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MATERIAŁY Z OBRAD DOROCZNEGO ZGROMADZENIA OGÓLNEGO SĘDZIÓW NACZELNEGO SĄDU ADMINISTRACYJNEGO W DNIU 8 MAJA 2017 R. W WARSZAWIE

STUDIA I ARTYKUŁY

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VARIA

CASE-LAW

/The emblem of the Republic of Poland/

President
of the Republic of Poland

Warsaw, 8 May 2017

Participants and Guests
of the General Assembly of Judges
of the Supreme Administrative Court

Mr President!
Ladies and Gentlemen – Your honours! Distinguished Guests of this ceremony!

I would like to greet all the participants and guests of the today's meeting of the General Assembly of Judges of the Supreme Administrative Court. I ask all of you to accept the expression of respect and gratefulness for your incredibly responsible and important work undertaken for the benefit of the Republic of Poland and its citizens.

One of the responsibilities entrusted to the General Assembly of Judges of the Supreme Administrative Court under the statutory act is an obligation to hear the President of the Supreme Administrative Court's information about the annual activity of the body. The document always presents a wide array of matters examined by voivodship administrative courts and the Supreme Administrative Court. These are legal matters which touch both upon important problems of individual citizens or the functioning of specific institutions and authorities, and upon the vital interest of entire social groups and the functioning of given public administration sectors. Resolutions in such matters are very important in terms of substance and they significantly enrich Polish jurisprudence. Their value lies also in the fact that increasingly often such decisions are made on the basis of constitutional standards, the heritage of the Constitutional Tribunal, European law and case-law and the provisions of international agreements. It is also necessary to emphasise the significance of warning rulings issued by administrative courts. They aim at reporting irregularities in the functioning of a given public administration body. I welcome the fact that administrative courts, both in this area and in other areas of their functioning, stand out due to their efficiency and high quality case-law.

The 20th anniversary of the adoption of the currently applicable Constitution is an opportunity to think how the basic law of 1997 meets the needs and challenges faced by the Republic of Poland in 2017. Positive features of the Constitution include the 'anchoring' in the constitutional standard the separateness and independence of the administrative judiciary that exercises supervision over the correct functioning of public administration bodies and – to some extent – of local administration. The

very existence of the separate administrative judiciary and the fact that cases with the widely understood executive power as a party are heard by specifically appointed and excellently prepared judges who possess substantive knowledge in this field constitute a meaningful declaration of axiological foundations of the state. It is a state that serves citizens. It is a state where human rights, civic rights and freedoms, as well as common good should be above any other rights.

I hope that voices of outstanding experts, also yours, will not be absent in the debate on the directions of changes in the Constitution of the Republic of Poland that I initiated. A general discussion in this regard and the holding in 2018 a consultation referendum would give a special dimension to the next year's celebrations of the 100th anniversary of Poland's regaining independence and of taking up this great endeavour consisting in building the modern political system of the independent Republic of Poland.

Ladies and Gentlemen! Thank you for yet another year of your hard work and for your significant contribution to the strengthening of rule-of-law foundations and legal governance in Poland. I wish all judges of administrative courts all the best and a lot of satisfaction from the mission you pursue.

/handwritten: Yours faithfully,/
/signature/

/The emblem of the Republic of Poland/

MARSHAL OF THE SENATE
OF THE REPUBLIC OF POLAND
Stanisław Karczewski

Warsaw, 30 April 2017

Professor
Marek Zirk-Sadowski
President of the Supreme Administrative Court

Members of the General Assembly of Judges
of the Supreme Administrative Court

/handwritten: Mr President/

This year witnesses the 20th anniversary of the introduction of two-tier principle in proceedings before administrative courts that accompanied the adoption of the new Constitution of the Republic of Poland, and at the same time the anniversary of making the administrative courts independent of the supervision of the Supreme Court. Statutory acts implementing the respective provisions of the Constitution were enacted 15 years ago. Those actions (the creation of the Constitution and statutory acts) are probably the only equally important examples of the formal influence of the Senate (and the Parliament in general) on the administrative judiciary. Indirectly, the activities of administrative courts also impact the legislative activities of the Parliament on an on-going basis. As it is known, the Senate proposes legislative initiatives amending the provisions questioned by the Constitutional Tribunal. In many cases, the judgements of the Tribunal are the results of legal questions formulated by administrative courts. In this manner, the Senate initiated in this term among others, the amendments to the Act on the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (the legal question was posed by the Supreme Administrative Court and Voivodship Administrative Court in Warsaw), and in the previous term the amendments to the Broadcasting Act (the legal question of the Voivodship Administrative Court in Warsaw), the Act on Combatants and Certain Victims of Repressions in Wartime and in the Post-War Period (the legal question of the Voivodship Administrative Court in Wrocław), Tax Ordinance, Penal and Fiscal Code, and Customs Law (the legal question of the Supreme Administrative Court). The Senate does not resign from this type of legislative activities, which, as it may be assumed, will still be an area of cooperation between the House and administrative courts.

Thank you for your invitation to the meeting of the General Assembly of Judges of the Supreme Administrative Court and for the earlier cooperation. I wish you fruitful discussions!

/handwritten: Yours sincerely,
Stanisław Karczewski/

Report of the proceedings

On 8 May 2017, in the Meeting Room in the registered office of the Supreme Administrative Court in Warsaw, the annual General Assembly of the Judges of the Supreme Administrative Court was held, at which the *Information on the functioning of administrative courts in 2016* presented by the President of the Supreme Administrative Court, Professor Marek Zirk-Sadowski, was adopted by way of a resolution.

The official meeting was attended by the President of the Supreme Administrative Court, Vice-Presidents of the Supreme Administrative Court: dr. hab. Jacek Chlebny, Janusz Drachal, Maria Wiśniewska, and the judges of the Supreme Administrative Court as well as the presidents of voivodship administrative courts, invited guests, being representatives of constitutional public authorities and lawyer's corporations, including: on behalf of the President of the Republic of Poland Andrzej Duda – Małgorzata Sadurska, head of the Chancellery Office of the President of the Republic of Poland; First President of the Supreme Court, Prof. Małgorzata Gersdorf; President of the Criminal Chamber of the Supreme Court, Stanisław Zabłocki; Vice-President of the National Council of the Judiciary, judge of the District Court in Lublin Krzysztof Wojtaszek; on behalf of the Minister of Justice Zbigniew Ziobro, judge of the District Court Łukasz Piebiak, undersecretary of the state in the Ministry of Justice; Krzysztof Kwiatkowski, President of the Supreme Audit Office; Stanisław Trociuk, deputy Commissioner for Human Rights; Marek Michalak, Ombudsman for Children; Edyta Bielak-Jomaa, Inspector General for the Protection of Personal Data; Antoni Cyran, head of the Chancellery Office of the First President of the Supreme Court; Grzegorz Borkowski, head of the Office of the National Council of the Judiciary; Piotr Kardas, Vice-President of the Supreme Bar Council; Zbigniew Tur – Vice-President of the National Council of Legal Advisors; prof. Jadwiga Glumińska-Pawlic, President of the National Council of Tax Advisors; Anna Korbela, President of the Polish Chamber of Patent Agents; and a judge of the Constitutional Tribunal, the Vicepresident thereof (not on behalf of the body) and a former judge of the Supreme Administrative Court prof. Stanisław Biernat.

After the official opening of the meeting and welcoming guests, the President of the Supreme Administrative Court, Professor Marek Zirk-Sadowski presented information on the functioning of the Supreme Administrative Court and voivodeship administrative courts in 2016. The full speech may be found on page 9 in this edition of ZNSA.

After the speech of the President of the Supreme Administrative Court, the floor was given to invited guests.

The first person to take the floor was M a ł g o r z a t a S a d u r s k a, the head of the Chancellery Office of the President of the Republic of Poland, who read out a letter from the President of the Republic of Poland A n d r z e j D u d a addressed to the participants and guests of the meeting. The full letter may be found on page 19(21) in this edition of ZNSA.

Another guest was Professor M a ł g o r z a t a G e r s d o r f – the First President of the Supreme Court. At the beginning of her speech, she thanked for the possibility of taking part in the meeting and she reminded that, historically speaking, lack

of administrative judiciary for many years had been a result of the authorities' fear of administrative judicial review and the judicial impact on the functioning of the state, and in the initial phase, the reactivation of this type of judiciary had been limited in its shape. She pointed out that systemic solutions adopted 20 years ago in the Constitution of the Republic of Poland consisting in the separation and shaping of an independent division of administrative judiciary under judicature and organisational supervision of the Supreme Administrative Court are deeply justified axiologically. She emphasised that for the control of legality of actions taken by public administration authorities to be effective and efficient, such control required full independence of the executive power.

She emphasised that judicial independence was the foundation of administrative court ruling and she expressed her reservation that this situation may be changed both in terms of institutions and in personal terms. She indicated that the potential change related to the principles of retirement may lead to the infringement of the rule under which judges are non-removable.

She also expressed an opinion that it should be reminded again and again that the independence of the judiciary, including the administrative judiciary, was a huge success that complements the long-term process of shaping relations between the judiciary and the executive powers, enshrined in the constitutional principle of the separation of powers, which these days had been put to a severe test, in particular in the light of the institutional disassembly of the Constitutional Tribunal. In this context, she stated that the role of the constitutional court must be taken over by other courts, including the Supreme Administrative Court or the Supreme Court, by directly applying the provisions of the Constitution of the Republic of Poland. She pointed out that this problem had been identified in 2016, both in the rulings of the Supreme Administrative Court and the Supreme Court.

In the further part of her speech, she referred to the case-law of the Supreme Administrative Court (judgment of 29 November 2016, I OSK 860/15) and the Supreme Court (judgment of 17 March 2016, V CSK 371/15 and decision of 13 January 2016, V CSK 455/15), under which it may be concluded in her opinion that both the Supreme Administrative Court and the Supreme Court are entitled to assess the constitutionality of statutory acts and to refuse their application in specific cases. She also stated that it was possible that the frequency of similar rulings would be increasing.

As far as recent disputes arising out of the relation between the judiciary and the executive powers is concerned, she pointed out that there were certain dysfunctions in terms of the current legal system that consist in a situation, in which an individual is deprived of any protection from actions taken by the executive or the legislative powers. To illustrate this point, she used the example of the assessment of the President's competence carried out by an administrative court in respect of his refusal to nominate a judge as a special prerogative of the head of state that is not subject to any review of administrative courts. According to Professor M. Gersdorf, lack of appropriate institutional guarantees ensuring protection of an individual against the actions taken by public authorities is also proved by the situation of those judges of the Constitutional Tribunal whose oaths the President of the Republic of Poland refused to accept, invoking the resolutions of the Sejm of the Republic of Poland, as well as those who were appointed to the already occupied positions pursuant to the judgment of the Constitutional Tribunal. She em-

phasised that at that moment there were no clear legal instruments, in particular before administrative courts, that would allow their status to be determined in order to finally put an end, in terms of law and not in terms of politics, to the constitutional crisis which undoubtedly contributes to the destruction of the state. She expressed her certainty that any attempts of forceful and political resolution of legal disputes would not lead to any order and social peace since the magnitude of the Republic of Poland as a common good of all nationals could not be based on conflicts and divisions.

At the end, she congratulated judges on the case-law created that was a result of work of many people: administrative court judges, academics, legal practitioners, and she thanked them for their efforts.

The next person to take the floor was the Vice-President of the National Council of the Judiciary, judge of the District Court in Lublin, K r z y s z t o f W o j t a s z e k. He emphasised the importance of administrative judiciary in Poland, also from the perspective of his participation in the work of the National Council of the Judiciary and the role of the President of the Supreme Administrative Court in the correct functioning of the National Council of the Judiciary. He indicated that the results achieved by administrative judiciary in 2016 would not be possible without full involvement of judges in their work and their responsible attitude arising from their sense of responsibility and understanding of the systemic position of administrative judiciary, its importance and its role in the democratic state of law.

The Vice-President of the National Council of the Judiciary also emphasised the high quality of rulings, which in consequence are referred to in the case-law of the Supreme Court and common courts. He indicated, among others, the importance of constitutional solutions ensuring the independence of courts and judges, in particular the solutions concerning the right to a fair trial and the position of the National Council of the Judiciary as a guardian of the independence of courts, emphasising that the experience of the last months clearly shows that such guarantees are necessary. He also emphasised that the National Council of the Judiciary had recently taken steps aimed at fighting against the intervention of the legislative and the executive powers in the independence of courts and judges. At the end, he expressed his gratitude to the representatives of administrative judiciary sitting in the National Council of the Judiciary and he wished the Supreme Administrative Court and its judges keeping their current independent systemic position and achieving successful 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 (NIK), addressed the attendees. At the beginning he indicated that NIK audits every year the implementation of state budget, the performance of tasks of internal audit, financial and property management of SAC, applying the criteria of legality, efficacy, economic prudence and integrity. He underlined that NIK has no competence to overall control of SAC, as that would have violated the principle of judicial independence, set out in the Article 178 and 195 of the Constitution of Republic of Poland. Further, he presented in the short abstract the results of 2016 NIK' audit.

In further part of his speech he noted that in the current activities of NIK, case-law of administrative courts were frequently relied on: in the work of auditors, in in the activity of adjudicative panels as well as the NIK Governing Board. He indicated that case-law helps to decide on the doubts and the Central Base of Case-Law of Administrative Courts gives the relevant access. President Kwiatkowski also noted that, in some number of cases regarding the labour law aspects of the

appointment of auditors and access to the public information, the NIK was a party in the proceedings before administrative courts.

Concluding, K. Kwiatkowski, referring to the Article 10 para 1 of Constitution, indicated that in his opinion - overall of system resulting from Constitution and also the values reiterated in its preamble, make possible to conclude that mutual respect for constitutional competences and balancing in carrying out state tasks, should be the common feature of all public authorities, also those not included in classical separation of powers, , in consequence also of NIK.

Another guest who took the floor was S t a n i s ł a w T r o c i u k – deputy Commissioner for Human Rights. In his introduction, he noted that the analysis of the *Information…* presented is an opportunity to reflect upon the condition of administrative law in Poland, including upon the issues not solved by the legislator and illustrated by the case-law of administrative courts. In this context, he referred to the fact that the legislator had not executed the judgment of the Constitutional Tribunal of 12 May 2015, P 46/13, declaring the unconstitutionality of timely unrestricted ability to declare invalidity of a decision, for instance, a decision which causes a gross breach of law (issued under Article 156(2) of the Code of Administrative Proceedings). – if a significant period of time had passed since the issuance thereof and the decision had constituted a basis for the acquisition of a right or expectancy right. He indicated that failure to enforce the judgment which is so important for legal certainty of legal transactions means that the burden of assessing the time aspect in declaring invalidity of administrative decisions rests with administrative courts.

As another example of failure to execute the rulings of the Constitutional Tribunal by the legislator, he indicated the judgment of the Constitutional Tribunal of 21 October 2014, K 38/13, declaring a breach of the rule of equality by statutory regulations on family benefits pursuant to which care benefits were refused in the case of carers of people whose disability occurred after they turned 18 or 25, if applicable. He stated that in such cases the activity of the Commissioner for Human Rights in the use of procedural rights before administrative courts made it possible to shape such line of ruling which, given lack of changes in substantive law, orders public authorities to respect the aforementioned judgment of the Constitutional Tribunal as long as the case refers to care benefits for the carers of people with disabilities.

In further parts of his speech, S. Trociuk pointed out that the General Assembly of Judges of the Supreme Administrative Court was held in a special moment since the model of protecting individuals rights as currently described in the Constitution of the Republic of Poland, based on the systemic rule of the separation of powers and balance between the legislative, the executive and the judiciary powers is subject to destructive activities. He mentioned that any restrictions of the independence of the judiciary were in fact targeted at the system of protecting human rights. In this opinion, the subsequent amendments related to the functioning of the Constitutional Tribunal had sparked controversies over its composition and legal grounds for its functioning and, as a result, considerably prevented the execution of its constitutional function that consists in preventing unconstitutional legislative actions on the part of the legislative and the executive powers. As far as the proposed amendment of the provisions regulating the composition of the National Council of the Judiciary is concerned, he expressed the view that it was aimed at granting politicians the competence to shape the composition of this body and at making the appointment for a position of a judge dependent on political factors. He also considered the

proposed amendment to the Act on the system of common courts to be an attempt of strengthening the influence of the executive power and politicians on the judicial system. Therefore, he reminded that the idea behind the independence of courts and judges was lack of real or apparent dependence of judges in their activities on factors other than required under law. He stated that in the Constitutional Tribunal's judgment of 28 November 2007, K 39/07 stipulated that "dependent courts do not have their own margin of assessment and they approve decisions which are in fact made somewhere else, while judges who are at others' disposal (or who have no courage) make the mechanism which is supposed to be based on the separation of powers a facade mechanism."

Finally, he pointed out that the maintenance of the independence of courts and judges is a condition of the rule of law and a guarantee of fair trial, and it is a condition for being able to say that the Constitution fulfils its basic function of the highest law that guarantees the protection of individuals' rights.

Then, the President of the Supreme Administrative Court, Professor Marek Zirk-Sadowski read out the letter addressed to the participants of the assembly sent by the Speaker of the Senate, S t a n i s ł a w K a r c z e w s k i. The full letter may be found on page 23(25) in this edition of ZNSA.

At the end of the meeting, the President of the Supreme Administrative Court announced the voting of the judges of the Supreme Administrative Court gathered at the meeting on the adoption of *Information on the functioning of administrative courts in 2016*. The General Assembly of Judges of the Supreme Administrative Court adopted the resolution unanimously.

Drafted by *Przemysław Florjanowicz-Błachut*
(Organisational and Legal Department
of the Chancellery Office
of the President of the Supreme
Administrative Court)

Summary

of the article: Imperfect appeal procedure within the system of implementing the EU cohesion policy in Poland. The assessment of the implementation of the Constitutional Tribunal's judgement of 12 December 2011, Case No. P 1/11

This article includes an analysis of legal regulations pertaining to the appeal procedure within the system of implementing the EU cohesion policy in Poland, taking into consideration major changes in this regard introduced by the legislator as a result of the Constitutional Tribunal's judgement of 12 December 2011, Case No. P 1/11. At the same time, an attempt has been made to assess the compliance of relevant regulations with the Constitution of the Republic of Poland, the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms in terms of the right to effective legal remedy.

In the initial phase, the matter of legal remedies available to the applicants in the procedure of applying for funds from operational programmes was not clearly regulated by universally binding law, which in fact deprived the participants of the procedure of their right to be heard. Certain positive changes in this respect have been introduced by the provisions of the Act on the principles of development policy. The Act has specified the types of legal remedies, the subjective and material scope thereof and the manner in which they are to be used and heard by authorised institutions. Unfortunately, practical application of the provisions has shown that the changes were far from perfect and internally inconsistent.

The case-law of administrative courts and the Constitutional Tribunal had a major influence on the legal form and scope of regulations related to rights enjoyed by applicants seeking EU funds. In particular, as a result of the Constitutional Tribunal's judgement of 12 December 2011, Case No. P 1/11, many provisions on the appeal procedure within the system of implementing the EU cohesion policy proved inconsistent with the Consitution. Therefore, the provisions adopted in the amended Act on the principles of development policy, and the provisions included in the Act on the principles of implementing cohesion policy programmes financed in the 2014–2020 financial perspective enforced the Constitutional Tribunal's judgment in this respect. It is also worth remembering, however, that the ruling referred exclusively to certain aspects of the appeal procedure.

The applicable legal regulations that comprehensively cover the appeal procedure within the system of implementing the EU cohesion policy in Poland require further improvement both in terms of their compliance with the Constitution of the Republic of Poland as well as with legal acts of the European Union and international agreements to which Poland is a party (they still fail to meet the standards specified in Article 13 of the ECHR and Article 47 of the EU Charter, and therefore, they can be challenged before the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union in Luxembourg).

Słowa kluczowe: procedura odwoławcza, fundusze unijne, sądowa kontrola

Keywords: appeal procedure, EU funds, judicial review

Summary

of the article: On the conflict of norms: the case of the conditions for the groundlessness of proceedings and inadmissibility of a motion in proceedings before the administrative court

In this article, the authors consider causes and types of conflicts of legal norms as well as methods of resolving those conflicts. In this context, the authors refer to the example of different judicial views on the procedural consequences of the motion to suspend the execution of a decision filed after the judgment is issued by an administrative court of first instance which grants a complaint. This divergence discloses a potential conflict of norms concerning groundlessness of proceedings and inadmissibility of the motion. Three options are taken into consideration in this matter: the first one proposes to dismiss the motion, the second one to discontinue the proceedings and the third one to reject the motion. The conclusion has been drawn that such motion should be perceived as inadmissible and therefore it should be rejected. However, it is necessary to keep in mind a certain interpretative discipline which allows such inconsistencies in legal interpretation to be avoided in much more important cases.

Słowa klucze: kolizja norm, reguły kolizyjne, bezprzedmiotowość postępowania, niedopuszczalność wniosku, wstrzymanie wykonania decyzji

Keywords: conflict of legal norms, conflict rules, groundlessness of the proceedings, inadmissibility of the motion, suspended execution of the decision

Summary

of the article: "The effect of prejudicing" as a premise of the return of EU funds by the beneficiary

In this paper, the notion of "the effect of prejudicing" has been analysed as an element of the definition of irregularity included in Article 2(7) of Council Regulation (EC) No. 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No. 1260/1999 (OJ L 2006, No. 210, p. 25 as amended). An irregularity is a premise to determine a correction, and consequently, to issue a decision requesting the return of EU funds by the beneficiary.

The authors carried out their analysis using a comparative legal analysis method. They compared the features of "the effect of prejudicing" as an element of the irregularity under public law with the basic rules of liability for damages under civil law, i.e. harmful event, type of damage (damnum emergens, lucrum cessans), causative relation. Legal literature and the case-law of administrative courts were taken into consideration.

It has been indicated that the "harmful event" in this case is "infringement of EU law or the domestic law regulating the application of EU law." Such event should not be linked to the premise of the beneficiary's fault and, at the same time, it should not be perceived in a manner shaping the beneficiary's liability as objective, preventing the beneficiary from being released from such liability. "The effect of prejudicing" may be real or potential, and the potential effect of prejudicing may, but does not need to, occur (which makes it different from damage to property typical of damage under civil law). In the process of determining the level of "the effect of prejudicing" observed in the case-law of administrative courts, the authors questioned the tendency to apply automatically a ratio method (with the use of the so-called Table of Tariffs), and emphasised the principle specified in the Guidelines on the priority of a differential method, stating that the ratio method should be used only if it is impossible to determine the "unjustified item of expenditure to the general [EU] budget" with the use of the differential method. By referring to the most recent case-law of the CJEU (judgment of 14 July 2016, case C-406/14), it was pointed out in this paper that emphasis is put correctly when determining the occurrence of irregularities, i.e. the necessity to prove that in the case of declaring an infringement of law, the occurrence of irregularities leading to a correction and to the issuance of a decision requesting the return of EU funds should be assumed only when losses suffered by the EU fund "cannot be ruled out". At the same time, while determining the amount lost, the proportionality principle formulated in Article 98 of Regulation No. 1083/2006, under which it is necessary to consider both the nature and importance of irregularities as well as a financial loss suffered by a given fund, cannot be ignored. According to the authors, it is unacceptable to assign irregularities to the beneficiary and to apply the Table of Tariffs automatically (in cases in the matter of declaring the existence of infringements in public contracts). The conditions of the principle of proportionality in the form of "nature and importance of irregularities and losses suffered by a given fund" in cases where the potential "effect of prejudicing" occurs should not be construed as a mere equivalent of an "item in the Table of Tariffs" stating the harmonised appraisal of such effect of prejudicing, but must be referred to the circumstances of a given case. This means that when assessing the importance and nature of any identified infringement, the importance of the cooperation of the beneficiary with the authority aimed at applying a correction which is more adequate given the features of the infringement that could be assumed on the basis of the automatic application of the Table of Tariffs cannot be overstated.

The method used in this publication allowed for formulating the conclusions concerning the special nature of "the effect of prejudicing" as an element of the definition of

"irregularity", such nature being different from the one universally used in private law and gaining the qualities of a new legal concept under public law.

Słowa klucze: budżet ogólny UE, fundusze unijne, zasada należytego zarządzania finansami, nieprawidłowość, nieuzasadniony wydatek, spowodowanie szkody, dokonywanie korekt finansowych, decyzja o zwrocie dofinansowania

Keywords: general budget of the European Union, European Funds, principles of sound financial management, irregularity, unjustified item of expenditure, the effect of prejudicing, making the financial corrections, decision on refund of EU funds

Summary

of the article: The principle of protecting cultural heritage in the light of selected case-law of administrative courts

The aim of this paper is to indicate that the law of cultural heritage protection has its own norms and principles that are separate from the ones present in other branches of law. Given that the term "principle of law" is ambiguous, a starting point for further deliberations on the existence of the principles of law applicable in cultural heritage protection is the idea of Ronald Dworkin, who understands law in a manner axiologically involved. This article focuses on the presentation of a meta-principle, namely the cultural heritage protection against the background of current case-law of administrative courts. The role of court case-law consists not only in the explanation of statutory notions and facilitation of understanding of the applicable law related to cultural heritage protection, but mainly in the strengthening of its norms and principles, which is of paramount importance. It seems essential to adopt the principles of law for cultural heritage protection and to create a list of such principles.

Słowa klucze: zasada prawa, teoria prawa, prawo ochrony zabytków, zabytek, dobro kultury, dziedzictwo kultury

Keywords: principle of law, legal theory, cultural heritage protection law, monument, cultural goods, cultural heritage

Summary

of the article: A few reflections on reasons for the rulings of administrative courts

The provisions of the Act - Law on the proceedings before administrative courts specify formal requirements that must be met by the reasons for the rulings of administrative courts. This article focuses on technical aspects related to the form and structure of the reasons. According to the present author, many court rulings are excessively long. In practice, there is no such ruling or resolution of the Supreme Administrative Court that could not be shortened. For instance, it is unnecessary to indicate at the beginning of the reasons the competence and jurisdiction of the administrative court or to specify the grounds for the appeal on the point of law (cassation). Also a extensive summary of the administrative decision and the content of appeal is unnecessary for the parties to such proceedings.

The reasons are a kind of communication between the court and the society. The language of the reasons should be simple and comprehensible. Referring in the reasons to any authority figures must be reasonable. Also references to the case-law of other courts cannot replace the court's independent reasoning. The number of words used in the resolutions of the Supreme Administrative Court is systematically increasing. An average resolution in 2012 was 6,257 words in length, while an average resolution in 2016 was 7,927 words in length.

The author urges to align standards of drafting the reasons for the resolutions of the Supreme Administrative Court, which would translate into making the practice of drafting more uniformed. Still, the reasons cannot be shortened at the expense of their quality. This is the reason why it is necessary that the reasons for the rulings should be as short as possible, but not any shorter.

Słowa kluczowe: uzasadnienie, sądy administracyjne, orzecznictwo sądów

Keywords: justification, administrative courts, judicial decisions