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Summary

of the article: **The jurisprudence of administrative courts in matters of certain local self-government resolutions on the example of rules and regulations of cemetery services. Effects on competition**

In accordance with the Constitution of the Republic of Poland local self-government bodies are entitled to enact a local law including in their own matters, i.e. regarding meeting the current needs of residents, e.g. maintaining municipal cemeteries. Due to the special position of municipality in the local legislative process, municipality has the possibility to introduce provisions that cause the infringement of the principles of free competition. On the other hand municipality is obliged to take account of prohibitions resulting from the Act on competition and consumer protection also in cases when it enacts local law or issues administrative decisions related to the organization of public services. Municipal cemetery is a public utility facility hence the regulations governing the use of it should guarantee free market rules because the cemetery services market is a special market where competition is limited for various reasons.

In the literature the issue of the legal nature of the rules and regulations of cemetery services is controversial and the case law of administrative courts is ambiguous. In the opinion of the part of legal scholarship and judicature the rules and regulations of cemetery services are an act of internal management, while others argue that such Rules and Regulations are an act of local law. Depriving these rules and regulations of the value of the local law act means that even after finding by President of the Office for Competition and Consumer Protection that municipality applies the practice of restricting competition, the Resolution enabling the practice is still valid and applicable in the legal relations. The effects of the provisions of such rules and regulations are borne by the residents of municipalities who – having no choice – suffer severe (including financial) consequences of such defective regulations. Despite the decision of the President of the Office of Competition and Consumer Protection and the imposition of fines the relevant rules and regulations – until their elimination by the administrative court – remain in the legal system and consumers and entrepreneurs may still be threatened by the application of harmful market practices. Therefore, correct identification by the administrative court of contested act of law is extremely important.

Keywords: local law, municipal local self-government, practices restricting competition, rules and regulations of cemetery services, internal management act, municipal economy, public utility facility, the President of the Office of Competition and Consumer Protection, administrative courts, the Constitution, legislation.

Summary

of the article: **Consequences of the judgment of the Constitutional Tribunal in the Case P 5/14 for the scope of cognition of administrative courts.**

The judgment of the Constitutional Tribunal of 6 April 2016 in the Case P 5/14 when it comes to its consequences is not limited solely to the issue of the admissibility of legal proceedings against the Resolutions of the National Electoral Commission referred to in Art. 420 § 1 of the Act of 5 January 2011 – Electoral Code (Journal of Laws 2017, item 15 as amended), and accordingly to Acts of this body taken pursuant to Art. 412 and Art. 456 of this Act. In this respect we have to keep in mind regulation contained in art. 12 § 13, and in Art. 17 of the Electoral Code because the acts of electoral bodies referred to in these provisions, are also made on the subject of "electoral geography" which constitutes an element of shaping the content of the principle of material equality of elections.

Due to the fact that Constitutional Tribunal questioned a solution allowing the exclusion of a judicial proceedings path in electoral matters regarding "electoral geography", hence it would be justified to expect that the legislator immediately undertakes actions aimed not only at executing judgment in the Case P 5/14 in the scope resulting from its sentence, but also to include in the content of the Act – Electoral Code and the Acts – the Law on proceedings before administrative courts, all further-reaching consequences of this judgment.

Keywords: electoral law; local government elections; electoral constituency; Acts of electoral bodies; complaint to the administrative court.

Summary

of the article: **Local spatial plan and the decision on building conditions**

The article concerns an extremely important but also controversial issue of the relationship between local spatial development plans and decisions on building conditions, i.e. decisions that determine the location of private construction projects. Beyond the scope of deliberations, a similar relationship remained between local spatial plans, and decisions on the location of public purpose investments due to the fact that these decisions play insignificant role in practice. Apart from the scope of considerations also remained the issue of the so-called Special Acts due to the fact that these regulations do not contain systemic solutions but diverge from them, and are episodic in nature at the same time.

The central issue analysed in the article is the issue of the substitution of local spatial plans with decisions on building conditions. This issue gives rise to other issues raised in the article namely, whether the decisions on building conditions determine the purpose of the area, and whether these decisions can constitute the basis for charging Spatial Planning fees for owners and perpetual usufruct holders of the real estate covered by such decisions, so-called Spatial Planning Rent, and therefore a kind of enrichment (sui generis) due to rise in value of property caused by change in its purpose which should be shared with the municipality in the form of a Spatial Planning Fee. A significant part of the article is devoted to the presentation of differences and similarities between local spatial plans and decisions on building conditions.

In the conclusions contrary to the dominant position of judicature and legal scholarship the authors concluded, that the decisions on building conditions determine the purpose of the area, and that to a certain extent, though not always, they constitute a substitute for local spatial plans mainly because both these Acts pave the way for the investor to apply for a building permit.

Keywords: local spatial plan, decision on building conditions, substitution, land use, planning fee.

Summary

of the article: **Liability for damages for violation of the party's right to consideration the case without undue delay in the administrative court proceedings after the amendment of 30 November, 2016.**

According to Art. 45 para. 1 of the Constitution of the Republic of Poland: „Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court". Delaying court proceedings constitutes in this context a threat, and sometimes even a denial of the way in which the tasks are performed by courts that administer justice in accordance with the Constitution. This problem also affects administrative courts.

In the Polish legal system the Act of 17 June, 2004 on the complaint of violation of the party's right to hear the case in preparatory proceedings conducted or supervised by the prosecutor, and court proceedings without unreasonable delay (unified text Journal of Laws of 2018, item 75) is in force. Examination of complaints against excessive length of administrative court proceedings lies within competence of the Supreme Administrative Court, and if excessive length is confirmed then – apart from the recommendation to take certain actions within the prescribed time limit – the Supreme Administrative Court awards a sum of money within the limits set out in the Act.

The indicated Act was significantly amended by the Act of 30 November, 2016 amending the Act-Law on the System of Common Courts and certain other acts (Journal of Laws of 2016, item 2103). The subject of this article is the analysis of the current regulation in the context of the activity of administrative courts with particular reference to the indications arising from the ECtHR judgment issued in the case *Rutkowski and others v. Poland* [application nos. 72287/10, 13927/11 and 46187/11].

Keywords: complaint against excessive length of proceedings, sum of money

Summary

of the article: **Personal data protection as a negative condition for providing access to public information.**

When considering the problem of defining personal data to be made available as part of provision of public information it is important to consider the distinction between sensitive data and basic data. Sensitive data are not to be made available, whereas the so-called basic data such as, for example: first and last name are to be made available. It must be stipulated at the same time, that personal data of private individuals is not completely deprived of protection. However they will only be secured as part of privacy protection scheme. We should agree with the view, that the protection of privacy must be understood as the prohibition of free acquisition, and collection by the state and its officers of information about the life of the individual. In the case of obtaining such information on the basis of generally applicable laws or their receipt from the individual itself it is prohibited to disclose such information to unauthorized persons or third parties.

The protection of personal data as a premise limiting the right of access to public information should be analysed through the prism of the concept of privacy of a natural person. Undoubtedly, it is impossible to establish unambiguous rules that would determine which data should be classified in every single case. The assessment as to the scope of the necessary restriction in the provision of public information containing basic personal data should be made in relation to a specific information or document that was made available, hence taking into account individual circumstances. Therefore, the obliged entity has to analyse what information the application concerns, and what area of the public sphere it relates to. It seems that always when assessing such a conclusion one should take into account the justified public interest in information about a specific individual justified by the purposes of the right to information among which the need for social control over public authority is of paramount importance. It should be remembered that the Act on Personal Data Protection is not a special law in relation to the Act on Access to Public Information. Both legal Acts are in force in parallel, and to some extent complementing each other. On the background however there are often collisions between two values, namely between the right to public information, and the right to privacy protection.

Keywords: the Act on Access to Public Information, the Act on Personal Data Protection, the right to access to public information, sensitive data, public disclosure, protection of privacy.

Summary

of the article: **Registration of new religious organizations. Comments on the case law of the Supreme Administrative Court on matters of the so-called independent Jewish communities**

The line of case law of the Supreme Administrative Court shaped in the years 2014-2017 regarding the registration of the so-called independent Jewish communities deserves a full approval. The court opposed the actions by the Union of Jewish Religious Communities aimed at deleting other Judaic religious organizations from the register of churches and other religious organizations. Supreme Administrative Court reasonably took the view that Polish law does not introduce compulsory membership of Judaism's followers into one religious organization, i.e. the Union of Jewish Religious Communities. The emergence of new religious organization depends on the will of their members, and not on the consent of other religious communities. The Union of Jewish Religious Communities has been showing monopolistic tendencies for years. This is confirmed by its internal law of 2006. In this regard it should be emphasized that registration of new religious organizations in Poland despite the higher criteria in force since 1998 is quite liberal. The application for registration should be submitted by at least 100 Polish citizens who have full legal capacity. In many other Central European countries the principles of legalizing religious communities are much more difficult. In the light of the case law of the Supreme Administrative Court it is reasonable to claim that it is one of the main guarantors of freedom of conscience and religion in contemporary Poland.

Keywords: religious freedom, religious organization, Jewish religious community, Union of Jewish Religious Communities, Supreme Administrative Court