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*The theoretical and legal conception of general principles
of the code of administrative procedure*

Summary

Jurisprudence distinguishes between (legally binding) principles-norms and (non-legally binding) principles-postulates. Both are further differentiated by into descriptive principles (describing the manner in which certain legal institutions are shaped) and directive principles (understood as a prescription – order or prohibition – of conduct). Such a dichotomic division of the general principles of the Code of administrative procedure (CAP) proves little useful. It is also an unsatisfactory division in which the concept of the general principles of CAP cannot be fully and adequately worked out.

When a general principle or rule is only approached in a directive manner, neither the exceptions to it or its guarantees are accounted for, and consequently the construction of a principle is incomplete. Hence the need to complement the general principles of the CAP with detailed principles approached in a descriptive manner. Consequently, instead of dividing the CAP principles into directive and descriptive ones, for each principle the directive and descriptive aspect has been identified. Likewise, approaching a given principle in a descriptive manner only, i.e. denoting and commenting on its static state, albeit right, is also incomplete.

Therefore it seems justified to see a general principle of the CAP as a triad consisting of an abstract norm, a model norm and a concrete norm.

The general principles of the CAP in the sense of abstract norms constitute model solutions that are not legally binding, but which relate to values which the doctrine considers leading. The general principles of the CAP in the sense of model norms are the legally binding norms that have been expressly codified and which are the generally adopted model solutions in general administrative proceedings. They constitute a part of a legal norm identical with the concrete norm and are seen as a principle of a general character, usually without exceptions.

The general principles of the CAP in the sense of concrete norms are the legally binding norms that contain a preferred legal norm that has been directly formulated in the general principle and modified or amended by guarantees and exceptions resulting from the provisions of the detailed principles of the CAP.

Keywords: legal principle, principle-postulate, descriptive norm, abstract norm, concrete norm, model norm