Due to editorial requirements applicable to this study, general comments on the concept of a party and legal interest are limited and references are made to the abundant body of literature and commentary on this subject.[5] We must only point out in this place that legal interest should be based

[1] Przemysław Zdyb - Faculty of Law and Administration of the University of Szczecin, Poland, przemyslaw.zdyb@usz.edu.pl, https://orcid.org/0000-0002-2068-4556.

[2] Barbara Adamiak, Janusz Borkowski, *Postępowanie administracyjne i sądowadministracyjne*, (Warsaw: Wolters Kluwer, 2022), 181–182.

[3] Barbara Adamiak, *Wadliwość decyzji administracyjnej* (Wrocław: Acta Universitatis Wratislaviensis, 1986), 47-48.

[4] Dz. U. (Journal of Laws) of 2023 item 775 as amended; hereinafter CAP.

[5] See: Tadeusz Bigo, "Ochrona interesu indywidualnego w projekcie kodeksu postępowania administracyjnego", *Państwo i Prawo*, no. 3 (1960): 467; Wit Klonowiecki, *Strona w postępowaniu administracyjnym*, (Lublin 1938), 41; Wacław Dawidowicz, *Ogólne postępowanie administracyjne. Zarys systemu* (Warsaw, 1962), 69; Janusz Borkowski, in *Kodeks postępowania administracyjnego. Komentarz*, eds. Barbara Adamiak, Janusz Borkowski, (Warsaw: C.H. Beck, 2017), 231; Wojciech Jakimowicz, *Publiczne prawa podmiotowe* (Kraków: Zakamycze, 2002), 132; Zbigniew Romuald Kmiecik, "Interes prawny stron w postępowaniu administracyjnym, *Państwo i Prawo*, no. 1 (2013): 19-35; Barbara Adamiak, Janusz Borkowski amd Agnieszka Krawczyk, "Aspekty podmiotowe regulacji prawa procesowego," in *Prawo procesowe administracyjne. System Prawa Administracyjnego Tom 9*, ed. Roman Hauser, Zygmunt Niewiadomski i Andrzej Wróbel, (Warsaw: C.H. Beck, 2020): 143-157; Janusz Borkowski, in *Kodeks postępowania administracyjnego. Komentarz*, ed. Barbara Adamiak, Janusz Borkowski (Warsaw: C.H. Beck, Legalis 2022), art. 28, nt. 7, https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbqhe3dsmboobqxalrwgq3tsnrwgq2a&refSource=guide1. See also Resolution of the Polish Supreme Administrative Court of 30 June 2022 r., I OPS 1/22; and judgements of the Polish Supreme

on norms of substantive law, most of all substantive administrative law, though it is admissible for such a norm to be a norm of another branch of law, e.g. civil law. In the latter case, it is pointed out that provisions of civil law may be taken into account when interpreting the legal interest of a party only when a provision of substantive administrative law refers to an institution of civil law (e.g. ownership right, perpetual usufruct)[6]. A legal interest should be precise at that, objectively identifiable and up-to-date, that is realisable in given facts and law, and referring to reality, which means that it should exist in the time of the application of norms, not be merely possible or potential.

It must then be noted that special rules that regulate a specific subject of an administrative case may identify entities who are entitled to the status of a party in given proceedings differently. One example of such a provision is Article 74 (3a) of the Act of 3 October 2008 on making available information about the environment and its protection, public participation in environmental protection and the assessment of the environmental impact (EIA)[7], which stipulates parties to proceedings in cases for issuing decisions on environmental determinants.

2. Legal character of decisions on environmental determinants

A decision on environmental determinants specifies environmental determinants of the implementation of a project. Provisions of Article 71(2)(1) and (2) EIA provide that obtaining decisions on environmental determinants of the implementation of a project that is an environmental decision is required both for planned projects that will always have a significant impact on the environment, and also for planned projects that may potentially have a significant impact on the environment. Failure to obtain this decision will mean that other administrative decisions, enumerated in Article 72(1) EIA, cannot be obtained. The aim of proceedings in environmental determinants is to specify optimal conditions that ensure environmental protection when implementing a given project. At the same time, it needs to be stressed that the category of projects that may have a significant impact on the environment is normative[8]. Classification of specific projects to one of the two categories was decided by the legislator by introducing general-abstract premises that determine the character of a given project[9]. An environmental decision is one of the key instruments of environmental protection in an investment process. As a binding ruling of an environmental protection authority, such a decision specifies environmental conditions (requirements) for the implementation of a planned project, that is conditions that make such a project admissible from the point of view of environmental protection requirements[10]. The aim of an environmental decision as a preventive instrument it to preclude potential threats that may have a significant impact on the environment and to counteract or reduce them[11].

3. Premises determining the status of a party in proceedings for issuing an environmental decision

At the outset, it needs to be pointed out that the requirement to carry out proceedings is set out in the provisions of Directive 2011/92/EU of the European Parliament and of the Council of 13

Administrative Court of 16 October 2012, II OSK 1125/11; of 19 April 2010, I OSK 844/09; of 12 January 2012, II OSK 2035/10; of 18 December 2020 (all rulingsare available in the Central Database of Rulings of Administrative Courts, https://orzeczenia.nsa.gov.pl/cbo/query, hereinafter as CBOSA).

[6] Piotr Gołaszewski, in *Kodeks postępowania administracyjnego. Komentarz*, ed. Roman Hauser, Marek Wierzbowski, C.H.Beck: Legalis 2023, art. 28, nt 6, https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbtgmydomjoobqxalrwhaydmmzsgi2q&refSource=guide1#tabs-metrical-info.

[7] Dz. U. (Polish Journal of Laws) of 2023 item 1094 as amended; hereinafter EIA.

[8] Regulation of the Polish Council of Ministers of 10 September 2019 on projects that may have a significant impact on the environment (Dz. U. – Polish Journal of Laws – no. 78 item 1839 as amended).

[9] Judgement of the Voivodship Administrative Court in Wrocław of 18 March 2021, II SA/Wr 60/21, CBOSA.

[10] Janina Ciechanowicz-McLean, *Leksykon ochrony środowiska* (Warsaw: C.H.Beck, 2009), 10.

[11] Przemysław Zdyb, "Organy właściwe w sprawie wydania decyzji o środowiskowych uwarunkowaniach," in *Ocena modelu prawnego organizacji ochrony środowiska w Polsce i na Słowacji*, ed. Elżbieta Ura, Jerzy Stelmasiak, Stanisław Pieprzny (Rzeszów: RS Druk, 2012).

December 2011 on the assessment of the effects of certain public and private projects on the environment (hereinafter Directive 2011/92/EU)[12]. Recital 16 of this directive emphasizes that effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Then, in Article 11 (1–5), Directive 2011/92/EU stipulates that Member States shall ensure that, in accordance with the relevant national legal system, members of the public are concerned:

a) having a sufficient interest, or alternatively;

b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition; have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

The need to ensure the possibility of active participation of parties to administrative proceedings is also pointed to in Article 41(1) and (2) of the Charter of Fundamental Rights of the European Union of 7 December 2000 that lays down the right to good administration. Pursuant to these provisions, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This right includes:

a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

c) the obligation of the administration to give reasons for its decisions.

On 1 December 2009 (that is on the date of entrance into force of the Treaty of Lisbon), the Charter became part of the EU's primary legislation. Pursuant to Article 6 of the Treaty on the Functioning of the European Union: 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties' (Article 6 – 1)[13]. Thus, the Charter contributes to strengthening standards of protection of the rights of an individual in contacts with national and EU administration authorities and also to exercising the right to good administration[14]. This is why it did and still does have a significant influence of the perception and respecting of fundamental rights[15]. The rules that make up the right to good administration were later developed in the European Code of Good Administrative Behaviour[16], which is an example of soft law and together with the Charter contributes to Europeanisation of administrative law and procedure[17].

While the obligation to observe the right to good administration covers only (all) EU institutions and authorities and EU organisational units[18], administrative authorities of Member

---

[12] OJ L 26, 28.1.2012, p. 1.

[13] Andrzej Wróbel, in *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. Andrzej Wróbel (Warsaw: C.H.Beck Legalis, 2020), https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrugmzdgna&refSource=search.

[14] Martyna Wilbrandt-Gotowicz, "Europeanisation of Administrative Proceedings Law – Opportunities and Risks," *Białostockie Studia Prawnicze* 23, no. 2, (2018), 31, https://doi.org/10.15290/bsp.2018.23.02.02.

[15] Barbara Randazzo, "The EU Charter of Fundamental Rights in constitutional adjudication. The Italian perspective,' *CERIDAP*, no. 4 (2023):121, https://doi.org/10.13130/2723-9195/2023-4-29; Bogusia Puchalska, 'The Charter of Fundamental Rights of the European Union: Central European Opt-Outs and the Politics of Power,' *Europe-Asia Studies* 66, no. 3 (May 2014): 505–506, https://doi.org/10.1080/09668136.2013.855019.

[16] Decision on the Code of Good Administrative Behaviour (OJ C 285, 29.9.2011, p. 3). e.g. pursuant to Article 16(1) and (2), in cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected. In cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken. In turn, Article 20 of the Code specifies that the official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.

[17] Anna De Ambrosis Vigna, Dariusz Kijowski, 'The Principle of Legitimate Expectations and the Protection of Trust in the Polish Administrative Law,' *Białostockie Studia Prawnicze* 23, no. 2 (2018): 41, https://doi.org/10.15290/bsp.2018.23.02.03.

[18] Judgment of the Court of 17 December 2015, C-419/14, *WebMindLicenses Kft v Nemzeti Adó – és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság*, ECLI: EU: C:2015:832, para. 83.

States, when exercising EU legislation, should refer to decisions of EU courts that formulate the principle of good administration considering the general principle of loyal cooperation included in Article 4(3) of the Treaty on European Union[19].

Returning to the provisions of Directive 2011/92/EU, it needs to be noted that it leaves it to the discretion of Member States to establish at what stage decisions, actions and omissions may be questioned and also what the sufficient interest or violation of a right is, in accordance with the purpose of ensuring access to justice for the community concerned. Provisions of Article 11 of the Directive shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law. Nevertheless, any such procedure shall be fair, equitable, timely and not prohibitively expensive.

Relying on the above scope of the implementation of provisions of Directive 2011/92/EU to the national legal order, the Polish legislator regulated, among other things, for the needs of conducting proceedings for issuing decisions on environmental determinants, the question of parties and specified what constitutes sufficient interest or impairment of a right. Pursuant to the provision of Article 74 (3a) EIA, the parties to the proceedings for issuing an environmental decision, apart from the entity planning the implementation of the project (applicant), include only those entities whose property is located in the area the project has an effect. The legislator has defined the term area of effect by listing three premises. The parties to proceedings in cases of issuing decisions on environmental determinants shall be the applicant and the entity entitled to a real right[20] to the property situated in the area where the project will have an effect in the variant proposed by the applicant, subject to Article 81(1) EIA. This area shall be understood as:

1) projected area on which the project will be implemented and the area within 100 m from the borders of this area;

2) plots of land on which as a result of implementation, exploitation or use of the project environmental quality standards have been exceeded, or

3) plots of land situated within the reach of a significant effect of the project, which may introduce limitations in developing the real estate according to its current purpose.

As seen from the above, the basic criterion that determines recognition as a party of an owner of real estate located in the area of planned investment is to establish that the real estate is subject to the effects of the planned project. The area on which the project will have an effect is established according to a permanent distance criterion of 100 m and according to a criterion established individually based on the character of the effect of the planned project. Usually, the effect concerns real estate directly neighbouring the area of the planned investment, though it does not have to always be like this. The character and the size of the planned project matter and so do other factors that may have an impact on the spatial reach of the effect, in particular a harmful or burdensome effect. In this sense, the legal interest of this entity is also evidenced by the right to undisturbed use of real estate, derived from Article 140 and Article 144 CAP.[21]

The status of the party applicant is indisputable; that is the status of the entity that plans to take up the project. It is from their initiative that the authority opens the proceedings.

For other parties this question is not unequivocal. Originally, the Act lacked a provision that would specify parties to proceedings for issuing an environmental decision. Thus, the status of the party was established for a given entity in proceedings on the basis of Article 28 CAP.[22] However,

---

[19] Krystyna Kowalik-Bańczyk, in *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, ed. Andrzej Wróbel (Warsaw: C.H.Beck Legalis, 2020), https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrugmzdgna&refSource=search.

[20] Pursuant to Article 244 (1) of the Polish Civil Code limited real rights are: usufructs, easements (servitudes), pledges, cooperative ownership rights to premises and mortgages. The catalogue of limited real rights was presented in Article 244 of the Polish Civil Code and is exhaustive. See Grzegorz Sikorski, in *Kodeks cywilny. Komentarz aktualizowany*, ed. Jerzy Ciszewski, Piotr Nazaruk, (Warsaw: LEX, 2023, art. 244), https://sip.lex.pl/#/commentary/587857990/744782/ciszewski-jerzy-red-nazaruk-piotr-red-kodeks-cywilny-komentarz-aktualizowany?cm=URELATIONS.

[21] Judgement of the Polish Supreme Administrative Court of 11 October 2022, III OSK 762/21, CBOSA.

[22] In its judgment of 16 August 2012, II OSK 832/11, CBOSA, the Polish Supreme Administrative Court held that 'whether the effect on the real estate is within permissible norms or exceed them is irrelevant to establishing whether a given entity has a legal interest in the proceedings for issuing a decision on environmental determinants and thus whether they have the attribute of a party in these

this often meant difficulties in establishing such parties because in the case of large projects that discharged dust or other substances to the atmosphere, the authority had to recognise as parties all persons whose real estate was located within the reach of the emissions, even if permissible values were not exceeded.

Then, by Article 209 (8)(c) of the Act of 20 July 2017 – Water law[23] subparagraph 3a was added to Article 74 EIA, where the premises determining the status of a party to proceedings for issuing an environmental decision were first laid down (the amendment entered into force on 1 January 2018).

The current wording of the analysed provision that establishes the parties to proceedings was given by the Act of 9 July 2019 on amending the Act on making available information about the environment and its protection, public participation in environmental protection and on the assessment of environmental effect and certain other acts[24]. The concept of the area of effect that is the premise for being granted the status of a party was modified. Before the amendment, the party to proceedings was an entity who held a real right to a plot of land directly adjacent to plots on which the project was to be implemented. By this amendment, the legislator resigned from the requirement of direct neighbouring of plots, adopting a permanent distance criterion of 100 meters[25] and the concept of an area instead of a plot of land. The explanatory memorandum pointed out that the purpose of the introduced amendment was to avoid situations in which the status of a party would be afforded to entities that have real rights to real estate located in a considerable distance from the area of the planned investment (e.g. in a situation where the investment is implemented only on a small fragment of a large plot of land), even though there would have been no other premises for recognising an entity as a party to the proceedings applicable to this case[26]. As pointed out in the explanatory memorandum to the draft act, the premise pertaining to real rights to the real estate situation in the area that will be affected by the project allows – in the broadest and most optimal way – for persons potentially affected by the significant impact of the planned project to be taken into account. These comments lead directly to the conclusion that it is impossible to equate the concept of a 'expected area on which the project will be implemented' with a plot of land as evidenced, because also only a fragment of this plot may constitute this area[27].

It is a positive change given that investors see the participation of other parties to the proceedings as a risk of prolonging the process of obtaining necessary decisions to carry out the investment and there might be attempts to limit their participation in the proceedings or even to eliminate them from the proceedings altogether. There have been situations where the investor sectioned off a plot of land that constitutes the area of investment only to eliminate any parties apart from them from participation in these proceedings. Administrative courts considered such manoeuvres circumvention (evasion) of law[28].

This solution is not devoid of other controversies. To recap, under the previous legislation, in the case of an investment where the expected effects were accommodated within the boundaries of the plot of land on which the implementation of the project was planned, the parties to proceedings included only entities that had real rights to real estate directly adjacent to this plot. At the moment, the parties to proceedings include all entities that have a real right to real estate situated within 100 m from the expected area of the implementation of the project, irrespective of the occurrence of real effects[29].

---

proceedings; the only condition is for the real estate to be located within the reach of the effect of the planned investment.'

[23] Dz. U. (Polish Journal of Laws) of 2017 item 1566.

[24] Dz. U. (Polish Journal of Laws) of 2019 item 1712.

[25] It needs to be noted that the legislator set this distance arbitrarily, without any explanation, hence 100 meters, not e.g. 50, 150 or 200 meters.

[26] See government draft act on emending the Act on making available information about the environment and its protection, public participation in environmental protection and on assessment of the environmental effect and certain other acts of 9 July 2019, VIII term of office, Document of the Polish Sejm no 3616.

[27] Judgement of the Voivodship Administrative Court in Szczecin of 19 January 2023, II SA/Sz 443/22, CBOSA.

[28] Judgement of the Voivodship Administrative Court in Gdańsk of 8 July 2022, II SA/Gd 299/20, CBOSA.

[28] Piotr Otawski, in *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, ed. Tomasz Filipowicz, Alicja Plucińska-Filipowicz, Marek Wierzbowski

Moving on to the second premise, it needs to be explained that in the light of the statute, in order to establish the circles of parties to the proceedings, it is crucial to settle whether environmental quality standards will be exceeded as a result of the implementation of a given project and whether these standards have already been exceeded in the investigated area. The assessment of exceeding environmental quality standards should be made based on the project information card (hereinafter: PIC) or a report on the project's environmental effect (hereinafter: report)[30].

Moving on to the third premise, it needs to be pointed out that in order to assess whether a given entity will have the attribute of a party to proceedings for issuing an environmental decision it is necessary to establish to what real estate they hold a real right, and – if it borders with the area of the planned investment – what its current and potential purpose resulting from the zoning plan is (because this is how the phrase 'according to its current purpose' should be understood), and whether due to its location in relation to the area of the planned investment this investment will result in exceeding environmental quality standards on this real estate or may introduce restrictions in its development[31].

4. Admission of a given person to proceedings as a party

Pursuant to the Code of Administrative Procedure, it is the administration authority that has the obligation to establish whether a given person may be afforded the attribute of a party to the proceedings. This does not relieve the applicant from the obligation to cooperate with the administration authority in this regard, but, under Article 74 (3a) EIA, it is the authority that is obliged to establish whether the applicant is afforded the legal interest in being a party to the proceedings. In the context of establishing the circle of parties to the proceedings, the PIC and the report are crucial, which, depending on the type of project (Article 74 (1) and (2) EIA) must be attached to the application for an environmental decision. These are private documents for which substantive law stipulates special requirements. The card and the report are documents the correct drafting of which requires the author to have specific expert knowledge and which in effect cover so-called special information. Even though neither the card nor the report are expert opinions in the technical-legal understanding of this phrase, that is in the understanding of Article 84(1) CAP, because they are not made on order of the authority, but of the investor, and because of their complexity, specialised nature and a central place in the procedure of assessment of the project's impact on the environment, they are attributed special evidence value and force[32]. These documents will in particular present a description of the planned project, its type, attributes, scale and location, and an expected effect of the analysed variants on the environment. Thus, it will determine the circle of parties to the proceedings.

Apart from this, the investor must attach to the application for an environmental decision relevant evidential maps and an excerpt from the register of lands or other documents, in paper or electronic form, issued by an authority that maintains records of lands and buildings, which allows for establishing parties to the proceedings, that includes at least the number of the plot of land as evidenced and the following, as long as they have been disclosed: the number in the land and mortgage register, first and last name or business name and address of the records-keeping authority, the expected area on which the project will be implemented and the area referred to in Article 74 (3a) sentence 2 EIA.[33]

If the number of parties to the proceedings in the case for issuing an environmental decision exceeds 10, the excerpt from the register of lands or other documents is not required. When in doubt, the authority may summon the entity planning implementation of the project to attach a document

(Warsaw: C.H.Beck: Legalis, 2020), art. 74, nt. 9, https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrvge2tknroobqxalrvgmytoojsgaza&refSource=toc#.

[30] Judgement of the Voivodship Administrative Court in Gliwice of 23 September 2021, II SA/Gl 611/21, CBOSA.

[31] Judgement of the Voivodship Administrative Court in Poznań of 7 April 2022, IV SA/Po 1444/20, CBOSA.

[32] Judgements of the Polish Supreme Administrative Court of 11 July 2013, II OSK 639/13 and judgement of the Voivodship Administrative Court in Gorzów Wielkopolski of 2 June 2022, II SA/Go 236/22, CBOSA.

[33] Listed in detail in Article 74(1) and (2) EIA with certain differentiation depending on the type of project.

relevant to evidence that the number of parties to the proceedings exceeds 10 (Article 74 (1a) EIA). Where the number of parties exceeds 10, then the authority that conducts the proceedings has additional obligations resulting from Article 74(3) and (3aa –4) EIA. If the number of parties to the proceedings in a case for issuing an environmental decision or other proceedings concerning this decision exceeds 10, provisions of Article 49 CAP are applied to notifying parties other than the entity planning the launching of the project, with the proviso that the notification is made in the form of public announcement in the seat of the authority competent in the case and by posting the document in the Public Information Bulletin on this authority's website. Notification of parties under Article 49 CAP cannot be equated with making public the information about the proceedings if it is conducted with public participation[34]. Moreover, the authority that conducts the proceedings must notify the commune head, mayor or president of the city in the commune appropriate to the area on which the project will have effects about decisions issued and other activities taken up by this authority in these proceedings. The commune head, mayor or president of the city makes available the notification in the Bulletin and announces it publicly in a manner that is customary to a given community. It needs to be emphasised that the real light to the real estate situated in the area on which the project will have effects is determined by the authority on the basis of the document referred to in Article 74(1)(6) EIA or other documents presented by the applicant and it is assumed that the information presented in these documents is true. Moreover, the criteria of staying and reopening proceedings were made stricter, which is clearly intended to speed up proceedings for issuing environmental decisions. The question remains whether this is done in violation of procedural entitlements of parties other than the applicant.

It also needs to be noted that the original establishment of parties to the proceedings will not always be definitive. It may turn out in the course of proceedings that the assessment of the project's effect on the environment will mean that the project cannot be carried out in the variants proposed by the applicant. Then, with the consent of the applicant, the authority shall stipulate in its decision, out of the variants referred to in Article 66(1)(5) EIA, the variant approved for implementation. This may be a rational alternative variant or a rational variant most beneficial for the environment. As a result, this should lead to updating the parties to the proceedings, because the new variants may stipulate a different area of the project's impact on the environment[35].

Therefore, if an entity is not recognised as a party, they do not have an easy task in establishing their procedural position. As pointed out in the established line of judicial decisions, verification of reliability and evidential force of these documents requires that evidence that is at least comparable in terms of expertise and specialist analysis be taken, e.g. evidence from a specialist expert opinion which would document, among other things, the flaws or erroneous assumptions or findings of the project information card[36]. However, how should this be done, e.g. how to question the correctness and reliability of the analysis and measurement made, if such an entity is not able to be up to date with the case files because they are not a party in the authority's assessment? The entity that considers itself a party and that is not admitted to the proceedings may request that the assessment of their status as a party to the proceedings be made only by requesting a review of the decision that closes these proceedings within the time limit stipulated for the parties who have been served the decision to file a request for a review. If, therefore, a given entity was not recognised as a party in the 'main' proceedings in the case, it may rely on the rights stipulated in Article 73 CAP.[37]

Neither of the provisions of EIA nor CAP stipulate an obligation to issue an order on admitting or an order on a refusal to admit a given person to participate in the proceedings[38]. In turn, every time

---

[33] Krzysztof Gruszecki, *Komentarz do ustawy o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko* (Warszawa: LEX, 2023), art. 74, https://sip.lex.pl/ #/commentary/ 587245024/718794?tocHit=1&cm=URELATIONS.

[35] Judgement of the Voivodeship Administrative Court in Warsaw on 20 October 2023, IV SA/Wa, 969/23, CBOSA.

[36] Judgement of the Supreme Administrative Court of 27 June 2023, III OSK 2352/21, CBOSA.

[37] Judgement of the Voivodship Administrative Court in Wrocław of 24 August 2023, II SA/Wr 299/23, CBOSA.

[38] The exception concerns admissibility of public organisation's participation in proceedings. Pursuant to Article 31(2) CAP, if a public administration authority considers such demand of a social organisation as justified, the authority shall order initiation of the proceedings ex officio or to allow the social organisation to participate in the proceedings. The order refusing to initiate the proceedings

the administrative proceedings are initiated either at the request of the party or *ex officio*, the authority is obliged to establish all parties to these proceedings. The authority establishes this circle of parties in given proceedings pursuant to Article 28 CAP in conjunction with special rules on the subject of the case, whereas the establishment of parties to the proceedings, including admitting a person to proceedings upon their request, is not done in the form of an order or in the form of other acts or activities of public administration. It is sufficient that the person requesting admission to participate in the proceedings be notified by the authority in a regular document that they are not entitled to the status of a party. This is why the question of correct establishment by the authority of parties to proceedings is not and cannot be the subject of a separate complaint (apart from the given examples). The obligation resulting from Article 61(4) CAP of notification about initiating proceedings of all persons who are parties in the case is intended to ensure that parties may actively participate in the case (Article 10 CAP). Additionally, it needs to be noted that the obligation of notification of parties concerns the initiation of proceedings, there is only one successfully initiated procedure and it is pending in a given case, while subsidiary petitions are examined during its course[39]. Admittedly, one may also apply to the authority that information about the environment and its protection be made available or for making available protection, but these applications do not affect the time limits for handing a case (thus obtaining relevant information may proceed after the lapse of the time limit for bringing an appeal or complaint to the administrative court).

Submitting a complaint by entities whom the authority did not recognise as parties to proceedings is also problematic. A person who is not a party in the proceedings, and who was omitted in these proceedings by not being served the decision of the first instance authority, may file an appeal within the time limit that runs for parties to the proceedings who have been served the decision, whereas after this time limit, they do not have the right to submit an appeal but a request that proceedings in the case be reopened pursuant to Article 145 (1)(4) CAP.[40] At that, it needs to be remembered that the reopening of proceedings applies only to final decisions. Therefore, if the authority fails to publicly post an announcement (and the limited number of parties was established on the basis of false information included in, e.g. the report or outdated entry in the registers), how can a given entity, who, invoking their legal interest, would like to file an appeal and question this evidence, is to know the date of service of the environmental decision upon other parties? It is, undoubtedly, very difficult.

5. Conclusions

Cases for issuing environmental decisions are often disputable. On the one side, there is the investor who plan's implementation of a project, and the other there are owners of the neighbouring real estate or persons who hold specific real rights to the real estate and who contest the planned investment. It is natural that if a subjective version of procedural legitimation was to be adopted and if everyone who has a true interest in the case was admitted to participate in the proceedings, this would lead in many proceedings to an excessive number of parties, which in turn would inevitably lead to an investment paralysis and an increase of costs of conducting such proceedings. Thus, it is reasonable to introduce objective criteria of establishing parties to the proceedings in cases for issuing environmental decisions. However, it is believed that the findings made in this publication may provide reasoning behind the *de lege ferenda* postulate that the existing obligation on individual notification of all parties if their number does not exceed 10 be upheld and that authorities are competent to issue decisions on environmental determinants or in other proceedings concerning this decision always apply additional provisions of Article 49 CAP to notifying parties other than the entity that plans the launch of the project. Secondly, such persons should be allowed to read the case

or to allow the social organisation to participate in the proceedings shall be subject to the complaint. Moreover, pursuant to article 61a CAP, if the demand to initiate proceedings has been submitted by a person who is not a party, the public administration authority shall issue an order to refuse to initiate proceedings and this order is subject to the complaint.

[39] Judgement of the Polish Supreme Administrative Court of 18 May 2021, I OSK 228/21, CBOSA.

[40] Judgement of the Polish Supreme Administrative Court of 24 November 2010, II OSK 1762/09, CBOSA.

file upon request, regardless of whether they are considered parties to the proceedings or not. A refusal of access to case files often causes mistrust in such persons and suspiciousness towards the intentions of the investor and public administration authorities. At the moment, in so-called 'chamber proceedings' concerning environmental decisions, where the number of the parties established by the authority on the basis of documents presented by the investor may be below 10, other entities may find out about issuing such a decision after is has been done. This, in turn, means that the introduced changes instead of accelerating the investment and construction process, may actually extend it in time, because the entities that consider themselves parties to proceedings will first attempt to find out their status in the appeals procedure and then in an administrative review procedure. If such entities had the opportunity to read the case file already at the stage of the first instance, they whould have a chance to verify the documents submitted and to recognise that there is no basis to submit appeals or complains, and thus the authorities would realise the postulates resulting from the principle of furnishing information (Article 9 CAP), the principle of convincing (Article 9CAP) and the principle of trust (Article 8 CAP).

Bibliography

1. Adamiak, Barbara, and Borkowski Janusz. *Postępowanie administracyjne i sądowadministracyjne* [Administrative procedure and administrative review procedure]. Warsaw: Wolters Kluwer, 2022.
2. Adamiak, Barbara, Borkowski, Janusz, Krawczyk, Agnieszka. 'Aspekty podmiotowe regulacji prawa procesowego' [Personal aspects of regulation of procedural law], in *Prawo procesowe administracyjne. System Prawa Administracyjnego* [Administrative procedural law. Administrative law system], vol. 9, ed. Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel, 124-157. Warsaw: C.H.Beck, 2020.
3. Adamiak, Barbara. '*Wadliwość decyzji administracyjnej*' [Flaws of an administrative decision]. Wrocław Acta Universitatis Wratislaviensis, 1986.
4. Borkowski, Janusz, Adamiak, Barbara, *Kodeks postępowania administracyjnego. Komentarz* [Code of administrative procedures. Commentary]. Warsaw: C.H.Beck: Legalis 2022. https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbqhe3dsmboobqxalrwgq3tsnrwgq2a&refSource=guide1
5. Borkowski, Janusz. In *Kodeks postępowania administracyjnego. Komentarz* [Code of administrative procedures. Commentary], ed. Barbara Adamiak, Janusz Borkowski, 231. Warsaw: C.H.Beck, 2017.
6. Ciechanowicz-McLean, Janina., *Leksykon ochrony środowiska* [Lexicon of environmental protection]. Warsaw: C.H.Beck, 2009.
7. Dawidowicz, Wacław. - *Ogólne postępowanie administracyjne. Zarys systemu* [General administrative procedure. Outline]. Warszawa, 1962.
8. De Ambrosis Vigna, Anna & Kijowski, Dariusz. "The Principle of Legitimate Expectations and the Protection of Trust in the Polish Administrative Law," *Białostockie Studia Prawnicze* 23, no. 2, (2018): 39-52. https://doi.org/10.15290/bsp.2018.23.02.03.
9. Gołaszewski, Piotr. In *Kodeks postępowania administracyjnego. Komentarz* [Code of administrative procedures. Commentary], ed. Roman Hauser, Marek Wierzbowski. Warsaw: C.H. Beck, Legalis, 2023. https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3danbtgmydomjoobqxalrwhaydmmzsgi2q&refSource=guide1#tabs-metrical-info.
10. Gruszecki, Krzysztof. *Komentarz do ustawy o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko* [Commentary to the act of making available information about the environment and its protection, public participation in environmental protection assessment of the effect on the environment]. Warsaw: LEX, 2023. https://sip.lex.pl/#/commentary/587245024/718794/gruszecki-krzysztof-komentarz-do-ustawy-o-udostepnianiu-informacji-o-srodowisku-i-jego-ochronie...?cm=URELATIONS
11. Jakimowicz, Wojciech. *Publiczne prawa podmiotowe* [Public personal rights]. Cracow: Zakamycze, 2002.
12. Klonowiecki, Wit. *Strona w postępowaniu administracyjnym* [A party to administrative proceedings]. Lublin, 1938.
13. Kmiecik, Zbigniew Romuald, "Interes prawny stron w postępowaniu administracyjnym" [Legal interest of parties in administrative proceedings], *Państwo i Prawo*, no. 1 (2013): 19- 35.
14. Kowalik-Bańczyk, Krystyna. In *Karta Praw Podstawowych Unii Europejskiej. Komentarz* [Charter of Fundamental Rights of the European Union. Commentary], ed. Andrzej Wróbel. Warsaw: C.H.Beck, Legalis, 2020. https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrugmzdgna&refSource=search
15. Otawski, Piotr. In *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz* [Act on making available information about the environment and its protection, public participation in environmental protection and the assessment of the impact on the environment. Commentary], ed. Tomasz, Filipowicz, Alicja, Plucińska-

Filipowicz, Marek Wierzbowski (Warsaw: C.H.Beck: Legalis 2020). https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrvge2tknroobqxalrvgmytoojsgaza&refSource=toc#tabs-metrical-info

16. Puchalska, Bogusia. "The Charter of Fundamental Rights of the European Union: Central European Opt-Outs and the Politics of Power." *Europe-Asia Studies*, 66, no. 3 (May 2014): 488–506. https://doi.org/10.1080/09668136.2013.855019.
17. Randazzo, Barbara. "The EU Charter of Fundamental Rights in constitutional adjudication. The Italian perspective." *CERIDAP* no. 4 (October-December 2023): 99–128. https://doi.org/10.13130/2723-9195/2023-4-29.
18. Sikorski, Grzegorz. In *Kodeks cywilny. Komentarz* [Civil code. Commentary], ed. Jerzy Ciszewski, Piotr Nazaruk, Warsaw: LEX, 2023. https://sip.lex.pl/#/commentary/587857990/744782/ciszewski-jerzy-red-nazaruk-piotr-red-kodeks-cywilny-komentarz-aktualizowany?cm=URELATIONS.
19. Tadeusz, Bigo, 'Ochrona interesu indywidualnego w projekcie kodeksu postępowania administracyjnego' [Protection of individual interest in the draft code of administrative procedures], Państwo i Prawo, no. 3 (1960): 459–471.
20. Wilbrandt-Gotowicz, Martyna. 'Europeanisation of Administrative Proceedings Law – Opportunities and Risks,' *Białostockie Studia Prawnicze* 23 no. 2 (2018), https://doi.org/10.15290/bsp.2018.23.02.02.
21. Wróbel, Andrzej. In *Karta Praw Podstawowych Unii Europejskiej. Komentarz* [Charter of Fundamental Rights of the European Union. Commentary], ed. Andrzej Wróbel. Warsaw: C.H.Beck, Legalis, 2020. https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogi3damrugmzdgna&refSource=search.
22. Zdyb, Przemysław. "Organy właściwe w sprawie wydania decyzji o środowiskowych uwarunkowaniach" [Authorities competent in cases of issuing decisions on environmental determinants]. In *Ocena modelu prawnego organizacji ochrony środowiska w Polsce i na Słowacji [Assessment of the legal model of the organisation of environmental protection in Poland and Slovakia]*, ed. Elżbieta Ura, Jerzy Stelmasiak, Stanisław Pieprzny. Rzeszów RS Druk, 2012.