

# SPIS TREŚCI

## STUDIA I ARTYKUŁY

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## Summary

of the article: The concept of a final decision (in the Administrative Procedure Code and the Tax Code)

So far the notion of a final decision has not stirred up any bigger controversies in the professional literature. Under Art. 16.1 of the Administrative Procedure Code, a final decision is a decision which may not be appealed against in the administrative course of instances. Art. 128 of the Tax Code defines this term otherwise i.e. a final decision is a decision which may not be appealed against in the tax proceedings. As the latter act distinguishes between the „classical” appeal i.e. the remedy resulting in the settlement of the case being transferred to the authority of a higher degree and the appeal brought to the authority which made the challenged decision, there exist – in the author’s opinion – grounds to reconsider the prevailing concept of a final decision. In his opinion, a non-final decision within the meaning of the laws on administrative proceedings (both general and fiscal) is also a decision which may be challenged by filing a request for reconsideration of the case and an appeal to the authority which made the decision. In turn this statement leads to the conclusion that the Polish system of administ-

orative proceedings has a few types of appeal. The essence of this construction is that the case is reconsidered to the full objective extent, without any restrictions. In the author's opinion the fact whether the case is considered by an authority of a higher degree or the authority which made the challenged decision is of secondary importance. In the latter case there must be observed certain guarantees of impartiality of decision related first of all to the institution of exclusion of an employee (a member of a collective body) who participated in the handling of the case from participation in further proceedings.

The author also emphasises that in certain specified categories of cases (e.g. from the area of telecommunications, energy, protection of competition) the parties cannot make an appeal to a public administration authority but a common court. In such circumstances the consideration of the case is transferred to a court. It means that apart from the administrative courts the judicial control of public administration in Poland is exercised – to the specified extent – by the common courts.

## **Summary**

of the article: Errors of the public administration bodies in the application of the objective truth principle in the light of the decisions of the Supreme Administrative Court

The choice of violations of the objective truth principle presented in the article shows the actual circumstances and situations translating into the object of consideration of the benches of judges. Furthermore, in the light of the prevailing events from the various spheres of social life the judicial activity of the SAC is the battleground for the achievements of the administrative doctrine, the material competences of the administrative authorities, the knowledge and experience of judges and the status of legal culture of the citizens.

The judgements referred to in the article may be analysed not only from the perspective of the errors made by the representatives of public administration but may also serve as the source of certain information on the social attitudes, civic disapproval towards specific decisions of the administrative authorities and the attitude of the benches of judges to the full spectrum of opinions presented, views expressed and demands made.

Apart from that the number and type of those errors are the specific litmus test of the legal awareness and culture of both the parties to the proceedings and the authorities in charge of the administrative proceedings of both instances. It allows to develop one's own perception of the position of the administrative courts as regards those attitudes of the public administration authorities as well as the parties and the other participants of the administrative proceedings.

## Summary

of the article: The succession of a buyer of a real property in place of a seller in proceedings for granting the terms and conditions of development

This article discusses the problem of succession of a buyer of a real property in place of a seller in proceedings for granting the terms and conditions of development. The divagations are focused on discussing the premises of the procedural succession expressed in Art. 30.4 of the Administrative Procedure Code (APC). The key role in the correct interpretation of the meaning of that provision is played by the context of Art. 28 APC defining the scope of entities enjoying the status of a party to the administrative proceedings. Art. 30.4 APC is not sufficient to define the scope of entities enjoying the status of a party to the administrative proceedings. This definition requires the application of Art. 28 APC. The procedural succession is the demonstration of transfer of legal interest between a party to the administrative proceedings and a third party, where that interest is identified solely with the transferable or inheritable subjective right.

Defining the scope of entities enjoying the status of a party and identifying the source of their entitlement has crucial importance for the arising of procedural succession in proceedings for granting the terms and conditions of development. Transferring the title to real property in the course of such proceedings may be the basis for the arising of procedural succession only if the title of ownership is a material substrate of the legal interest within the meaning of Art. 28 APC. It may not be excluded that in specific actual circumstances the ownership of real property shall be the basis of the procedural authorisation of the owner of the real property in proceedings for granting the terms and conditions of development but such evaluation must be always performed *in casum*. The ownership of real property should not have the legitimising function in such proceedings which are only a specific element of the entire investment-construction procedure. The key element of that procedure are proceedings for granting the construction permit where the legal interests of the owner are sufficiently protected.

Recapitulating, selling real property is generally a legal transaction which does not involve procedural succession in proceedings for granting the terms and conditions of development, except for the proceedings not related to the investment-construction procedure and those in which the owner has the status of a party due to the specific circumstances.

## Summary

of the article: Could a violation of regulations governing proceedings before a public administration body be covered by the cassation basis referred to in Art. 174.2 of the Act on Proceedings Before Administrative Courts<sup>26</sup>

This article discusses the influence of violation of regulations governing proceedings before a public administration body on proceedings before an administrative court.

Violation of regulations governing proceedings before a public administration body materially affecting the result of a case is a premise of reversal of the challenged decision made by the public administration body and returning the case to that body for reconsideration. However, such violation may not be discovered in the course of proceedings before a voivodship administrative court and the judgement will dismiss the complaint. Could such violation be the basis of a cassation complaint to the Supreme Administrative Court? Violation of procedural regulations materially affecting the result of a case as the basis of cassation described in Art. 174.2 of the Act on Proceedings Before Administrative Courts concerns proceedings before administrative courts and not proceedings before the public administration bodies. Hence formulating the plea of violation of the procedural regulations by the voivodship administrative court which could materially affect the result of the case won't be an easy task.

If the author of the cassation complaint intends to evidence that the court of the first instance accepted the factual status determined by a public administration body in violation of the applicable procedure and in particular failed to take all the steps necessary in order to clarify the factual status in detail, then s/he should formulate the plea of violation of Art. 141.4 of the Act on Proceedings Before Administrative Courts consisting in presentation of the case inconsistently with the factual status as well as the pleas of violation of Art. 145.1.1.c of that Act by dismissing the complaint in spite of the violation committed by the public administration bodies.