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SĘDZIÓW NACZELNEGO SĄDU ADMINISTRACYJNEGO
W DNIU 18 KWIETNIA 2016 R. W WARSZAWIE

STUDIA I ARTYKUŁY

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Report of the proceedings

The annual General Assembly of Judges of the Supreme Administrative Court was held on 18 April 2016 in the Assembly Hall in the building of the Supreme Administrative Court [SAC] in Warsaw; it adopted – by resolution – the *Information on the Activities of Administrative Courts in 2015* as presented by the President of the Supreme Administrative Court, Professor Marek Zirk-Sadowski.

In addition to the President of the SAC and to the Court's Vice-Presidents: Professor Jacek Chlebny, Janusz Drachal, Maria Wiśniewska as well as judges of the SAC and presidents of voivodeship administrative courts, the General Assembly was also attended by invited guests – representatives of constitutional state agencies and lawyers' corporations: on behalf of the Polish President, Andrzej Duda: Andrzej Dera – Secretary of State in the Polish President's Chancellery; Professor Andrzej Rzepliński – President of the Constitutional Tribunal; Professor Małgorzata Gersdorf – First President of the Supreme Court, judge of the Supreme Court; Dariusz Zawistowski – Chairman of the National Council of the Judiciary, judge of the Supreme Court; in place of Zbigniew Ziobro, Minister of Justice: Łukasz Piebiak – judge, Undersecretary of State in the Ministry of Justice; Stanisław Piotrowicz – Chairman of the Commission for Justice and Human Rights of the Lower House of the Polish Parliament; Krzysztof Kwiatkowski – President of the Supreme Audit Office; Adam Bodnar, PhD – Human Rights Defender; Marek Michalak – Children's Ombudsman; Hanna Majszczyk – Undersecretary of State in the Ministry of Finance; Edyta Bielak-Jomaa – General Inspector for Personal Data Protection; Maciej Graniecki – Head of the Office of the Constitutional Tribunal; Antoni Cyran – Head of the Chancellery of the First President of the Supreme Court; Grzegorz Borkowski – Head of the Office of the National Council of the Judiciary; Beata Tokaj – Head of the National Electoral Office; Roman Kapeliński – Director of the Legislative Office at the Chancellery of the Upper House of the Polish Parliament; Jolanta Rusiniak – Secretary of the Council of Ministers, President of the Government Legislative Centre; Urszula Góral – Director of the Department of Social Education and International Cooperation in the Office of the General Inspector for Personal Data Protection; Andrzej Zwara – President of the Supreme Bar Council; Dariusz Sałajewski – President of the National Council of Legal Advisers; Jawiga Glumińska-Pawlic – Chairperson of the National Chamber of Tax Advisers; and Anna Korbela – President of the Polish Chamber of Patent Attorneys.

The General Assembly was also attended by Professor Irena Wiszniewska-Białecka, judge of the Court of Justice of the European Union in Luxembourg.

After the official inauguration, the President of the Supreme Administrative Court, Professor Marek Zirk-Sadowski, presented the information about the activities of the Supreme Administrative Court and voivodeship administrative courts in 2015, pointing out that the presentation follows the 35th anniversary of the reactivation of administrative jurisdiction and the incoming 95th anniversary of the establishment of the Supreme Administrative Tribunal. The President of the SAC emphasized that administrative courts: voivodeship administrative courts as first instance courts and the SAC as a cassation court and, at the same time, a court responsible for the consistency of judicial decisions and for preventing the protraction of proceedings, have been a separate organisational and judicial structure for

12 years. The President of the SAC believes that, over that period, the judicial efficiency has considerably improved, thus affirming the rightness of the two-instance model of administrative jurisdiction adopted in the Polish Constitution and in the Law on the System of Administrative Courts.

Later on, Professor M. Zirk-Sadowski spoke about the issues relating to: the efficiency of operation of courts of both instances in the light of statistical data; the *ratione materiae* scope of judicial decisions of courts of both instances; the steps taken by the SAC to eliminate any discrepancies in judicial decisions; the application of pro-constitutional and pro-EU interpretation of legal regulations; the steps made, as part of control over the operation of public administration, towards the effective enforceability of judgments of administrative courts, *inter alia*, by fining and awarding sums of money to parties in proceedings.

While presenting the output of judicial decisions of administrative courts, Professor M. Zirk-Sadowski emphasized that they served as guarantors of the idea of democratic state of law, building both on the idea of freedom (among others, economic freedoms and rights) and the idea of duty (among others, the duty to bear public charges and levies); and when the judges of administrative courts resolve cases, they have to weigh both values by reliance on the output of judicial decisions of the Constitutional Tribunal, the European Court of Justice and the European Court of Human Rights.

The President of the SAC also pointed to the future tasks facing the administrative courts: the electronisation of proceedings before administrative courts and the organisational and legislative steps to improve the pace of proceedings before the SAC.

He further highlighted the importance of new legal arrangements launched by the Act of 9 April 2015 – Amendment to the Law on Proceedings Before Administrative Courts that should contribute to improving the pace of case-solving by courts, the efficiency of administrative proceedings and the reduction in the number of complaints about protracted proceedings. Towards the end of his speech, the President of the SAC underlined that the achievements of the administrative jurisdiction were to a great extent the result of good cooperation between the legislative and executive powers. His speech *in extenso* is published on page 9 in this issue of ZNSA.

The first guest to speak was the Secretary of State in the Chancellery of the Polish President, A n d r z e j D e r a , who read out the letter from the President of the Republic of Poland, A n d r z e j D u d a . The letter *in extenso* is published on page 17 in this issue of ZNSA.

The next speaker was Professor M a ł g o r z a t a G e r s d o r f – First President of the Supreme Court. At the beginning of her speech, she thanked for the invitation to participate in the assembly, congratulated Professor M. Zirk-Sadowski on his appointment to the office of the President of the SAC and noted that the annual meeting of the General Assembly of Judges of the SAC in progress was the very first attended by him in that official capacity. She wished the President of the SAC success in standing guard over the independence of the administrative jurisdiction as well as fair decisions that would duly and deliberately take account of the legal interest of both an individual and the state. At this point, she also thanked Professor Roman Hauser for long years of his service and for his unquestionable contribution to the formation of the model of administrative jurisdiction and for the cooperation between the Supreme Administrative Court and the Supreme Court as recently manifested by their joint conference on reprivatisation.

At the beginning, she underlined that the independence of judges was the foundation of administrative jurisdiction – a high-level part of the administration of justice which reviews the state actions and materially affects the operation of the state. She further reminded that its reinstatement was the result of democratisation of community life and the acknowledgement of the need for control over the actions of state authorities by the independent administration of justice, especially those affecting individuals. She concluded that the independence and self-governance of the administrative jurisdiction were great accomplishments crowning many years on the path of shaping up the relationship between the judicial and executive powers in the context of the constitutional principle of tripartite separation of powers. She also emphasized that the guarantees for independence of judges that manifest as special powers vested in judges, were not personal privileges of specified persons but an expression of efforts to guarantee an effective protection of an individual, including the right to sue. Further, she called attention to references, commonly made at present in judicial decisions, to international laws as well as the provisions of the Polish Constitution in order to seek protection for rights of an individual. However, she concluded that the excessive promotion of the interest of an individual creates certain risks to the bodies of public administration, the executive authority and in a wider sense – the state; therefore, both the protection of an individual and the satisfaction of an individual's interest should have limits. By way of an example, she quoted the rulings of administrative courts regarding the access to public information. At this point, she reminded that the Constitutional Tribunal was to decide on the motion submitted by the First President of the Supreme Court to examine whether the Access to Public Information Act conformed to the Constitution (files no. K 58/13); it is underlined by numerous rulings of administrative courts with the Supreme Court as a party; Professor M. Gersdorf argues that those rulings were too liberal in guaranteeing access to public information and tended to develop a rule of allowing a groundlessly wide access to information relating to the actions of public authorities. She noted that, especially considering the recent developments in Europe, it would be advisable to consider that excessively wide access to such information might create certain threats to the state and its bodies; she emphasized that the motion submitted to the Constitutional Tribunal demonstrated the concern about the state security and not the interest of the Supreme Court.

In conclusion of her speech, Professor M. Gersdorf congratulated the judges on their judicial decisions; she believes that it is an intellectual wealth of the modern legal thought and combines the efforts of many people: administrative court judges, scholars and law practitioners. She underlined that the consistency remained especially valued in judicial decisions since it promoted the confidence in the administration of justice, built stability and safety. She made a wish that the rulings of administrative courts should continue on that path.

Then, Professor Andrzej Rzepliński, President of the Constitutional Tribunal, took the floor. He thanked for the invitation and mentioned that it was his last time to participate in the assembly as a representative of the Constitutional Tribunal. To begin with, he also thanked the former President of the SAC, Professor Roman Hauser, who was appointed judge of the Constitutional Tribunal, saying it was a great loss to the Polish constitutional judicature and the quality of Polish law that, despite of being appointed to the Constitutional Tribunal, the judge could not take the oath or rule as a member of the Constitutional Tribunal. He emphasized the considerable contribution made by Professor R. Hauser to the establishment of

a model system of administrative jurisdiction for the EU. He underlined that the last year was a continuation of successful cooperation between the administrative jurisdiction and the constitutional court – the cooperation which tends to gain in special importance in the period when the independence and separateness of the administration of justice had been publically challenged although they were among the foundations of the political system of the Republic of Poland.

He identified juridical questions to the Constitutional Tribunal asked by administrative courts as the crucial tool of cooperation. He noted that although no such questions were forwarded by those courts during 2015, the Constitutional Tribunal ruled on five cases initiated by questions asked by administrative courts that concerned the following: whether it is allowed to amortise intangible assets in corporate income tax (judgment of the Constitutional Tribunal of 10 February 2015, P 10/11 – juridical question asked by the Voivodeship Administrative Court [VAC] in Kraków); limitation of those eligible for the government programme of support to certain persons that receive carer's allowance (judgment of the Constitutional Tribunal of 10 March 2015, P 38/12 – juridical question asked by the VAC in Poznań); gabling games (judgment of the Constitutional Tribunal of 11 March 2015, P 4/14 and judgment of the Constitutional Tribunal of 21 October 2015, P 32/12 – juridical questions asked, respectively, by the SAC and the District Court for Gdańsk-Południe and the VAC in Gliwice); no time limitation for judgment on the nullity of a decision issued in gross violation of the law (judgment of the Constitutional Tribunal of 12 May 2015, P 46/13 – juridical question asked by the VAC in Warsaw).

Among the judgments discussed by him later on in his speech, he attached special importance to the judgments in the cases P 4/14 and P 32/12, passed by all the judges of the Constitutional Tribunal (although the constitutional court failed to concur with the doubts of the senders of those questions). In the opinion of the President of the Tribunal, this demonstrates the "considerable ability of administrative courts to select cases of particular constitutional importance."

With respect to the first of the above-mentioned judgments (P 4/14), one of the issues considered was the question of failure to notify the so-called technical regulations as referred to in the Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998, where the Constitutional Tribunal resolved that the failure to notify the regulations of the Gambling Act as technical regulations did not lead to breaching the rule of democratic state of law or the rule of law. Another issue involved limiting the ability to organise gambling on gaming machines to casinos. In this case, the Tribunal ruled that such a limitation conformed to the constitutional rule of economic freedom considering the need for reasonable protection of citizens against adverse consequences of gambling.

As regards the second of the judgments (P 32/12), the Constitutional Tribunal ruled that the provisions of the Gambling Act, to the extent allowing to penalise an individual who had already been sentenced *res judicata* to pay a fine for a fiscal offence of organising gambling on gaming machines without a licence for gambling on gaming machines outside a casino, did not infringe on the rule of proportional reaction of the state to the violation of legal duties.

Then, Professor A. Rzepliński moved to another instrument of cooperation between both courts – the mutual recognition of their decisions with respect to such issues/notions as: gross violation of law (judgment of the Constitutional Tribunal of 12 May 2015, P 46/13), right to sue (resolution of the SAC of 19 October 2015, I OPS 1/15), freedom to build, rights of third parties (judgment of the SAC of 5 May 2015,

II OSK 1604/13), *in dubio pro tributario* principle (e.g., decision of the Constitutional Tribunal of 15 July 2015, SK 69/13; judgments of the SAC of: 31 March 2015, II FSK 707/13; 23 April 2015, I FSK 1558/13; 16 December 2015, II FSK 2392/13). The President of the Tribunal also mentioned the example of the judgment of the Constitutional Tribunal of 2014 (files no. K 7/13) regarding the issue of taxation on free benefits provided by an employer to an employee that affected the outcome of judicial decisions of the SAC in that respect in 2015 (e.g., see the rulings of the SAC of: 6 February 2015, II FSK 350/14; 21 April 2015, II FSK 792/13; 2 June 2015, II FSK 1126/13).

Like in the previous years, the President of the Constitutional Tribunal pointed to the issue of application by administrative courts of regulations ruled unconstitutional by the Constitutional Tribunal where the Tribunal deferred the date when they were to lose force (the so-called deferment clause). He noted that the SAC did not stipulate whether the use of the deferment clause by the Tribunal would forejudge about the continued application of an unconstitutional regulation during the deferment period (see the judgment of the SAC of 19 June 2015, II FSK 800/15). A group of cases relating to the so-called undisclosed sources of revenue can serve as an example of administrative judicial decisions admitting the possibility of continued application of an unconstitutional regulation during the deferment period.

Continuing his speech, Professor A. Rzepliński noted that in a multi-centric legal system a dialogue among respective centres of judicial decisions not only entailed the recognition and mutual reliance on each other's rulings, but also the mutual respect for each other's powers. He stated that, in the foregoing sense, the cooperation between the SAC and the Constitutional Tribunal remained satisfactory. The SAC makes use of certain means to resolve constitutional doubts other than juridical questions (direct application of the Constitution and the rulings of the Constitutional Tribunal – see, e.g., the judgment of the SAC of 20 November 2015, I OSK 1003/14; techniques of interpreting the law in conformity with the Constitution – see, e.g., the judgment of the SAC of 7 May 2015, II GSK 740/14; a concept of the so-called obvious incompliance with the Constitution – see, e.g., the judgment of the SAC of 21 January 2015, II FSK 1764/14).

In this part of his speech, President A. Rzepliński addressed in more detail the issues of applying the techniques of interpreting the law in conformity with the Constitution, and presented some examples of that approach being used in the rulings of the SAC (see the resolution of the SAC of 19 October 2015, I OPS 1/15; judgments of the SAC of 3 April 2015, II FSK 615/13 and 11 August 2015, II FSK 1676/13).

He also underlined the self-restrain of the Constitutional Tribunal in its operations as it respects the powers of other bodies of public administration, including administrative courts. To illustrate such approach, he pointed to the judgment in the case P 4/14 where the Constitutional Tribunal limited its disposition to the Constitution-related doubts of the SAC and refrained from addressing the conformity of the challenged regulations of the Gambling Act to the EU legislation considering that to be a task for the trying court and not the constitutional court as belonging to the sphere of application and not the binding force of the law. Hence, as he pointed out, the courts determined independently whether a given provision of the law should be deemed a so-called technical regulation, and established the effects of such determination (see, e.g., the judgments of the SAC of 5 November 2015, II GSK 2050/15 and 16 December 2015, II GSK 132/14).

Finishing his speech, Professor A. Rzepliński thanked for the opportunity to participate, as the President of the Constitutional Tribunal, in the General Assembly of Judges of the SAC during the last several years. He also wished the judges interesting cases and courage, among other things to ensure that the Constitution continues to have precedence in the practical application of the law.

Then, the attendees were addressed by D a r i u s z Z a w i s t o w s k i , judge of the Supreme Court and Chairman of the National Council of the Judiciary [*Krajowa Rada Sądownictwa – KRS*]. He congratulated Professor M. Zirk-Sadowski on his appointment to serve as President of the SAC and emphasized the importance of that office for the entire administration of justice in Poland, also from the perspective of taking part in the KRS activities and the role of the President of the SAC in the proper operation of the KRS. He stressed that the achievements of the administrative jurisdiction in 2015 could not have been possible without the full involvement of judges in their work and the responsible attitude of judges building on their sense of duty and the understanding of the position of administrative jurisdiction within the system, its importance and role in a democratic state of law. Going back to the history of reactivation of the administrative jurisdiction in Poland and its role in providing guarantees for protecting the rights of an individual vis-a-vis the public authority, he mentioned, as examples of actual importance of the independent administrative jurisdiction, situations involving a regulation added to the Polish Constitution that introduced a liability of the public authority for damage caused by its unlawful actions. He reminded the listeners that, once it entered into force, the common courts received a considerable number of cases where compensation was sought from the State Treasury for damage caused due to unlawful actions of officials of the communist state, especially frequent and painful for citizens in the 1940s and 1950s. Then, there arose the issue of limitation of claims sought by reliance on regulations regarding the liability in tort of the State Treasury. At that time, the judicature accepted (especially by reliance on the resolution passed by all members of the Civil Chamber of the Supreme Court) that considering the inability to obtain actual legal protection by citizens with respect to certain categories of claims in the reality of the communist regime, the period of their limitation had been suspended during that time (the situation was recognised as similar to an event of force majeure) and, as a rule, it became possible to seek such claims after the establishment of the administrative jurisdiction.

The KRS Chairman highlighted the high standard of rulings and the resulting authority of the courts which are referenced to in the rulings of both the Supreme Court and common courts, especially in those fields of law where the powers of common and administrative courts overlap (e.g., real estate management). He noted that the good cooperation between both branches of the administration of justice, where the division of powers was respected and each other's rulings were relied on, contributed to a more uniform interpretation of the law, stability of legal order and increased standards of protection of individuals' rights.

Further on, the KRS Chairman noted, among other things, the importance of constitutional arrangements that guarantee the independence of courts and the independence of judges, including the right to fair court trial and the position of the KRS as a guardian of courts' independence; he underlined that the last months' experiences clearly showed that guarantees of such type were necessary. He also noted that the current systemic practice proved the importance of the role played by the Constitutional Tribunal in a democratic state as a guarantor of the intransience

of system-related arrangements written in the Constitution, including the rule of tripartite separation of powers and the independence of judicial power. He further stressed that, in the recent period, the KRS had taken steps not only to counteract the interference of the legislative and executive powers with the independence of the judicial power and the independence of judges, especially with the position of the Constitutional Tribunal in the system, but also against allegations made by representatives of state authorities suggesting, among other things, political dependence of judges.

Towards the end, D. Zawistowski thanked the representatives of the administrative jurisdiction in the KRS – both the incumbent ones (judges of the SAC: Janusz Drachal and Jan Grzęda) and those no longer in office (judges of the SAC: Andrzej Jagiełło and Professor Roman Hauser) – for their active participation in and commitment to the KRS activities; he also wished the SAC and its judges maintenance of their existing independent position in the system as well as good work results.

Then, K r z y s z t o f K w i a t k o w s k i , President of the Supreme Audit Office [*Najwyższa Izba Kontroli – NIK*], addressed the attendees.

At the beginning, he congratulated the newly appointed President of the SAC, Professor M. Zirk-Sadowski, and thanked the previous President of the SAC – Professor R. Hauser. He also mentioned the positive results of the audit of the implementation of the state budget by the President of the SAC in the section covering administrative courts; all proposed goals were attained. Then, he stressed that the NIK audited for the first time in 2015 the enforcement of judgments of the SAC and the VACs by tax offices and customs chambers, based on the criteria of legality, efficacy, economic prudence and integrity. The analysis covered the years 2013 and 2014 and certain earlier facts if related to the audited issues. President K. Kwiatkowski considered that audit as particularly important from the point of view of guarantees for rights of an individual. He underlined that the enforcement of judgements requires seeking solutions to improve the efficiency in that respect. He noted that according to NIK's audit, tax offices and customs chambers enforced the judgments of administrative courts with due diligence, with a few exceptions. He offered some post-audit statistical data regarding the foregoing as well as data concerning the actions of tax and customs authorities relating to the recovery of amounts owed for misappropriated value added tax.

He underlined that in the current activities of the NIK, the rulings of administrative courts were frequently relied on: in the work of auditors, in training, in the activity of adjudicative groups as well as the NIK Governing Board as such. He thanked for the availability of the Central Base of Rulings of Administrative Courts which significantly facilitated access to judicial decisions of administrative courts.

President K. Kwiatkowski also noted that, in a limited number of cases regarding the appointment of auditors, the NIK was a party before administrative courts.

He concluded his speech with thanks for the cooperation to date.

The last to speak was A d a m B o d n a r , PhD, Human Rights Defender [HRD].

At the beginning, he congratulated Professor M. Zirk-Sadowski on his appointment to the office of President of the SAC. He also spoke the words of appreciation regarding the activities of Professor R. Hauser as well as the words of sadness that he could not serve in any constitutional capacity other than the judge of the SAC at present.

He underscored, in the context of promotion of legal standards, the importance of references made by administrative courts in their rulings, not only to the norms

set out in Chapter Two of the Polish Constitution and the Constitutional rule of law but also the provisions of international treaties and the EU Charter of Fundamental Rights regarding the rights and freedoms of an individual. He further noted that the administrative courts did not limit themselves to the application of the norms regarding the rights and freedoms of an individual but also actively promoted those issues through their publications and conferences.

He emphasized the active role played by the HRD as a participant of proceedings before administrative courts and an originator of motions to adopt resolutions by extended panels.

Further, he called attention to the following special issues of interest to both the HRD and the administrative courts: 1) tax authorities' practice in granting extensions to repay obligations and the associated court review of discretionary decisions, including the need to re-define the institution of administrative discretion; 2) following the rule *in dubio pro tributario* in the practice of tax authorities and the role of administrative courts in that respect; 3) infrequent application of the institution of mediation in the practice of administrative courts; 4) communicativeness and comprehensibility of reasons provided by administrative courts to their rulings and delivered to the parties in proceedings; their defects disqualifying them from cassation review; 5) the practice of administrative courts with respect to granting the right to obtain assistance to parties that earn small regular income and the ability to continue litigation by an individual; 6) legal regulation of the ability to record proceedings before administrative courts in the light of Article 96 of the Law on Proceedings before Administrative Courts.

Another complex issue spanning not only the sphere of rulings issued by administrative courts but also the practical operation of the state was identified by the HRD as the issue of reprivatisation. He noted that after the judgment of the Constitutional Tribunal of 12 May 2015, P 46/13, the issue of approach to reprivatisation and the role of administrative courts in that respect became more complicated. The Tribunal found that the perpetual ability to declare a decision to be invalid, for example a decision that grossly violates the law (issued pursuant to Article 156 § 2 of the Code of Administrative Procedure), was unconstitutional if a long period of time elapsed since the issuance of the decision, when that decision served as a basis for acquisition of a right or expectancy. The administrative courts attempt to define how the notion of elapsing time should be understood, nevertheless, they point out that interpretations alone cannot solve all problems. In the judgment of 19 November 2015, II OSK 651/14, the SAC pointed out that: "however, it is not possible to set – by way of interpretation of Article 156 § 2 of the Code of Administrative Procedure read together with Article 156 § 1.2 of that Code – the deadline past which it would become impossible to declare nullity of a decision issued in gross violation of the law." In the opinion of the HRD, the approach taken by the Constitutional Tribunal and the SAC is of fundamental importance for claiming that the burden of responsibility for the lack of reprivatisation regulations cannot be shifted onto the courts. He underlined that he believes – like his predecessor, Professor Irena Lipowicz – that the current situation of failure to regulate the terms of reprivatisation should be deemed to be violating the rule of the state of law since the law is unclear, unjust and infringes upon the principle of equal treatment of citizens by public authorities, and reprivatisation claims were afforded only to certain categories of injured parties, and to varying degrees. He expressed his viewpoint that the state tends to shrink from enacting clear-cut legislative solutions and shifts the entire burden of

law development onto courts since such arrangements are the most convenient for the legislator; however, they cannot merit approval, among other things, from the perspective of the HRD tasks.

The HRD put emphasis on the issues of access to public information and the right to petition. In his opinion, administrative courts play a very important role in those areas since they decide how to shape up the principle of open operation of state bodies as well as how to shape up the right to petition when petitions submitted by citizens fails to attract any interest or in-depth reflection of state authorities. In this context, the HRD applauded the use of the ECHR rulings by the administrative courts and the direction given to the interpretation of Article 61 of the Constitution.

Later on, A. Bodnar, PhD, underscored the importance of mutual relations, dialogue and loyal cooperation among the Constitutional Tribunal, the SAC and the Supreme Court.

To sum up his speech, the HRD pointed to the importance of the exercise by the President of the SAC of his powers under Article 191.1 of the Constitution to submit an application to the Constitutional Tribunal regarding the review of conformity of the law with the Constitution, especially in a situation when the fundamental rules of law and order were being undermined.

Concluding, he congratulated the judges and praised the integrity and quality of the Polish administrative jurisdiction.

Then, the President of the SAC, Professor M. Zirk-Sadowski, read out the letter addressed to the attendees by the Prime Minister, B e a t a S z y d ł o . The letter *in extenso* is published on page 18 in this issue of ZNSA.

The President of the SAC ordered voting on the acceptance of the *Information on the Activities of Administrative Courts in 2015*. The General Assembly of Judges of the SAC passed their unanimous decision to adopt it.

The meeting was closed at this point.

Prepared by *Przemysław Florjanowicz-Błachut*
(Judicial Decisions Bureau
of the Supreme Administrative Court)

Summary

of the article: **Relative down transference of cassation appeal in proceedings before administrative courts**

This paper addresses quite a new procedural regulation added to the Act – the Law on Proceedings before Administrative Courts (p.p.s.a.) by the Amendment of 9 April 2015, in the form of the so-called relative down transference of cassation appeal. It means that a first instance court's ruling reviewed in a cassation appeal may be reversed by that court without referring the matter to the Supreme Administrative Court for determination. The article addresses such issues as the interpretation of the grounds for applicability of Article 179a p.p.s.a., the course of court proceedings and certain issues relating to the Constitution which mostly refer to the principle of two instances in court proceedings. The application of Article 179a p.p.s.a. by administrative courts should contribute to the acceleration and simplification of proceedings before administrative courts.

Keywords: relative down transference, cassation appeal, two instances of proceedings, self-review, inter-instance proceedings

Summary

of the article: ***Ratione materiae* jurisdiction in matters of permits to collect and recycle waste**

Article 41 of the Waste Act of 14 December 2012 provides for a separate permit to collect waste, a permit to recycle waste and a permit to collect and recycle waste. The *ratione materiae* jurisdiction in matters of those permits was divided among three agencies: Voivodeship Marshal, Regional Director for Environmental Protection, and Starost. The competence of the Starost is a rule, as it was established generally, whenever a matter is outside the competence of the two other agencies. The competence of the Regional Director for Environmental Protection was, however, reserved only for activities within closed areas. Consequently, the regulation concerning the Voivodeship Marshal is the most extensive one. That agency is competent in matters identified by the properties of the waste recycling process or the status of the facility where that process takes place.

In Article 41 of the Waste Act, the jurisdiction has been laid down in a complicated manner, often by way of references to other legal acts that must be taken into consideration; for example, the Voivodeship Marshal is competent, among other issues, in projects that always have a significant environmental impact, i.e., projects that require a mandatory environmental impact assessment as listed in the Regulation of the Council of Ministers of 9 November 2010 on projects that may have a significant environmental impact. As a result, the *ratione materiae* jurisdiction in matters concerning permits to collect and recycle waste gives rise to numerous doubts that create a source of repeated disputes as to the competence and authority that are quite frequently resolved by the Supreme Administrative Court, however, not in a uniform manner or with the use of argumentation that could be regarded questionable. That issue is, nonetheless, very important, since issuing a decision in violation of the competence regulations can serve as grounds for declaring it null and void. For that reason, the analyzed regulation should be simplified.

In this paper, an attempt was made to address the foregoing doubts as to the interpretation, and to put forward some proposals to dissipate them.

Summary

of the article: **Issues of the applicability of international treaties in proceedings before administrative courts. Commentary based on the judgment of the Supreme Administrative Court of 19 March 2015 (files no. II GSK 151/14)**

This article offers an analytical commentary on the judgment of the Supreme Administrative Court of 19 March 2015, in which the issues of applicability of international law constituted one of the main streams of legal analysis. The discussion focused mainly on the assessment of the nature and legal effect of the accession to an international treaty that occurred before the effective date of the Constitution of 1997; an attempt was made to determine the importance and place of unratified international treaties in the Polish international order. Those analyses were followed by the issue of publication in the Journal of Laws of the text of an international treaty that has been repeatedly amended at the international level, and the legal consequences of state authorities' failing to publish the amended version were pointed out. The article further addressed the ways and sources necessary for the proper assessment of the *ratione materiae* scope of an international treaty. The article highlights the complexity of the matter faced by Polish courts that apply international law in their rulings, and also how uneasy this issue is for individuals and legal persons to whom international norms are addressed.

Keywords: treaty, accession to the treaty, ratification, unratified treaty, the application of international law, the Constitution of the Republic of Poland

Summary

of the article: **Motion to suspend enforcement of a decision in proceedings before administrative courts. Selected issues**

The purpose of this paper was to answer the question, whether an administrative court that is about to rule on the grant of temporary injunction pursuant to Article 61 § 3 of the Act – the Law on Proceedings before Administrative Courts (Journal of Laws 2012, Item 270, as amended, hereinafter: p.p.s.a.) has to take into account, apart from the claimant's motion, also the body of evidence gathered in the case files.

The answer was preceded by a discussion concerning the motion to suspend enforcement of a decision in proceedings before administrative courts understood as pleadings that do not institute proceedings in a matter before an administrative court. Then, the analysis concerned the issue of proper evidencing in the motion to suspend enforcement of a decision (act) that the grounds supporting the suspension have been met, as referred to in Article 61 § 3 p.p.s.a., and the issue of whether the court is bound by the text of the motion submitted in that respect.

The foregoing deliberations led to the following conclusion: when an administrative court decides to suspend enforcement of a decision pursuant to Article 61 § 3 p.p.s.a., it rules by reliance on the case files as provided for in Article 133 § 1 p.p.s.a., read together with Article 166 of the same Act, and is not bound to take into account any circumstances supporting the grounds for suspending the enforcement of a decision other than those given (substantiated) by the claimant and included in the files of the case for suspending the enforcement of a decision.