SPIS TREŚCI

KRONIKA

BIBLIOGRAFIA

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Summary

of the article: The constitutional expression of the principle of independence of the judiciary in Poland

The constitutional principle of judicial independence refers to the holding of the office but may be expanded to cover the entire bench in a given case (the

independence of the court). In a democratic state this principle is the foundation of the independent existence of the judiciary and means that a judge individually construes the law and evaluates the facts and evidence in the course of his/her duties in the area of administration of justice. The judge decides solely on the basis of the Constitution and the law. This categorical opinion is sometimes unfairly weakened in the judicial decisions by vesting the courts with the right to apply the Constitution directly only when the case the court is competent to hear is not statutorily regulated i.e. when there is a gap in law. The judicial independence covers only the area of adjudication.

The judicial independence is ensured by the guarantees of a judge's position, including the statutory list of requirements a candidate for a judge must meet, appointing judges for an unspecified period of time, irremovability of judges, judicial immunity, prohibition to couple the function of a judge with a political party or trade union membership or public activity that is irreconcilable with the principles of the independence of courts and independence of the judiciary, the prohibition to take additional employment and the financial independence of the judges.

The science of law and the decisions of the Constitutional Tribunal emphasise the internal, personal traits of a judge's character conditioning his/her independence and impartiality. The principle of impartiality is violated not only when a judge shows overt and easy to identify bias towards a party but also in the case of any form of favouring a party, even if as a result of the information and opinions the judge developed in his/her private life.

The political rights and freedoms of the judiciary were not limited, but exercising these rights and freedoms the judges must not offend the independence of the courts and preserve their impartiality. The impartiality and independence may be at risk when a judge takes an active role in the current political disputes, speaks publicly for or against a candidate for a specific position, speaks for or against the manner any public authority exercises its powers, publicly expresses his/her opinion on a religious issue or becomes publicly involved in the activities of a specific charitable organisation. In all these cases a judge expresses his/her opinions and sends a clear signal to the potential parties to the proceedings thus informing them that the future judgment may be determined by his/her views.

Summary

of the article: Liability for the increased environmental charges

This article discusses the liability of an entity using the environment for the increased environmental charges. Such charges are one of the most important financial-legal measures of environmental protection.

The increased environmental charges have a preventive, fiscal and repressive function. They are a sanction of administrative nature for the illegal use of the elements of environment (an administrative tort).

The liability of the entity using the environment for the increased environmental charges results from the illegality of such use. It bears the risk of using the environment without the necessary environmental permit or illegal handling of waste. The obligation to pay the increased environmental charges arises irrespective of whether the lack of the necessary environmental permit is attributable to the entity using the environment or not, even if due to reasons beyond its control. The excessive duration of the proceedings for issuing an environmental permit does not render ineffective the obligation to pay the increased environmental charges. The liability of the entity using the environment for the increased environmental charges has the objective nature. This is supported by the linguistic, systemic and functional interpretation of the environmental protection laws.

If the obligation to pay the increased environmental charges arises due to the conduct of other persons the entity using the environment may seek compensation for the loss it suffered on the general principles set out in the civil law and the labour law. If the loss results from an illegal conduct of a public authority, including the excessive duration of the proceedings for issuing an environmental permit, the State Treasury shall be liable for damages towards the entity using the environment under Art. 417–417[1] of the Civil Code.

The objective nature of the liability of the entity using the environment for the increased environmental charges coupled with the mechanism of liability for damages satisfactorily and proportionately resolves the collision of the constitutional values promoting further protection of environment in Polish law.

Summary

of the article: The legislative role of judges and the resolutions of the SAC

This article discusses the issue of the legislative role of judges in the context of the procedural regulations concerning the resolutions of the Supreme Administrative Court that came into force on 1 January 2004. The reason for this article was the so-called general binding force attributed to these resolutions.

This article presents the thesis that these resolutions (both specific and abstract) in certain circumstances may become functionally close to the source of the generally applicable law. The author claims that due to their general binding force these resolutions have the quality of being general and abstract, attributable to the generally applicable law. In practice an interpretation made in a resolution will hardly ever be changed in the statutorily prescribed manner (actually this has not taken place so far). A legislative decision must be made within the powers available to the increased composition of a bench. Therefore the author analyses the situations when a resolution adopted in violation of the powers vested in the Supreme Administrative Court may be deprived of its general binding force and therefore will not display the features corresponding to the norms of the generally applicable laws. The last factor affecting the potentially legislative nature of a resolution is the normative novelty. This article presents the cases when an interpretation made in a resolution may satisfy this condition as well as the cases when it fits within the limits of the interpretative paradigm accepted in our legal culture.

Concluding the author notes that adopting a resolution on the basis of the applicable procedure and within the limits of authorisation coupled with the normative (logical) novelty in the decision of the extended bench may have a legislative effect. It's dangerous because such conduct must qualify as violation of law while the administrative courts will hardly ever use the resolution revocation procedure. This encourages the author to accept the opinion that the expanded benches should carefully formulate their legislative utterances. The purpose of the resolutions is to clarify the contents of laws and therefore such utterances must remain within the limits of application and interpretation of law.

Summary

of the article: Serving process to the address (number) of a post-office box in proceedings before administrative courts

One of the basic principles of all judicial proceedings, including the proceedings before administrative courts, is the principle of active participation of the parties to the proceedings. This principle is implemented via a number of procedural institutions including, among others, the institution of service of process. A defect in the service of process may translate directly into a party becoming unable to defend its rights and therefore the proceedings in the case becoming invalid. For this reason the legal regulations of the service of process should be clear and precise and the interpretation of the applicable provisions coherent and stable.

Recently in the area of the proceedings before administrative courts there arose the issue of the effective service of process to the address (number) of a post-office box i.e. the box the addressee has in a post office run by a public operator. Neither the legal literature nor the judicial decisions present a common opinion on the effectiveness of such service of process. The recent months have seen the tendency to recognise such service of process as effective. In particular the administrative courts refer to the amended Civil Procedure Code where the legislator permitted to serve process to the address of a post-office box.

This interpretation may not be supported. In order to justify the effectiveness of the service of process to the address of a post-office box in the course of proceedings before an administrative court one may not invoke the relevant normative amendments in the area of the civil procedure. Although the provisions on the service of process applicable to proceedings before the common courts apply accordingly to the proceedings before administrative courts, but not to the extent allowing for a simple transfer of the new regulation of the Civil Procedure Code to the proceedings before administrative courts. In order to prove the effective service of process to a post-office box one may not rely on the extensive interpretation of the term „mail box" included in Art. 73 of the Law on Proceedings Before Administrative Courts. The provisions governing the service of process must be interpreted strictly – the extensive interpretation of these provisions is inadmissible.

Under the prevailing laws the service of process to the address (number) of a post-office box in the course of proceedings before administrative courts is inadmissible. Only the direct and explicit intervention of the legislator may change this situation. At the same time the legislator is expected, and should be requested, to intervene.