SPIS TREŚCI

STUDIA I ARTYKUŁY

ORZECZNICTWO

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JUDICIAL DECISIONS

Summary

of the article: Resolutions adopted by the Supreme Administrative Court in the years 2008–2009

The basic duties of the Supreme Administrative Court (the SAC) include ensuring the compliance with law and uniformity of the judicial decisions made by the Voivodship Administrative Courts (the VACs). These duties are performed in the course of the judicial supervision over the activities of the VACs in the area of adjudication following the procedure set out in the applicable laws.

Under Art. 3.2 of the Act on the System of Administrative Courts dated 25 July 2002 the SAC exercises this supervision in particular by considering the means of appeal (cassations and complaints) and adopting resolutions clarifying the legal issues. It is commonly accepted that the resolutions adopted by the SAC play a special role in the performance of the judicial supervision, especially in unifying the judicial decisions of the administrative courts.

In the years 2008–2009 the SAC adopted 56 resolutions and made 12 other decisions (refusal to adopt a resolution, decision to take over a case for consideration) and compared to the preceding period of time (2004–2007) the SAC's resolution-adopting activity is characterised by the increased number of adopted resolutions (in the years 2004–2007 the SAC adopted 47 resolutions). This tendency is undoubtedly related to the clearly increased activity of the entities authorised to initiate the procedure of adopting abstract resolutions. During this period of time the President of the SAC and the Commissioner for Civil Rights Protection submitted 25 requests to adopt an abstract resolution i.e. more than in the preceding 4 years (in the years 2004–2007 the President of the SAC and the Commissioner for Civil Rights Protection submitted the total of 12 requests). The contents of the analysed resolutions leads to the conclusion that both the entitled entities and the decision-making panels of the SAC in most cases diligently considered the necessity to revert to the institution of resolutions.

The conducted research seems to show that the regulation of the abstract and specific resolutions included in the Act on Proceedings Before Administrative Courts of 30 August 2002 determines the appropriate boundaries of the resolution-adopting activities. The practice in this respect was materially affected by the SAC's interpretation of the preconditions that must be satisfied to initiate the resolution-adopting procedure almost completely respected by the decision-making panels of the SAC who adopted the analysed resolutions.

Most of the resolutions adopted in the years 2008–2009 concerned the procedural regulations, most often these regulating the proceedings before administrative courts. The resolutions adopted in connection with these issues clarified many material legal issues related to these proceedings and the interpretation assumed therein clearly leads to guaranteeing that the party will enjoy its procedural rights and, first of all, the constitutional right to trial.

Summary

of the article: Proceedings for granting provisional protection before a Polish administrative court against the standards of the Council of Europe

This article evaluates the institution of suspending the execution of an act or an action before administrative courts from the perspective of the provisional protection standards developed on the basis of the work of the Council of Europe. This issue is closely related to the problem of warranting to the participants of the incidental proceedings, the proceedings for granting provisional protection being such proceedings, that the trial will be fair and efficient. The above is strongly emphasised in the recommendations of the Council of Europe concerning the administrative proceedings and proceedings before administrative courts which – although not generally applicable – formulate the example of the institution of provisional protection. Therefore these recommendations formulate certain „ideal" form of procedure which may serve as the comparative material both for evaluating the institution of suspending the execution of an act or an action in the Act on Proceedings Before Administrative Courts and the activities of the administrative courts so far.

This article, based on the vast number of judicial decisions made by the Polish administrative courts and the European Court of Human Rights, highlights the basic procedural problems an administrative court may face when considering a request to suspend the execution of a challenged act or action and points to the most important elements of the proceedings for granting provisional protection, determining their qualification as fair and efficient. It emphasises the particular role of an administrative court which in the course of the pending proceedings in progress is obliged to take into account all aspects of the case pending before it at the same time not being bound with the contents of the request to suspend the execution of an act or action. It presents the differences between the institution of provisional protection developed by the Council of Europe and the one present in the Polish procedural regulations.

Summary

of the article: Selected problems of the court control over the EU funds redistribution

The Act on the Principles of Implementing the Development Policy of 6 December 2006 recently amended on 20 December 2008 significantly modified the principles of granting subsidies from the EU funds for the projects notified in the individual operational programmes. It introduced at least two-stage appellate procedure at the pre-court level when a given draft is evaluated by the relevant institution and at the same time generally regulated the principles of this procedure making references to the individual systems of implementing the given operational programme. Furthermore, the legislator openly allowed the applicants to lodge complaints to the administrative courts in this category of cases. This ends the dispute over the admissibility of challenging the decisions of the relevant institutions recognising the applications for subsidies to projects. Apart from admitting the possibility to lodge complaints to the administrative courts in this category of cases, the purpose of the amendments was to ensure the efficient and reasonably fast distribution of the funds designated for this purpose. The funds for subsidising specific projects are programmed for a limited period of time. The Act includes provisions modifying the court procedure set out in the Act on Proceedings Before Administrative Courts. Introduced was the shorter period of 14 days for filing a complaint to a Voivodship Administrative Court and the same time limit for challenging the decision of the court of the first instance to the Supreme Administrative Court. The indirect procedure of filing complaints was abandoned. The administrative courts became obliged to consider the complaints and cassations in 30 days. The execution of a challenged act may no longer be suspended and the courts may not proceed in simplified procedure and in conciliatory proceedings. At the same time the administrative court may recognise only the negative evaluation of the appellate procedure in the given system of implementation of the operational programme. Lodging a complaint after the relevant time limit or an incomplete complaint and a complaint without the court fees will have far-reaching consequences. In these cases the court will be obliged to ignore such a complaint, without first requesting the applicant to rectify the omissions rendering it incomplete or to pay the court fees. Such far-reaching consequences are mitigated by the rule that if an authority erroneously instructs or does not instruct an applicant on the appropriate method and procedure of lodging a complaint, this will not negatively affect the applicant's right to lodge a complaint to an administrative court.

Summary

of the article: Cooperation of authorities in the application of law

This article describes the issue of cooperation of the administrative authorities. It presents two levels of their cooperation i.e. the levels of making and applying law. As far as law-making is concerned, it presents cooperation between authorities in making the acts of the generally applicable law and the acts of local law. The author's considerations are focused on the issue of cooperation in the application of law and the point of reference is the court practice i.e. the decisions of the administrative courts. The article presents the characteristics of the legal preconditions of cooperation between entities in the issuing of administrative decisions and describes the legal form of cooperation between authorities. Apart from the most popular forms of cooperation the author refers to the cooperation between authorities consisting in making the possibility to issue a specific decision by an authority conditional on the presence the decisions of another authority in the legal relations. Based on the specific examples the article presents the evolution of amendments to the prevailing laws as a result of which the authorities cooperate under the prevailing laws. Furthermore it shows the differences between the classically understood cooperation of authorities and the joint powers of authorities. It points to the moment when such cooperation is deemed completed and describes the consequences of the lack of cooperation and the capacity to lodge a complaint against the decision issued under Art. 106 of the Administrative Procedure Code. It also presents the issue of the capacity of an authority issuing the decision under Art. 106 of the Administrative Procedure Code to challenge an administrative decision issued by the authority in the main case.

Summary

of the article: Order of immediate enforceability in Polish tax proceedings

This article presents an institution new in the Polish tax proceedings which has been functioning for decades in the Polish civil and administrative proceedings i.e. the order of immediate enforceability of non-final tax decisions and rulings including the obligations enforceable by way of administrative enforcement. This institution was introduced to the tax proceedings as a result of the amendment as of 1 January 2009 to the legal form of enforceability of a non-final decision. On this day the Polish legislator introduced the principle contrary to the one prevailing until then i.e. that the enforceability of the specified individual acts was suspended by virtue of law until they become final. At the same time the tax authorities are still able to ensure that the acts issued in the first instance are enforced earlier by declaring the decision or ruling immediately enforceable in the situations enumerated in the act.

The legal validity i.e. the effectiveness of the said order in respect of an individual tax act to which it applies stems – on the one hand – from the very nature of this legal institution and its accessorial nature in relation to a decision or a ruling, and on the other hand – the legal form of the act by which such act is so declared i.e. the ruling. The first of these predicates implies the basic result of this order becoming present in the legal transactions i.e. the immediate enforceability

of the act referred to in such order, irrespective of the possibility to bring an appal against it. If a party refuses to perform the decision or ruling voluntarily then the coercive measures applied in the course of administrative enforcement are implemented. The extensive contents-related scope of the preconditions of issuing an order on immediate enforceability, in the perspective of the risk that the act enforceable by execution may be consequentially defective, and the related liability of the State Treasury for damages, lead to the conclusion that the said order should be issued only as a means of last resort – when in the given case securing the enforceability of a tax obligation may not produce the intended effect.

Given the provisions of the Polish Tax Code it is impossible to assume that the immediate enforceability may be ordered in the form of a ruling deciding on the nature of the given tax case. The tax authority issues rulings concerning specific problems arising in the course of the tax proceedings and the need to procure that an individual act issued in the first instance becomes immediately enforceable undoubtedly is such a problem due to the existence of the grounds specified in Art. 239b.1 of the Tax Code. Certainly, the ruling declaring a tax decision immediately enforceable should be issued in the main proceedings aimed at deciding on the nature of the given tax case and not in the separate proceedings conducted under Section IV of the Tax Code. Restricting the formalities and reducing the scope of the case on declaring a tax decision immediately enforceable to the issuing and delivering of a ruling in such case will accelerate the achieving of the purpose stemming from the nature of this legal institution.

Summary

of the article: The concept of administrative liability in the light of Art. 93.7 of the Act on Road Transport

This article discusses the problems of interpretation of Art. 93.7 of the Act on Road Transport in which the legislator included a general clause excluding the administrative liability based on the subject-related preconditions. In the light of

this legal regulation the provisions of Art. 93.1–3 providing for imposition on the party rendering road transport services or other activities related to road transport a financial penalty by way of an administrative decision do not apply if it is determined that the provisions were violated as a result of the events or circumstances the party rendering the transport services was unable to foresee. In such event the authority competent due to the location of the inspection issues a decision on discontinuation of the proceedings for imposing a financial penalty.

The interpretation of the aforementioned regulation served as the basis for building a specific interpretative model. First of all the author attempts to conduct a critical analysis of the form of „due diligence" developed in the decisions of administrative courts and then proposes the canon of a „reasonable person" as the concept of administrative liability adequate to the analysed regulation.