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Summary

of the article: **Administrative courts and the separation of powers**

In the twentieth century, in democratic states of the European continent, the predominance of an act [of parliament / statute] within the system of the sources of law combined, despite the declared separation of powers, with the dominating role of the legislature is being replaced by constitutionalism understood as the supremacy of the constitution. This is mainly the result of a gradually raising popularity of a model of judicial control of constitutionality of statutes, as developed by Hans Kelsen and adopted also in the Third Republic of Poland. The process of moving towards constitutionalism, within which the separation of powers becomes solidified, is accompanied by the new understanding of the role of courts, being no longer the “mouth of the law”, but rather co-creators of law. This means not only that the boundary between lawmaking and application of law becomes blurred, but also that the third category, namely the control of law, becomes strengthened. The control of law is primarily a competence of public law courts: the constitutional court and administrative courts. The aim of the public law judiciary is to protect the objective legal order and to protect a subjective right vis-à-vis the public authorities. This article discusses the relationship between these objectives and the "reformatory" or "cassatory" role of the administrative courts as a public law courts. Moreover, a suggestion is made that the "reformatory" role of such courts must be limited.

Słowa klucze: konstytucjonalizm, podział władz, sądownictwo administracyjne, kasatoryjność, reformatoryjność

Keywords: constitutionalism, separation of powers, administrative judiciary, "reformatory" or "cassatory" role of the court

Summary

of the article: **Serving official and court documents abroad in the light of domestic law**

The domestic legal regulations governing the serving of cross-border documents in administrative proceedings and proceedings before administrative courts are referred to by various notions, such as "abroad", "proceedings in foreign relations", "international civil proceedings", and "provisions on international civil proceedings", and they apply in domestic proceedings in which there is any foreign element involved concerning the individual (entity) or subject matter, and there is a legally regulated form of cooperation between bodies of two countries. In proceedings before administrative courts, even though the reference is made to domestic civil law regulations and a notion of a civil case broadly interpreted by European courts, EU Regulation No. 1393/2007 does not apply. Disputes before administrative courts in the matter of legality of actions/omissions of public administration, which have their source in widely understood administrative law, concern the nature of public power acts, which are excluded by courts from the notion of a "civil case".

The effective first delivery of a cross-border official document and administrative court document, made, as a rule, under specific procedures envisaged for the serving of domestic documents, will differentiate the legal situation of domestic and foreign addressees of documents. Irrespective of the nature of procedure, three systems of serving documents may be distinguished, namely: (1) documents are served directly to the addressee to his or her address abroad, with the use of methods of service defined by law for specific procedures; (2) documents are served directly to the addressee to his or her address abroad, but with the involvement of bodies of the country of dispatch and the country of delivery designated in international regulations or agreements; and (3) documents are served indirectly to the address of the domestic representative for service (representative ad litem). To foreign addressees staying within the territory in which EU law applies, documents are served in the same manner as domestic addressees, taking into account international agreements and acts of international organisations. Other foreign addressees are generally obliged to appoint in domestic proceedings a representative for service. The current legal construct of the legal concept of the representative for service, as shaped by domestic law under the influence of the judgment of the CJEU in the case C-325/11 Alder (ECLI:EU:C:2012:824), even though they are not shaped in a uniform manner, include the following elements: place of residence (stay) or seat of the addressee abroad, obligation of the addressee to appoint a domestic representative for service and the effect of omission to comply with this obligation, without serving documents abroad at the same time with the use of electronic communications means, as well as the appointment of a legal representative to conduct a case residing in the country, or acting through the consul of the Republic of Poland. By introducing a separate legal construct of the domestic representative for service, the domestic legislator provides for the possibility to leave the letter in the case files with the effect of having been served in administrative proceedings and administrative courts proceedings in respect of a participant, as well as the rejection of a complaint in respect of the complainants party and, respectively, the period for satisfying the obligation: as specified by the domestic public administrative authority and a 2-month statutory period. However, as regards the first period mentioned, it should be a reasonable period in the light of standards of the right to good administration, and the period of 2 months may be deemed such.

Słowa klucze: obrót zagraniczny, doręczanie dokumentów transgranicznych w prawie krajowym, pojęcie „sprawa cywilna", pełnomocnik do doręczeń w kraju

Keywords: foreign legal relations, serving of cross-border documents in domestic law, "civil case" notion, domestic representative for service

Summary

of the article: **Constitutional right to a fair trial in the light of amended Article 3(2)(4) of the Act – Law on the proceedings before administrative courts (Amendments of 9 April 2015)**

This paper analyses the modification of Article 3(2)(4) of the Act and its impact on the constitutionally guaranteed right to a fair trial. By the Amendments, the legislator excluded from the scope of adjudication by the administrative courts certain actions and activities from the field of public administration. This action was intended to simplify and accelerate proceedings. It was concluded that the broad right to a fair trial unnecessarily prolongs the settlement of particular cases, and as a result, it does not ensure effective legal protection. The objective of the change is legitimate, but limitations of the right to a fair trial raised doubts of constitutional nature. This paper, being a starting point for discussion, attempts to resolve the doubts. According to literature overview, the issue has not been discussed yet. When assessing the compliance of the modifications introduced by the Amendments, an attempt was made to balance two inherently contradictory values: an unrestricted right to a fair trial, automatically related in this case to the right to challenge a decision, and effectiveness and rapidity of proceedings. It goes without saying that the right to a fair trial and the right to challenge a decision are not absolute values and limitations thereof are acceptable under the Constitution. There is a view in the case-law of the Constitutional Tribunal and legal doctrine that decisions of incidental and secondary nature may be excluded from being challenged if they can be verified at a further stage of the proceedings. It is also observed that the effectiveness of the judiciary is an element of the legal order, which – pursuant to Article 31(3) of the Constitution of the Republic of Poland – is a prerequisite to apply the principle of proportionality. The rapidity of deciding upon the case is also important for ensuring the right to a fair trial in its substantive aspect. In view of the above, in the paper it will be defended the position that the introduced amendment of Article 3(2)(4) of the Act is consistent with the Constitution of the Republic of Poland. On the one hand, what matters is the principle of closing any proceedings with a decision, which implies that non-actionable acts or actions falling within the scope of public administration will be subject to judicial review at a further stage of the proceedings. If the case is decided upon by an administrative body in a protracted manner or if the body omits to take actions in accordance with law, the party is entitled to lodge a complaint at any stage on the grounds of failure to act or excessive duration. The paper also considers in what manner and to what extent acts or actions falling within the scope of public administration, which cannot be challenged before an administrative court as a result of the Amendments, are subject to the review of administrative courts. It may exist exclusively within legal solutions arising from the current procedure. Consequently, Articles 135 or 145 of the Act may possibly apply. In other words, the control thereof will be acceptable only after the case is finally settled by the administrative body, in the course of examination of complaint by an administrative court.

Słowa klucze: prawo do sądu, prawo do zaskarżenia, zasada proporcjonalności, efektywność wymiaru sprawiedliwości, sądowoadministracyjna kontrola, sądy administracyjne, zgodność z konstytucją, Trybunał Konstytucyjny, nowelizacja ustawy

Keywords: right to a fair trial, right to challenge a decision, principle of proportionality, effectiveness of the judiciary, judicial review exercised by administrative courts, administrative courts, constitutionality, Constitutional Tribunal, amendment to the Act

Summary

of the article: **Setting aside by the administrative court of an administrative decision in its part including the statement of reasons or any part thereof**

This paper is an attempt to assess admissibility of the setting aside by the administrative court of an administrative decision exclusively in its part including the statement of reasons, leaving the operative part being legally binding. The author reviews law theory statements and case-law in this regard in the context of the function of the statement of reasons, basic principles of administrative proceedings, as well as the provisions of the Constitution of the Republic of Poland and international conventions, including but not limited to the right to a fair trial, the rule-of-law principle and the principle of separation and balance of powers. The emphasis was put on the possibility of setting aside the statement of reasons to a decision due to its impact on the legal situation of a party to the proceedings. The author concludes that arguments of linguistic, functional and systemic interpretation support the conclusion that the administrative court, if the appeal against an administrative decision is granted, is able to set aside it exclusively in the scope of its statement of reasons or parts thereof.

Słowa klucze: sąd administracyjny, kontrola administracji publicznej, uzasadnienie, decyzja administracyjna, skarga do sądu administracyjnego, wyrok sądu administracyjnego

Keywords: administrative court, control of public administration, statement of reasons, administrative decision, complaint to the administrative court, administrative court judgement

Summary

of the article: **The concept of procedural power**

The aim of this study is to present the concept of procedural power. Procedural power, similarly as administrative power, is an attribute used by public administration bodies to perform powerful interference in their legal situation. Exercising procedural power by a public administration body may take different forms, depending on the subject matter of an administrative decision. If the subject matter of the decision is authorisation, the body will execute power in the process of controlling the performance thereof with the use of legal institution such as the expiry of the administrative decision, setting aside or modification thereof based on special provisions. If the administrative decision imposing an obligation is not performed, the public administration body implements separate enforcement proceedings. In this paper, the author refers not only to the notion of procedural power, but also indicates its limitations. Specifying the limitations of procedural power is not an easy endeavour as it requires consulting not only the provisions of procedural and substantive administrative law, but also the provisions of the Constitution, as well as referring to the principles included therein, in particular taking into consideration the principle of a democratic state ruled through law, the principle of separation of powers, the rule-of-law principle and the principle of the protection of acquired rights.

Słowa klucze: wykonanie decyzji administracyjnej, postępowanie egzekucyjne, uprawnienie, władztwo administracyjne, Konstytucja, prawo administracyjne materialne, prawo administracyjne procesowe, wygaśnięcie decyzji administracyjnej, zasada ochrony praw nabytych, zasada demokratycznego państwa prawnego

Keywords: enforcement of an administrative decision, enforcement proceedings, right, administrative power, Constitution, substantive administrative law, procedural administrative law, expiry of an administrative decision, principle of the protection of acquired rights, principle of a democratic state ruled through law