SPIS TREŚCI

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Summary

of the article: The proceedings before administrative courts and their transformations

The article is divided into four parts. The first part presents the court control over the public administration in the 2nd Republic of Poland and the two prevailing procedures, as in the territories formerly occupied by Prussia, in the multi-instance judicial system it was the litigious-administrative proceedings, and separate proceedings before the Supreme Administrative Tribunal regulated in detail in 1932. The second part discusses the reactivation of the administrative jurisdiction exercised by the Supreme Administrative Court and its local branches and regulation of the proceedings before administrative courts in the Administrative Procedure Code supplemented by an extensive reference to the Civil Procedure Code. The third part concerns the Act on the Supreme Administrative Court of 1995 expanding the scope of separate regulation of the proceedings before administrative courts while retaining the reference to the Civil Procedure Code coupled with a reference to the Administrative Procedure Code. The fourth part is devoted to the assumptions of creating – in accordance with the constitutional announcement of the interim regulations – the legal basis of functioning of the two-instance administrative courts and the proceedings before administrative courts treated explicitly as a specific complete court procedure. A few selected legal solutions are used as an example proving the strengthening of the individual nature of this procedure necessary due to the specific object of activities of the administrative courts i.e. the administration of justice by controlling the functioning of the public administration. The nature of this procedure has been being strengthened by way of amendments to the prevailing laws and interpretation of law in the court decisions.

Summary

of the article: Evidence obtained by hearing the parties in the proceedings for granting the status of a refugee

The evidence obtained by hearing an applicant in the case for granting the status of a refugee must be perceived as basic given that without taking such evidence the authority will not obtain the information that if the foreigner returns to his or her home country he or she will be in danger. Recognising the importance of this evidence the legislator decided that one of the most important obligations of the applicant is appearing before the authority conducting the proceedings at its request in order to be questioned or to testify.

If the applicant does not appear before the authority in order to be questioned and fails to prove in 7 days of the scheduled date of the questioning that defaulting on this obligation was caused by the circumstances beyond the applicant's control, the proceedings are discontinued, unless such decision would contradict the public interest. In the proceedings for granting the status of a refugee hearing the applicant is the authority's obligation as in these proceedings this evidence is not an auxiliary (supplementary) evidence, as in the Administrative Procedure Code. It is a positive fact that the transposition of the procedural directive to Polish law took into account its basic character and the Act on Granting Protection to Foreigners in Poland dated 13 June 2003 provides for excluding the obligation to obtain evidence from hearing a party to a lesser degree than the procedural directive. The applicant is not heard only in 3 situations: (1) when the decision on granting the status of a refugee is issued on the basis of the gathered evidence (therefore hearing a party may not be omitted also when the applicant was granted a form of protection other than the status of a refugee); (2) when due to the poor physical or mental condition the applicant is unable to or incapable of participating in the hearing; (3) when the application is obviously groundless as the applicant specified the reasons for submitting his or her application other than the fear of persecution on the grounds of race, religion, nationality, political beliefs or membership of a specific social group or the risk of suffering grievous harm or failed to provide any information on the circumstances related to his or her fear of persecution or the risk of suffering grievous harm. Apart from the abovementioned events, the failure to obtain evidence from the hearing of a party will usually constitute such violation of the procedural regulations that might have significantly affected the result of the case. The hearing of the party by the appellate authority may be also of material importance due to the need to update the facts of the case, in particular to determine the applicant's situation in his or her home country.

Summary

of the article: Judicial decisions of the Supreme Administrative Court in the disciplinary cases involving the administrative court judges

This article presents a very narrow scope of the decision-making activity of the Supreme Administrative Court which is also a disciplinary court in the disciplinary cases involving the administrative court judges (Art. 9 of the Act on the Administrative Courts System).

It must be emphasised that the disciplinary commissioner is authorised to submit to the disciplinary court of the 1st instance a request to consider a disciplinary case (Art. 56.3 of the Act on the Supreme Administrative Court and Art. 112.1 of the Act on the Common Courts System).

Firstly the author discusses the notion of a disciplinary case, then he goes on to presenting the legal grounds of the disciplinary jurisdiction beginning with the period between WWI and WWII i.e. from the Supreme Administrative Tribunal established by the act of 1922 and its consecutive amendments until the Regulation of the President of Poland of 1932 with the force of an act. Between 1922 and 1939 no disciplinary case involving a Supreme Administrative Tribunal's judge was initiated.

Then presented are the legal solutions concerning the disciplinary jurisdiction in the Act on the Supreme Administrative Court of 1980 reactivating the administrative courts, the amendments introduced by virtue of the Act on the Supreme Administrative Court of 1995 and its amendments introduced by virtue of the Act on the Administrative Courts System of 2001 under which on 1 October 2001 the Supreme Administrative Court became the disciplinary court for the SAC's judges (previously the relevant disciplinary court was the Supreme Court).

The review of the legal grounds of the disciplinary jurisdiction ends with the presentation of the Law on the Administrative Courts System dated 25 July 2002 which came into force on 1 January 2004.

The article discusses the judicial decisions of the Supreme Administrative Court as the disciplinary court in the years 2004–2010, the list of cases and the method of their handling – presented in three tables. In the cases where the public prosecutor requested the SAC's consent to hold a judge criminally liable such consent was granted only three times.

Summary

of the article: The capacity to file complaints in the proceedings before administrative courts

This article analyses the entities with the capacity to file complaints i.e. authorised to file complaints against the acts, actions and inaction of the public administration authorities to the Voivodship Administrative Courts.

The author begins his ponderings reminding the regulation of these issues in Poland under the previous regulations.

Before the World War II anyone who claimed his or her rights were violated or that he or she was burdened with an obligation without any legal grounds was able to file a complaint to the Supreme Administrative Tribunal. Therefore the capacity to file complaint had a subjective nature while the model of court control of administrative authorities exercised by the Supreme Administrative Court that has been prevailing since 1980 was based on the concept of a party's objective capacity to file complaints by making a reference as regards an entity authorised to file a complaint to the notion of a party to the administrative proceedings. The capacity to file complaints was granted also to a public prosecutor and a public organisation.

Both under the regulations prevailing in the years 1995–2003 and in the present model of two-instance administrative jurisdiction a complaint may be filed by "anyone who has a legal interest in filing a complaint", a public prosecutor and a public organisation. An entity enjoying such a right under other acts is also authorised to file a complaint.

In practice most often a complaint is filed by the first of the above mentioned entities i.e. "anyone who has a legal interest in filing a complaint". The opinion dominant in the doctrine and the court decisions is that such legal interest has an objective nature – it must be based on a specific provision of the substantive law, sometimes the procedural or systemic law.

Then the author analyses the capacity to file a complaint concerning the individual acts and actions of the public administration authorities that the administrative courts are capable of recognising. He also presents the controversial issues related to the capacity to file complaints vested in the public prosecutors, the Civil Rights Commissioner filing a complaint on the same terms and conditions as a public prosecutor and a public organisation who participated in the administrative proceedings as a party and the entities enjoying the capacity to file complaints under specific acts.

Summary

of the article: Application of the output of the doctrine and the judicial decisions in the area of the civil procedure in the proceedings before administrative courts

The Law on Proceedings Before Administrative Courts dated 30 August 2002 regulated the administrative court procedure. It does not include any general reference to the other procedures, but it includes the detailed references e.g. in Art. 106.5 and Art. 300 to the provisions of the Civil Procedure Code. The administrative court procedure and the civil procedure have different functions in the administration of justice (Art. 175 of the Polish Constitution).

The object of both procedures is different, hence the civil and administrative courts make establishments using different methods. In the civil cases the court examines and evaluates evidence and then determines the factual and legal basis of its decision, while the administrative courts refer to the establishments and the decisions made by the administrative authorities, verifying their compliance with law. Exceptionally they add to the established factual status, but the court may establish the facts on its own only to the extent it is necessary in order to verify the compliance with law of the challenged action or inaction of a public administration authority. The proceedings to take evidence may not result in the establishments leading to the content-related decision in the case in which an administrative decision was made.

The administrative courts do not conduct the proceedings to take evidence, they decide on the basis of the files of the case (Art. 133.1 of the Law on Proceedings Before Administrative Courts). Therefore the administrative court procedure does not include the provisions concerning evidence and the method of taking evidence, because the court refers to the results of the administrative proceedings. On the exceptional basis Art. 106 § 3 of the Law on Proceedings Before Administrative Courts authorises a court to act on its own motion or on the motion of the parties and to take the supplementary documentary evidence, should it be necessary to clarify the serious doubts and not result in the excessive extension of the proceedings in the case. It is a material restriction concerning the means of evidence, because the court makes the supplementary establishments only on the basis of the documentary evidence. Under Art. 106.5 of the Law on Proceedings Before Administrative Courts the provisions of the Civil Procedure Code apply accordingly to the proceedings to take evidence before an administrative court.

Supplementing the proceedings to take evidence requires the court to make the decision on evidence (Art. 106.3 and 106.5 of the Law on Proceedings Before Administrative Courts in connection with Art. 236 of the Civil Procedure Code). In the decision to take evidence the court points to the facts to be established and the means of evidence, bearing in mind the object of evidence are only the facts material for the case (Art. 227 of the Civil Procedure Code). The administrative court may only take the evidence from the documents and not from any other means of evidence. Given this it must be concluded that in the proceedings before the administrative courts there apply Art. 244 and 245 of the Civil Procedure Code specifying the types of the documents and their role in taking evidence. They must be applied with due regard to the restrictions and prohibitions referred to in Art. 246 and 247 of the Civil Procedure Code, and the issued related to the obligation to present the documents – Art. 248, 249, 250 and 251 of the Civil Procedure Code, as well as Art. 256 and 257 of the Civil Procedure Code related to translating a document in a foreign language and evaluating the damaged documents.

Summary

of the article: The problems of court protection of the right to information

Under the Constitution each citizen is entitled to be informed of the activities of the public authorities, the persons performing public functions and the institutions managing public property. This constitutional principle is expressed in the Act on Access to Public Information. It includes significant procedural solutions in the area of access to public information specifying both the administrative procedure and the principles of protection exercised by the administrative or common courts. Depending on the reasons behind the refusal to provide information, the entity concerned may seek protection before an administrative or common court.

The law provides for two types of information: plain and processed. Plain information is information the content of which stems directly from the existing documents. In principle this will be the content of official documents. It is made available to anyone, irrespective of the purpose for which it will be used. The processed information is information that requires the entity providing such information to conduct research or analysis and involves taking the necessary organisational steps. Such information may be made available only when it is justified by the public interest. In practice access to such information is available to the journalists and other entities who may effectively affect the functioning of the public institutions to which such information relates.

Information is made available upon taking a material-technical action i.e. sending a copy of a decision or ruling. Refusal to make available information has the form of an administrative decisions with the means of recourse, including court control. Access to public information may be refused only in order to protect the values specified in the Constitution or due to the secrets specified in the relevant acts.

The notion of public information is extensive and in principle includes all forms of the state's functioning and covers all public documents. In practice the boundary between the public information as the expression of the guaranteed openness of the state's activities and the commercial, educational, scientific and the like information is sometimes blurred. It frequently results in abusing the right to information in order, for example, to obtain the decisions or rulings for the needs of business activity in the numbers exceeding the organisational capacity of the obliged entities. Both the administrative authorities and the courts attempt to take these differences into consideration in their activities. There is no reason to burden the public administration authorities with obtaining and gathering the legal acts promoting business activity.

Access to public information is free. There are no limitations as to the number of the documents required. Under the applicable laws some public documents (judgements, rulings, decisions, certificates) are issued against an administrative fee. In practice there have arisen doubts whether such an administrative fee may be charged when such document is requested by a person invoking his or her right of access to public information. It is therefore assumed that the principle of free access to public information is aimed at preventing the control of access to such information by its price. Collecting (relatively medium) administrative fees for the desired form of an official document is something different.

Both the refusal to provide public information and the inaction of the public authority to this extent are subject to court protection. The proceedings before administrative courts are based on the principle that prior to instituting the court proceedings the party should exhaust the means of appeal available in the administrative proceedings and when under the applicable law no such means are available – request the public authority to remedy the violation of law. At the beginning the administrative courts used to decide that if the relevant authority failed to provide information within the statutory period of time, prior to filing a complaint to an administrative court the party should file a complaint to the authority of higher instance or request the defaulting authority to remedy such violation of law. The courts abandoned this point of view, now they are of the opinion that filing a complaint to an administrative court against the inaction of a public authority does not need to be preceded by any preliminary measures.

Summary

of the article: Evaluation of the provisions of the Tax Code in the judgements of the administrative courts (selected aspects)

The contents of the selected decisions and their rationales justify the following comments. (1) The Tax Code should respect the universal values that are represented by the coherence and stability of law, its clarity, justice and functionality, while the Tax Code's material defects are the lack of clarity, instability of solutions and incoherence of provisions. (2) The regulation concerning the institutional solutions adopted in the Tax Code is hardly ever complete, universal and exhaustive and quite frequently fails to include the important and material legal issues. (3) Many amendments to the Tax Code may be understood as the legislator's response to the state's urgent financial needs, often adopted without ensuring that they will create a coherent and uniform system of regulations. (4) Given the frequency and contents of the amendments it is hard to resist the impression that the equilibrium between the protection of public and private benefit is distorted (*salus rei publice suprema lex esto* and *salus civium suprema lex esto*), and at the same time the problem of the limits to which the Tax Code may effectively solve the complicated and non-schematic public relations is increasingly frequent. (5) Due to the defective legislative technique some of the provisions must be a riddle even to the legislator himself, and in particular the communicativeness of the provisions delimiting the taxpayer's legal security. Sometimes the solutions adopted in the Tax Code violate the principle of the clarity of law as the legislator expresses himself inadequately to the assumptions of the legal text. Therefore the principle of creating provisions clear and understandable to their addresses as well as the principle of precision in the legislator's use of the language when formulating a legal text are violated, there appear the non-normative contents of various character e.g. persuasive; in certain events the excessive casuistry of the regulations is striking. (6) Sometimes the interpretative misunderstandings result from the ambiguity of words and expressions; it is obvious because when the different meanings of a given word, expression or term are similar, there arises an interpretative dispute. This dispute is sometimes caused by the diverging judicial convictions and the difference between the opinions the judges formulate. (7) The amendments to the Tax Code fail to duly take into account (rather selectively than comprehensively) the orderly and stable system of the constitutionally protected values. And the result thereof is the unconstitutionality of the Tax Code provisions. (8) The amendments to the Tax Code only superficially rely on the decisions of the administrative courts and this is important, significant, almost readily available and systematised knowledge the legislator should perceive as an important guideline for creating the institutional solutions.

And two reflections of a more general nature. Firstly, when the solutions of the Tax Code are incoherent, dysfunctional, defective, ambiguous and unspecified the legislator is replaced by the "an administrative court judge who thinks and acts using the weapon bestowed upon him on behalf of the Republic of Poland being a court decision remedying the legislator's mistakes".

Secondly, the administrative courts are the venue of formation of opinions. Even if there appear any controversial claims, the court judgements warrant that the case will be considered thoroughly. It is quite a lot, given that many amendments are introduced to the Tax Code without due preparation. The thesis included in the administrative court judgements and the reasons for these judgements result in the increased activity of the doctrine (the court decisions are voted upon).

It would be splendid if the discussion started in the doctrine as a result of the administrative court decisions would lead to the solution that would actually give the Tax Code the power of a code.

Summary

of the article: The source of factual presumption and the administrative court decisions in tax cases

The administrative court decisions evaluating the proceedings to take evidence conducted by the public administration authorities taking into consideration the factual presumptions (*preasumptio facti*) are rather scarce and fragmentary. The importance of these problems is significant not only for determining the facts of the case by the public administration authorities but also for control of the compliance with law of the methods of determining the facts of the case conducted by the administrative courts

Given the nature of the proceedings before administrative courts consisting in controlling the decision in an administrative-law case included in the act or activity of a public administration authority appealed against, the role of the factual presumptions in the tax proceedings should be emphasised. Particular importance should be attached to their source i.e. the factual basis of a presumption and especially the methods of its determination. It is the starting point for determining the elements of the facts of the case by way of factual presumption. The law-making facts do not always stem directly from the specific sources or evidence given that in the course of considering many administrative-law cases there is no evidence allowing the court to determine directly the truthfulness of the law-making facts and all the circumstances material for the decision in the case.

On the other hand the limits of making a factual presumption are determined by the basis of such presumption. For this reason a tax authority must prove all the indirect evidentiary facts material for determining the facts of the case being the object of the relevant proceedings. However, the indirect evidentiary facts may not be determined by presumption. For this reason proving a given event representing the factual basis being the source of the given presumption is possible only by way of the proceedings to take evidence as the result of which the complete evidence is obtained.

The completeness of the basis of a presumption is the condition necessary, but not sufficient to apply the presumption as the method of evidence-free determination of the facts of the case. The material including the indirect evidentiary facts must be freely evaluated under Art. 191 of the Tax Code. Only such free evaluation permits making the true determinations. For this reason the proceedings to take evidence aimed at proving the indirect evidentiary facts should be conducted in accordance with the rules ensuring that the material truth will be established i.e. pursuant to Art. 122 of the Tax Code. If the indirect evidentiary facts are untrue, it prevents formulating the conclusions permitting to determine the direct evidentiary facts.

Determining the existence of a main fact by way of a factual presumption is possible on the proviso that this method of determining the facts of the case is based on the mutual relations between the indirect evidentiary facts obtained in the case and the main fact being sought out i.e. the presumed fact. The relation between the indirect evidentiary

facts and the main fact being sought out must indicate that the presumed fact origins from another event i.e. the indirect evidentiary fact. The relations between the indirect evidentiary facts and the presumed fact and the conditions they must satisfy in order to be deemed the relations making these facts together into the logical whole represent problems that require a separate article.

Summary

of the article: Transformations of the role and structure of the Supreme Administrative Court

This article discusses the problems of the structural changes in the Polish administrative jurisdiction in the post-war period. The consecutive statutory and constitutional regulations shifted the position of the Supreme Administrative Court in the system of public authorities.

The restoration of the administrative courts was first announced in the Act on the System and Scope of Functioning of the Highest Authorities of the Republic of Poland dated 19 February 1947 which announced the appointing of the administrative courts, but this statutory declaration was not put into effect. The problem of administrative jurisdiction was not regulated at all in the Constitution of the People's Republic of Poland of 22 July 1952, therefore the issue of the court control over the activities of the public administration authorities was ignored for many decades. On the other hand, the representatives of the legal doctrine were interested in this problem. The efforts of the scientific circles and the distribution of the political power in the 1980s (the government was ready to introduce limited political reforms) resulted in adopting the Act on the Supreme Administrative Court and Amending the Administrative Procedure Code dated 31 January 1980. This act established the Supreme Administrative Court as a particular, one-instance court under the judicial supervision of the Supreme Court. The powers of the Supreme Administrative Court were enumerated positively and gradually expanded. The increasing scope of the Supreme Administrative Court's competence was related to the political developments which resulted in, among others, adding a general clause submitting all administrative decisions (except for these explicitly exempted) and resolutions of the local government authorities to the court control.

All the activities of the public administration authorities were submitted to the court control under the Act on the Supreme Administrative Court dated 11 May 1995. This act ensured the balance between an administrative act and the possibility of filing a complaint and warranted a citizen's right to trial. The model of the administrative jurisdiction as a one-instance central court (divided into two chambers) with the local branches was maintained, while introducing the institution of clarification of the significant legal doubts by the bench composed of seven judges, a chamber or the joint chambers in order to ensure the uniformity of its judicial decisions

The administrative jurisdiction was further transformed under the Constitution of the Republic of Poland dated 2 April 1997 introducing the principle of two-instance administrative jurisdiction and the following acts adopted in 2002: (1) the Law on the System

of Administrative Courts and (2) the Law on Proceedings Before Administrative Courts and (3) the provisions implementing these Laws. They came into force on 1 January 2004 thus commencing the reform of the administrative jurisdiction.

These Laws comprehensively regulate the system of administrative courts and the proceedings before them. The 1st instance courts were the newly established Voivodship Administrative Courts while the appeals against their decisions were considered by the Supreme Administrative Court. The Supreme Administrative Court's jurisdictional activities are carried on by three chambers: financial, commercial and general administrative; the activities related to the efficiency of court proceedings and the jurisdictional functions are performed by the Jurisdictional Bureau and the Office of the Supreme Administrative Court's President takes care of the financial and HR matters.

The Constitution of the Republic of Poland specified the limits of competence of the administrative courts introducing in Art. 184 the principle that the cases in which the administration of justice consists in controlling the activities of the public administration authorities are reserved for the administrative courts.

Establishing the two-instance administrative jurisdiction completed the adaptation of the administrative courts system to the constitutional requirements.

Summary

of the article: Administrative discretion in the administrative court decisions

This article analyses the standpoint of the Polish administrative courts in respect of the notion and scope of the court control of administrative discretion. In the light of these decisions the discretion seems to be a separate, fully developed legal institution displaying specific features. It is related to the division into the acts bound with and based on the administrative discretion and the specific formation of the latter's legal basis. In the judicial decisions the administrative discretion is defined restrictively as related to the selection of the legal consequences in the decision-making process. Therefore it is required first of all that the authorisation to exercise the administrative discretion stems directly from the statutory acts or the acts based on the statutory authorisation and is not inferred by implication. At the same time the author points to the differences between the discretion and the so-called underspecified notions due to the fact that they are related to the various stages of the application of law. These differences are the reason for emphasising the different scope of their court control. The underspecified notions in principle are subject to the court control in full, however in the case of the estimating expressions and the necessity to evaluate a specific state of affairs the evaluation margin is quite considerable which may sometimes prevent the abstract interpretation. The control of the discretion has a limited nature, but this limit applies to the last stage of the application of law. The administrative decisions based on the selection of the legal consequences are subject to court control. In order to allow the courts to exercise this control the court decisions emphasise the necessity for such decisions to be justified and, given the evaluation of the limits of the administrative discretion, such justification must be particularly careful.

In the light of the court decisions the scope of control over the discretionary decisions is determined by the elements of legality. It is emphasised that the discretion itself represents the scope of freedom the authority may enjoy and the court may not replace the executive authorities. This control mainly consists in verifying the legal and factual grounds of a decision i.e. the stages preceding the selection of the legal consequences. As regards the discretion exercised when determining the limits of control, the courts in principle do no rely on the concepts of the internal boundaries and the errors in exercising discretion. In exchange, they extensively rely on the so-called directive of choice of consequences. It permits developing such agreements concerning the method of understanding and controlling the administrative discretion which in principle fully satisfy the requirements of the Community law. It seems, however, that relying on the concept of errors in exercising discretion, and in particular of the abuse of discretion, would allow to control the borderline situations involving the so-called difficult cases and permit the more extensive application of the Community law and the laws of other European countries.

Summary

of the article: The role of the Supreme Administrative Court in shaping the uniform decisions of the administrative courts

Considering the role of the Supreme Administrative Court in shaping the uniform decisions of the administrative courts it must be noted that performing this task in respect of the administrative law encounters particular difficulties. They result from both the significant development of the administrative law and the very numerous group of entities making this law. The administrative law is known to be a very vast, dynamic and frequently amended area of law. Pursuant to the Polish Constitution the administrative

law is sometimes made not only by adopting laws but also by the public administration authorities issuing the generally applicable normative acts.

The consecutive regulations concerning administrative jurisdiction used to designate the role of the SAC in shaping the uniform application of laws by the administrative courts in substantially different ways.

When the Act on the Supreme Administrative Court and Amending the Administrative Procedure Code dated 31 January 1980 was in force the SAC's activities were supervised by the Supreme Court. The Act on the Supreme Administrative Court dated 11 May 1995 changed this situation empowering the enlarged benches of the SAC to adopt resolutions clarifying the legal issues giving rise to serious doubts. The Supreme Administrative Court used to exercise this power next to the Supreme Court's means of judicial supervision over the SAC's judicial decisions. This legal status was in force in principle until 1 January 2004 i.e. until the effective date of the three acts of 2002 implementing the reform of the system of administrative jurisdiction.

Almost from the very first day of its functioning the Supreme Administrative Court was taking steps aimed at ensuring the uniformity of judicial decisions. Although when the Act of 1980 was in force the SAC's powers in this area were limited with the supervisory powers of the Supreme Court, however this legal status and the lack of the relevant regulations within the SAC itself did not prevent the SAC from taking actions necessary to ensure the uniformity of legal decisions. For this purpose the decision-making benches of the SAC initiated the resolutions to be taken by the Supreme Court and interpreted law in the decisions in individual cases. Given the significant importance of the legal problems solved by the SAC and the frequent references to the Constitution in its interpretations of law the above SAC's practice materially affected the proper application of the administrative law. Then, when the abovementioned Act dated 11 May 1995 was in force, the SAC often used the institution of resolutions which due to the extensive scope of the clarified legal issues played an important role in ensuring the uniformity of legal decisions. When the acts introducing in Poland the two-instance system of administrative courts came into force and the SAC was vested with the means of jurisdictional supervision, the SAC's role in ensuring the legally valid and uniform legal decisions of the Voivodship Administrative Courts became particularly important. The observation of the SAC's functioning shows that the means of supervisions provided for in the Act have been used reasonably. It must be particularly emphasised that the SAC has been using its resolution-adopting activities to ensure that the parties to the proceedings may exercise their procedural rights, and first of all the constitutional right to a trial.

Summary

of the article: The industrial property in the administrative court decisions

This article discusses the few issues concerning the industrial property problems basic for the administrative court decisions. The author emphasises that the industrial property rights and therefore the ownership-type rights are created and to the significant extent protected with the public-law methods. Their source are the administrative decisions of the Polish Patent Office – the central body of government administration competent in these matters. Submitting the Patent Office's decisions to the control exercised by the administrative courts in the way relevant for these courts is fully consistent with the constitutional principle specifying their scope of competence and operating procedures. Under the first sentence of Art. 184 of the Constitution the Supreme Administrative Court and the other administrative courts exercise control, to the extent specified by law, over the functioning of the public administration authorities. Under this provision the cases concerning the legal relations arising in the course of exercising the administrative authority should be within the scope of competence of the administrative courts.

One of the features characterising the judicial activity of the administrative courts in the industrial property cases is the application of the regulations repealed by the Industrial Property Law. This results from the fact that the Industrial Property Law includes the principle of the continuity of the rights acquired under the rule of the previously applicable regulations. Due to the ambiguities in the transitional regulations concerning these problems determining the scope of application of the existing regulations gave rise to many doubts expressed in the judicial decisions and the legal literature.

Undoubtedly the basic problem arising in the judicial decisions in the industrial property cases is the determination of the existence of the legal interest authorising the initiation of the proceedings before an administrative court and the legal interest justifying the submission of a request to the Patent Office to invalidate an exclusive right or declare it expired. A lot of attention is devoted to these issues in this article. The author reminds the understanding of this notion in the administrative procedure and administrative court procedure illustrating his reflections with the numerous examples from the decisions of the Voivodship Administrative Courts and the Supreme Administrative Court.

Summary

of the article: The standards of an individual's protection in the administrative judicial decisions

The reactivation of the administrative courts in Poland in 1980 coincided with the major changes in the public and political life which triggered the legal and systemic transformation started in the 1990s. Since the beginning of its functioning the Supreme Admi-

nistrative Court (which until the end of 2003 was the only instance settling the disputes between an individual and the public administration authorities) was attempting to reconstruct and specify the requirements and principles setting the standards of the civil rights protection.

The first period of the SAC's functioning is currently perceived as the period of "return to the sources", reminding and streamlining the assumptions and values that determined the evolution and the present form of the administrative law institutions. This observation is illustrated by the numerous statements included in the reasons for the judgements concerning the exercising of the administrative discretion, protection of trust in the state and the law or exercising a party's right to be heard. The transformations of the Polish system of law in the 1990s, including the adoption and entry into force of the new Constitution and then Poland's accession to the European Union and, on the other hand, the modifications in the system of administrative courts itself (adopting the two-instance system of decision-making) affected the performance of the tasks in the area of the administrative jurisdiction. It became natural, and in certain events necessary, that supervision over the functioning of the public administration authorities had to be exercised with the due regard to the provisions of the Constitution and the relevant conventions, the recommendations of the European soft law (including the resolutions and recommendations of the Committee of Ministers of the Council of Europe) and the acts of the EU law. They became a particularly importance source of the interpretative directives facilitating the interpretation of law by the administrative courts, with the Supreme Administrative Court as the most important of them.

The method of justifying the theses and assertions setting the standards of an individual's rights (interests) protection has changed since the restoration of the administrative courts in Poland. This may be due to the increased complexity of the axiological grounds of the opinions formulated by the administrative courts (the sources of the specific ideas and assumptions) as well the continuous development of the reasoning techniques referring to the continuously expanding extent to the purposes of law, the systemic principles or the decisions of the other authorities, especially the supranational courts (the European Court of Justice and the European Court of Human Rights).

The relationship between the rules and determinations stemming from the court practice and the statutory (constitutional, conventional) norm is not questioned in Poland as a result of which the above activity is different from the shaping of the "praetorian" administrative law, irrespective of the act, in particular by the French *Conseil d'Etat*. It's beyond doubt that the rules perceived as the source of the "secondary legislation" (the judge-made law) are to a certain extent the product of the administrative court decisions in the analysed sphere of problems.

Summary

of the article: Selected issues of the agricultural law in the decisions of the Constitutional Tribunal

The factors affecting the directions of development of the agricultural law, apart from the national, Community and international ones, include the judicial decisions. Although they are not the critical development stimuli due to the fact that under the prevailing Constitution the court judgements are not the source of the generally applicable laws, but one may not ignore the role of the court judgements as the factor indirectly affecting the tendencies and directions of the agricultural law development. The judicial decisions of the Constitutional Tribunal may play a particularly important role in the development of law given it is authorised to decide if a normative act is compatible with the Constitution even though it is not authorised to decide on the application of law because justice is administered by the courts. For this reason the decisions of the Constitutional Tribunal may particularly affect the individual solutions functioning in the given area of law. This article attempts to present the recent decisions of the Constitutional Tribunal concerning the various problems of the agricultural law. These problems include the following areas: the *inter vivos* (between living persons) trading in real property – judgement of the Constitutional Tribunal dated 18 March 2010, file No. K 8/08; the agricultural reform – decision of the Constitutional Tribunal dated 1 March 2010, file No. P 107/08, and the financial aid provided under the rural areas development plan – decision of the Constitutional Tribunal dated 24 March 2009, file No. U 6/07. The above mentioned decisions of the Constitutional Tribunal are supposed not only to point to the current content-related issues but also to signal the cases in which the Constitutional Tribunal discontinues the proceedings and therefore formally does not render a content-related decision but in the reasons to the decision on discontinuation of the proceedings presents its content-related opinion in the case. Such practice must be highly controversial.

Summary

of the article: The selected problems of the administrative court decisions in the cases concerning the service relationships

The term "service relationship" in the most general sense is interpreted as the particular form of a public (administrative) relationship entered into in order to perform public functions against remuneration, permanently and continuously. The service relationships include the service relationships of persons employed in the militarised formations (e.g. army and police) and the employment service relationship concerning the persons who entered into an employment relationship (e.g. officials). The former comprise mainly the norms of the administrative law and the latter cover the public sphere concerning the relations between an employee and the body which is not his or her employee and the sphere of obligations concerning the relations between a nominee and his or her employer.

The scope of competence of the administrative courts includes a wide selection of cases concerning the origination, modification or expiration of the service relationship and the performance of the various rights and obligations of the parties resulting from its contents. As regards the cases related to the recruitment in the civil service, the author concludes that in spite of the changed legal status the decision-making practice of the administrative courts qualifying the decisions made in the course of competitions for the senior positions in the civil service as the acts of applications of the administrative law for which the administrative courts are competent remains valid. The author questions

the position presented in the judicial decisions assuming that the cases concerning the authorisation for a policeman to take a job against remuneration outside the police are beyond the competence of the administrative courts due to the fact that they concern the relationship between a subordinate and a superior. The author claims that such cases, given they are related to the constitutionally protected sphere of the freedom of labour, are within the competence of the administrative courts. He criticises these judicial decisions which in spite of the appropriate reference permit the application of the provisions of the labour and civil law to the functionaries, concluding this is possible only if these provisions permit so. He agrees with the position that a periodic service-related opinion as the act determining an individual case and concerning the professional qualifications of a functionary and the assessment of his or her work is within the competence of administrative courts. He also refers to the views presented in the judicial decisions concerning the reinstatement of a functionary to service.

Summary

of the article: The administrative court decisions and the control of interpretation of law

In the decision-making procedures concerning the application of law by the administrative courts the interpretation of law includes, apart from the normative constructions of the basis of their own judgements, the control of interpretation being the element of the decision-making procedures undertaken by the public administration authorities. In both the above aspects this interpretation is the operative interpretation i.e. the "decision-making" interpretation (aimed at completing the decision-making procedure) aimed at reconstructing not the "entire norm", but the "norm for application" (in this decision-making procedure), then transformed into the normative basis of the decision concerning the application of law. It includes (as the validating-derivative interpretation) both determining the source of the norm reconstruction and the reconstruction itself of both the competence norm as well as the procedural and substantive-law norms (used in order to qualify the factual status and determining the consequences) and assumes the rationalisation of this reconstruction in the reasons for the decision.

One of the most important and the strongest elements of the controlling interpretation conducted by the administrative courts as a part of the validating argumentation is the choice of the laws and regulations applied in the given decision-making process. Such control covers, among other, the following issues:

– the direct application of the constitutional provisions, the application of the international law and the EU law (including the judgements of the European Court of Justice),

– the application of the implementing regulations (a regulation), independently or jointly with the provisions of an act,

– the application of the provisions of local laws, also in the context of relations with the statutory provisions and the provisions of a regulation, or

– using the judgements of the Constitutional Tribunal on unconstitutionality, taking into account the nature of such judgements, as the judgements concerning the interpretation, scope or application of an act.

In turn the court control of the normative reconstruction of the basis of a decision made by a public administration authority is related to, as regards using the individual principles of interpretation and the course of the interpretation process itself, among others:

– controlling the method of determining the meanings of the normative terms, including the correct application of the legal definitions and the possibility to use the meanings determined in the other sub-branches of the administrative law,

– determining the scope of regulation and the scope of application of the given model of conduct included in the relevant paragraph of a legal text, taking into account the differences in the style of formulating and editing the administrative-law regulations,

– defining the systemic relations within, substantially, the relevant legal institution and the relevant normative act, then expanded to include the more general units of subdivision of the system of law to build the common model of conduct creating the normative basis of the decision qualifying the given factual status and the decision determining the normative consequences of such qualification,

– using the systemic-axiological argumentation (the principles of law) as the contextual rule for all the types of the interpretative activities which might also result in the verification of the result of the linguistic and systemic-structural interpretation,

– using the argument of purpose and the argument of function as the auxiliary arguments and potentially verifying the results of the linguistic and systemic interpretation as well as the arguments allowing to introduce the inferring argumentation to the interpretation of law,

– observing the rule of the order of application of the relevant rules of interpretation in the individual interpretative activities, with their breakdown into the basic rules (the systemic and linguistic rules) and the contextual and auxiliary-verifying ones, and

– assuming that the full catalogue of the rules of interpretation will be used, at least to verify the correctness of its results.

Summary

of the article: The problems of submitting and responding to reference for a preliminary ruling – on the dialogue between an administrative and constitutional court

The courts participate in the public dialogue also between themselves. The references for a preliminary ruling referred to in Art. 193 of the Constitution are the instrument of this dialogue. They are aimed at elevating the activities of the third branch of government to the constitutional level by the appropriate formation of the submitting court's judicial decisions *in concreto*. This in turn affects the method of adjudication by the Constitutional Tribunal in the cases initiated by submitting a request for a preliminary ruling.

The party submitting a reference for a preliminary ruling and the party responding thereto should be able to understand each other, respect their scopes of competences and expectations. The asker's communicational position is worse as the Constitutional Tribunal's response is given *vi imperii* (arbitrarily). The respondent's mistakes may be corrected only in an external opinion expressed *imperio rationis* (at the command of reason). The problem is the persons commenting on the Constitutional Tribunal's judgements are hardly ever aware of the specific nature of the control of constitutionality determined by the individual forms of the specific control. The strategy, tactics, the actual reasons for submitting and responding to a reference for a preliminary ruling (in this and not any other way) is a separate problem, a very difficult one, given the need to be aware of the court "backroom". Only a very naive person might suspect that the asker submits a reference for a preliminary ruling because it does not know the answer. The askers submits a reference expecting a response of the specific contents and its purpose is to make it easier for the asker to make a decision perceived as difficult, frequently not due to intellectual, but tactical or strategic reasons. In other words: when a court submits a reference to the Constitutional Tribunal, it wants to share the risk of various types. By default the references are the instrument of cooperation and assistance. However, sometimes they express collision and disappointment when the asker's intentions and expectations and the response do not match, in terms of form or contents. Sometimes the issue of the form is an apparent problem: it arises when the reasons are incomplete or unclear. Sometimes a reference demonstrates the lack of imagination where the decision made in line with the response will not solve the problem the asker has faced; sometimes the asker is unaware the response will not affect the decision in the case in the course of which the reference was submitted and, finally, solving the problem in spite of its unconstitutionality declared by the Constitutional Tribunal requires the legislator's intervention.

This article discusses a few detailed issues: the Constitutional Tribunal's decision-making strategy (the necessity to avoid discontinuations in the cases initiated by a reference for a preliminary ruling), the administrative court submitting a reference for a preliminary ruling (controlling the compliance of an administrative decision with law as at the date of such decision) being bound with a judgment declaring a norm unconstitutional and derogating such norm upon the promulgation of the Constitutional Tribunal's judgement; the situation of the court submitting a reference when the norm is declared unconstitutional and at the same time the effective date of the judgement is deferred; the necessity to distinguish, against the background of the provision permitting the Constitutional Tribunal to verify the constitutionality of the provisions that are no longer in force, between the situations when the purpose of a reference is controlling the applicable provisions and challenging the previously applied provisions.

Summary

of the article: Transformations of the administrative courts decisions in tax cases (years 1981–2010)

The tax-related decisions of the Supreme Administrative Court played an important role in the transformation of the model of making the socialist tax law, the return to the sources and normality prevailing in all the contemporary democratic countries. They significantly added to the propagation of the legal culture characteristic for the state of law and reduced the onerous nature of the destabilised concept of the sources of law for the taxpayers. The law-making decisions of the Supreme Administrative Court were ahead of the obsolete and unclear regulations. Its decisions led, among other, to the cancellation of the independent norm-making activity of the government and disappearance of the so-called "photocopy tax legislation" (interpretations, guidelines and circular documents published by tax authorities often treated as more important than the laws and regulations); the direct application of the Constitution in the tax-law cases, opposing the practice consisting in giving the laws and regulations the retroactive force and the legislator ignoring the rights the taxpayers duly acquired; formulating the prohibition to apply the *legis* (statutory) analogy in the substantive tax law; covering the decisions issued by exercising the

administrative discretion or under the regulations including the indefinite expressions with court protection; recognising the relying on the decision-making principle *in dubio pro tributario* (resolve doubts concerning provisions of law in favour of the taxpayer) in the doubtful cases as purposeful; arguing that the common knowledge of the tax law and the ability to avoid the adverse effects of such non-culpable ignorance of tax law is a fiction; pointing to and setting the standards of the democratic state of law prevailing in the sphere of the tax law; ensuring protection of the individual entities and in the specific tax-law case when such protection could not be ensured by e.g. the Constitutional Tribunal as a result of repealing the normative act on which the tax decision was based.

The article presents the detailed problems of the tax decisions made by the administrative courts in the three main periods of time: 1981–1995, 1996–2003 and 2004 – now.

skiej.

Summary

of the article: The EU law in the Polish legal order

Since 1 May 2004 under Art. 2 of the Act of Accession concerning the conditions of accession being an integral part of the Accession Treaty signed on 16 April 2003 in Athens Poland has been bound, firstly – with the provisions of the Founding Treaties, including the Treaty establishing the European Community and the Treaty on European Union and the Treaty of Lisbon amending the Treaty on European Union, secondly – the acts adopted by the institutions of the European Union and thirdly – which to a certain extent is a novelty, the interpretation and application of the EU law stemming from the judicial decisions of the Court of Justice of the European Union.

The European Union is functioning in accordance with its constituting treaties, on the basis of and within the scope of its powers vested in the EU by the Member States. Therefore the EU institutions may function only to the extent set out in the treaty provisions.

The formal frameworks of the European integration are delimited by the extensive system of regulations comprising the so-called "primary law" i.e. the Founding Treaties – the international treaties establishing the European Communities and the European Union and the "secondary law" comprising the directives, regulations, decisions, recommendations and opinions.

The three following principles are or crucial importance for the position of the EU law in the Polish legal order: the principle of direct effect (applicability) of the EU law in the national legal orders, the principle of supremacy of the EU law over the national legislations and the principle of uniformity of the EU law. Subordination of these three rules stems from the very nature of the EU membership which imposes on the national legislator the obligation to adapt its legal system to the requirements of the EU law.

The very concept and model of the European law created a new situation where the autonomous legal orders are functioning next to each other. Their mutual interaction may not be fully described using the traditional concepts of monism and dualism in the arrangement: national law vs. international law. The place of the EU law in the national legal order is defined in Art. 91 of the Polish Constitution; as regards the primary law there apply the general norms of Art. 91.1 and 91.2. As far as the secondary law is concerned, Art. 93 of the Constitution provides that it "applies directly enjoying precedence in case of conflict with the acts and laws."

Applying the EU law, including resolving the conflict of the national law with the EU law, is the duty of the courts. In case of any doubts whether a provision of the national law is consistent with the EU law, the court should first of all seek such an interpretation of the provision of the national law that would allow for its reconciliation with the EU law.

Priority over the acts and laws does not mean priority over the Constitution. Such contradiction may not be in any case resolved in the Polish system of law by acknowledging the superiority of an EU norm over the constitutional norm. It could not result in the invalidation of the constitutional norm and replacing it with an EU norm or limiting the scope of its application to the area not regulated by the EU law.

The effectiveness of the Charter of Fundamental Rights of the European Union is of material importance for defining the place of the EU law in the Polish legal order.

With the entry of the Lisbon Treaty into force the Charter acquired the legal force of the treaties. However, as a result of negotiating the Lisbon Treaty Poland acquired a specific position as regards the Charter of Fundamental Rights. The legal framework of this position is set out in Protocol No. 7 on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom.

Summary

of the article: The administrative court decisions concerning the mining of minerals

This article presents the selected examples of the administrative court decisions concerning the mining of minerals regulated in the Geological and Mining Law dated 4 February 1994. The number of cases in this area has been growing steadily, as well as their diversity, mainly due to the fact that commencing and then conducting the mining activities requires satisfying certain obligations which usually become specific in the form of the acts of the public administration authorities, in principle performed in the form of decisions. It should not be ignored that the above mentioned activities have specific consequences in relation to which – at least to a certain extent – certain rulings are also made that may be the object of control exercised by the administrative courts. A separate issue is the unclear wording of many laws and regulations prevailing in this area which requires making, sometimes complicated, interpretative efforts.

Given all the above circumstances, when controlling the activities of the public administration authorities the administrative courts increasingly often participate in the interpretation of the laws regulating the mining of minerals. The selected examples of such interpretation presented in this article refer to the issues so controversial as: the scope of the obligation to obtain the licence for mining the minerals, the circle of the entities being a party to the licence proceedings, the legal position and the powers of the authorities cooperating with the licensing authorities and the tools of supervision over the functioning of a mine.

Summary

of the article: The shaping of the administrative court decisions in the zoning and construction law cases

The administrative court decisions concerning the investment-construction process may be divided into three basic stages delimited by: creation of the administrative jurisdiction, change of the political system in the years 1989–1990 and the related restitution of the local government, the systemic changes in the zoning and construction law and the changes strengthening the reform of the zoning system and construction law. These stages overlap creating the sequence of the mutually related judgements. The first stage opened in 1980 with the creation of the Supreme Administrative Court. One of the areas then subjected to the court control was the investment-construction activity. Covering this sphere of administrative activities with court control was the more important that the method of exercising the property rights was not limited by law, but by the zoning plans. At that time the zoning plans were adopted freely and without any control. The citizens received a strong weapon in their battles with the public administration and its discretionary zoning powers. The second stage opened with the political transformation in the

years 1989–1990 and the related restitution of the local government. The then Act on the Local Government dated 8 March 1990 made an independent and subjectified commune the administrator of the space and its activities in this area were from then on controlled by the Supreme Administrative Court. Expanding the cognition of the administrative courts triggered the appearance in the judicial decisions of the trend to protect the citizen against the defective zoning plans. The entry into force in 1994 of the new Zoning Act and the Construction Law adapting the zoning system and the construction law to the new political circumstances and the market economy requirements strengthened the trend to protect the investor's rights at the stages of zoning and construction, but a view that at the same time the high-worth values must be protected (the natural environment, the historic monuments etc.) has been expressed. This trend has become stronger under the rule of the next zoning act of 2003 and the construction law of 1994 with the numerous amendments made in the recent years determining the third stage of development of jurisdiction of administrative courts concerning the subject matter.

This all justifies the conclusion that that the administrative court decisions in the zoning and construction law cases have considerably evolved during the recent 30 years. In the most general terms, it was the way from the limited protection of the investor's rights determined by the narrower cognition of the administrative courts to the wide protection of these rights with the simultaneous balancing of the public and private interest.

Summary

of the article: Complaint against the excessive length of court proceedings before administrative courts

This article presents the selected issues from the Act on Complaints Against the Violation of a Party's Right to Have His or Her Case Considered in the Preparatory Proceedings or Proceedings Supervised by a Public Prosecutor and the Court Proceedings Without Undue Delay dated 17 June 2004 (J.L. No. 179, item 1843, as amended) against the background of the decisions made by the Supreme Administrative Court in the cases initiated by the complaints against the excessive length of proceedings before the administrative courts.

A complaint against the excessive length of proceedings is a remedy the purpose of which is, first of all, to prevent the excessive length of the court proceedings and to ensure the proceedings are completed. When the proceedings are recognised as excessively lengthy the Act provides for the compensation for the loss that occurred as a result of such excessive length of proceedings by awarding to the claimant the appropriate amount of compensation and giving instructions to the court considering the case.

This article presents the problems related to bringing and considering a complaint against the excessive length of court proceedings (II. The proceedings initiated by a complaint against the excessive length of court proceedings), the circle of the entities authorised to bring a complaint against the excessive length of court proceedings (III. The parties to the court proceedings initiated by a complaint against the excessive length of court proceedings), the legal conditions that must be satisfied under the pain of the complaint being rejected (IV. The grounds of rejecting a complaint against the excessive length of court proceedings) and the prerequisites of allowing the complaint (recognising the court proceedings as excessively lengthy, giving instructions to the court considering the case and awarding to the claimant the appropriate amount of compensation) or dismissing it (V. Considering a complaint against the excessive length of proceedings).

The SAC's decisions in the cases initiated by a complaint against the excessive length of proceedings are presented in the context of the judicial decisions of the European Court of Human Rights in Strasbourg in the cases initiated by the complaints against violation of Art. 6.1 of the Convention. The ECHR presents the opinion that exercising the national remedies against the excessive length of court proceedings does not deprive the party whose right to have his or her case considered without undue delay was violated of the right to submit a complaint to the ECHR. As a result of this opinion the ECHR evaluates the decisions of the national courts in these cases from the perspective of the standards adopted in its decisions.

The article's basic conclusion may be resolved to the opinion that the decisions made so far in the cases initiated by the complaints against the excessive length of proceedings are too restrictive.

Summary

of the article: The guaranteeing role of the administrative courts in the enforcement proceedings in administration (considerations exemplified by the application of the principle of purposefulness)

The administrative courts assign an important role to the general principles of the enforcement proceedings, and in particular the principle of the purposefulness. Under this principle the only purpose of the enforcement proceedings may be ensuring the administrative obligations are performed and not imposing a burden on the obligated party. In the administrative courts' opinion the principle of purposefulness distinguishes between the enforcement proceedings and the proceedings of repressive types (e.g. penal proceedings) and, furthermore, is the source of the other general principles governing the enforcement proceedings. It makes the principle of purposefulness the most important principle of the enforcement proceedings. In the course of control before an administrative court the court determines whether the public administration authority exceeded the

limits determined by the general principles of the enforcement proceedings i.e. whether it applies the means of enforcement that result directly in the obligation being performed and are as minimally onerous for the obligated party as possible. To this extent the public administration authority should be guided by the principle of purposefulness so as to impose on the obliged party only such onerous burden as is necessary to make the obliged party perform the relevant obligation and to remove this burden when the obligation has been performed. It must be emphasised that due to applying the general principles of the enforcement proceedings the judicial decisions of the administrative courts often correct the imperfect text of an act without amending that act under the pretences of its interpretation.

Summary

of the article: The administrative court decisions in the local government cases

This author evaluates the output of the administrative courts in the local government cases. This output is considerable and important from the systemic point of view, developed from the beginning, covering a great deal of decisions concerning a wide scope of cases. Since the reactivation of the local government in 1990 the administrative courts (first the Supreme Administrative Court and then the Voivodship Administrative Courts) ensured the protection of independence of the local government units by controlling the acts of supervision, protected the objective legal order and the public subjective rights of the other subjects violated by the resolutions and orders of the local government units in the cases concerning public administration and settled the competence disputes between the local government units and the government administration.

The administrative courts as the basic guarantor of the local government's systemic independence – in its various manifestations: the organisational, legislative and financial independence – by interpreting the local government law used to set the legal standards of the local government activities (including, without limitation, the law-making activities) and the supervision over these activities. Controlling the legality of the widely understood activities of the local government the administrative courts (and predominantly the Supreme Administrative Court in the first years of the local government's functioning) have developed the model of application of the local government law and the directions of interpretation, respecting the independence of the local government but also pointing to its limitations. In many important issues the administrative courts by their decisions and resolutions of the expanded benches have developed a uniform line of adjudication which to a large extent has promoted the improvement of the local government operating practice and the local government legislation.

Summary

of the article: The issues of environmental protection in the administrative court decisions

This article analyses the crucial administrative-law aspects of environment and nature protection in the light of the judicial decisions made by the Supreme Administrative Court and the Voivodship Administrative Courts. The author presents the most important problems arising in the administrative court decisions concerning the administrative liability of the perpetrator of the environmental pollution. Furthermore, the author distinguished three groups of cases in the decisions of the administrative courts. First of all, concerning only the environmental protection law, secondly – the law on the protection of nature and thirdly – the law on the protection of historic monuments in relation to the law on the protection of nature. e.g. the legal institution of a landscape park and the cultural park. He points to the specific nature of the cases considered by the Supreme Administrative Court in the area of settling the disputes between the units of local government and the public administration authorities concerning their scope of powers in the area of the environmental protection law.

This article presents the dilemmas resulting from the decisions of the administrative courts which must also control the interpretation of the environmental protection law and the law on the protection of nature in the light of the ECJ decisions and their correct pro-EU interpretation when a complaint is made to a Voivodship Administrative Court or a cassation complaint is made to the Supreme Administrative to this extent against the decision of the Voivodship Administrative Court.

Summary

of the article: Evolution of the Supreme Administrative Court's decisions concerning the grounds for a cassation complaint and an appeal

From the very beginning the regulation of the grounds for a cassation complaint stirred up a lot of controversies, both in the doctrine and the decisions of the Supreme Administrative Court. On the one hand it was emphasised that the regulation included

in the law on proceedings before administrative courts provided the parties with almost unlimited possibilities of lodging a cassation complaint as well as proposed to define the grounds for the cassation complaint narrowly by introducing the notion of gross violation of law and the institution of refusal to accept the cassation complaint for consideration which could rationalise and speed up the proceedings. On the other hand it was argued that the grounds for a cassation complaint were defined too narrowly rendering them incompatible with the object of the proceedings before administrative courts. The reasons for this state of affairs were identified in the shaping of the grounds for a cassation complaint on the basis of the civil-law solutions which to a significant extent rendered them inconsistent with the public-law nature of the cassation complaint in the proceedings before administrative courts.

The grounds for a cassation complaint were also widely interpreted in the numerous decisions of the Supreme Administrative Court. Interpreting them the SAC pointed to the individual aspects of this procedural institution attempting to identify the characteristic elements of the violations of law constituting the grounds for a cassation complaint. The SAC's decisions in this respect show dissenting opinions as the individual decision-making panels opted for the different concepts of the grounds for a cassation complaint. The current direction of interpretation of this term was determined by the resolution of the complete decision-making panel of the SAC dated 26 October 2009, I OPS 10/09, in which the SAC stated that "*Quoting the grounds for a cassation complaint understood as specifying the provisions which in the opinion of the party who brought the cassation complaint were violated by the Voivodship Administrative Court imposes on the Supreme Administrative Court, under Art. 174.1 and 174.2 and Art. 183.1 of the Law on Proceedings Before Administrative Courts dated 30 August 2002 (Journal of Laws No. 153, item 1270, as amended) the obligation to comment on all the charges included in the grounds for the cassation complaint.*" The cassation complaint model adopted in the resolution does not violate the standards developed in the decisions of the Constitutional Tribunal, given that certain formal conditions imposed on the participants by the administrative law procedure accepted in this resolution do not result in the unjustified restrictions in access to a court because they are necessary from the procedural point of view.

Summary

of the article: On the role of the Constitution as the basic law of a state

In the modern democratic states the constitutions regulate the state's legal life and are a test of the legal functioning of its authorities. In order for the constitution to play its role certain conditions such as the political situation, the relation of the legal doctrine to the constitution and the legal culture of the society and the ruling class must be satisfied. The constitution must be applied, in particular by the courts. For this purpose it must satisfy the rigours of a normative act.

This article analyses three problems of crucial importance for the characteristics of the constitution as a legal act, the scope of the constitution's contents, the regulation of the system of the sources of law and the regulation of an individual's position in the state.

As far as the scope of contents is concerned, the constitutions have undergone an evolution. The first constitutions regulated as little as the system of the state's supreme authorities. The modern constitutions in detail regulate the civil freedoms and rights as well as other institutions such as political parties, trade unions, local-government organisations, the National Judicial Council, the National Broadcasting Council. As a result the constitutional provisions must have a form of the legal norms. It is necessary in order to apply the constitution.

The problem of the meaning of the constitution for the system of the sources of law includes two detailed issues: the constitution as the law-making act (the source of law) and the place of the constitution in the system of sources of law. The Polish Constitution of 1997 was based on the complex regulation of the system of sources of law and the superiority of the constitution in this system. Furthermore, the constitution included the principle of the hierarchical structure of the system of sources of law and the principle of the application of the ratified international treaties in the legal order of the state. Following Poland's accession to the European Union the issue of the sources of law became more complicated. In particular, the principle of the direct application expressed in Art. 91.3 of the Constitution does not regulate all the issues.

At the beginning the constitutional regulation of the civil freedoms and rights was modest. As late as in the middle of the 20th century it was limited to the suffrage and a few principles copying the expressions from the French Declaration of the Rights of Man and of the Citizen (*La Déclaration des droits de l'Homme et du Citoyen*). Only the 20th century brought the increased interest in the social-economic rights. This delayed the regulation of the social and economic rights in the constitution, compared to the political rights and led to the situation when in many contemporary constitutions the social and economic rights of an individual have the form of a declaration (programmatic norm).

A closer look at the regulation of the freedoms and rights of an individual over the years shows that this area has progressed and become unified in line with the development of the European civilisation. The acts of international law recognised as a part of the state's legal order played an significant role. Nevertheless Europe is not ready for the joint European constitution.

Currently the constitution is increasingly often the basis of court decisions which demonstrates the long way we have gone in only 50 years and the great importance of the constitution in the legal life.

Summary

of the article: Expropriation and return of real property in the administrative court decisions

The expropriation and return of real property is one of these institutions of the Polish substantive administrative law whose present form has been predominantly shaped by the court decisions, mainly of the Supreme Court and the administrative courts: firstly the Supreme Administrative Court and now also the Voivodship Administrative Courts.

During the 40 years of functioning of the administrative courts in Poland, after WWII, the expropriation legislation has undergone substantial transformations. During this period of time the system of legal norms in this area was totally changed three times. The Act on Real Property Management has been amended a few dozen times during the twelve years since its effective date. Some of these amendments materially changed the construction of the real property expropriation and in the manner indicating the total inconsistence of the legislator or lack of respect for the constitutional rules as exemplified by two amendments to the principles of awarding compensation for the expropriated real property.

It is not a surprise that in such an unstable state of the legal regulation and its deficiencies the court decisions have played the key role in the interpretation of the laconic, often unclear and constantly changing norms regulating the institution of expropriation and return of real property and it must be stated without exaggeration that the Supreme Court and the Supreme Administrative Court, and now also the Voivodship Administrative Courts, have passed the exam with merits and their decisions have played the key role in giving the legal construction of the expropriation and return of real property the shape that takes into consideration the public interest that requires cancelling or limiting the rights to real property, including, without limitation, the right of ownership, and the equitable interest of the entities affected by the procedure of expropriation of real property.

It must be noted that quite often the principles developed in the court decisions were then approved by the legislator and became the formally applicable legal norms. The perfect example is the evaluation by the judicial decisions and doctrine of the legal nature of the acquisition of real property by the State Treasury under the agreement referred to in Art. 6 of the Expropriation Act of 1958 as subject to return under Art. 34 thereof. Only several years later the legislator ordered in Art. 216.1 *in principio* (in the beginning) of the Act on Real Property Management that the provisions of Chapter 6 Title III thereof should be applied to the real property acquired under Art. 6 of the Expropriation Act of 1958. The regulation included in Art. 216.1 *in principio* (in the beginning) of the Act on Real Property Management means that the legislator – accepting the opinions included in the judicial decisions and the doctrine confirmed *expressis verbis* (in express words) that such real property is subject to return under the procedure and on the principles set out in Art. 136 and the following of the Act on Real Property Management.

Summary

of the article: The administrative courts as the European Union courts

This article presents certain problems concerning the competence of the administrative courts as the EU law courts i.e. the problem of the individual's access to the administrative courts in order to protect the rights based on the EU law, the problem of the administrative courts raising on their own motions the EU law issues, the problem of the administrative courts determining the factual basis of a court decision and the scope of the proceedings to take evidence, the problem of transitional protection in the proceedings before administrative court and the problem of an administrative court's refusal to apply the act recognised by this court as inconsistent with the EU law. The analyses included in the article show that the so-called capacity to lodge a complaint regulated in the Law on Proceedings Before Administrative Courts satisfies the requirements of the effective court protection of these rights. The problem identified in the doctrine as "the administrative courts raising on their own motions the EU law issues" is actually the known problem the administrative court being bound with the charges and the grounds of the complaint updated only in the case of a cassation complaint to the Supreme Administrative Court. The issue of the administrative courts determining the factual basis, the scope of the proceedings to take evidence before these courts or the evaluation of evidence by the administrative court is problematic under the Law on Proceedings Before Administrative Courts as in some categories of the EU cases falling within the competence of the administrative courts the EU law requires not only that the legality of the decision is assessed but first of all that the case is decided as to the merits and the factual basis is determined, and not only that the correctness of the facts established by the public administration is assessed. It is beyond doubt that the system of the so-called transitional protection provided for in the Law on Proceedings Before Administrative Courts does not fully correspond with the European standards in this area and requires urgent legislative amendments. The relation of the administrative courts to the compliance of laws with the Constitution and the EU law and to the practice of the Constitutional Tribunal "deferring" the date on which laws become ineffective must be redefined, when it is related to the individual freedoms and rights based on the EU law. The line of adjudication started with the *Simmenthal* case, and in particular the case of *Filipiak* and recently *Kücükdeveci*, does not leave any doubts that the Constitutional Tribunal has definitively lost its status of the sole "controller" of legality of the implementing acts as well as the other laws in the "European shadow".

Summary

of the article: The administrative court decisions in the farmland conversion cases

Farmland has been and for a long time will be an irreplaceable means of production for the farmers. Its practical lack of capacity to be multiplied, the chemical, physical and agrotechnical qualities make the legislators (not only the Polish legislator) designate the reasonable directions of its use and protection. The protective aspect may not dominate the needs to organise the investment space and the infrastructure of the rural environment. The contemporary protection of farmland should be the sequence of organically interrelated protective and planning measures, given that investors are increasingly often and even almost universally interested in the traditional rural areas, including farmland.

The Polish protective legislation has evolved, beginning with the act of 1971 through the act of 1982 until the prevailing Act on Protection of Farmland and Forests dated 3 February 1995 (Journal of Laws of 2004, No. 121, item 1266, as amended). Given that the

administrative courts were reactivated in Poland as late as in 1980, until then the problem of protection of land was within the competence of the common courts. Since the 1980s it became the domain of the administrative courts – now the Voivodship Administrative Courts adjudicating in the 1st instance and the Supreme Administrative Court as the 2nd instance.

The presented review of the farmland conversion cases is selective. The author selected these judgements which set the adjudicating trends and as a result led to the unification of practice. These are both the judgements of the Voivodship Administrative Courts and the resolutions and judgements of the Supreme Administrative Court. The hierarchical structure of the review reflects, with slight modifications, the order of the articles in the Act. In the case of certain statutory provisions the court practice does not exist at all and in the case of others e.g. Art. 7, 12 or 20, it is very rich.

The problems considered by the administrative courts most often concerned: the purposes of farmland protection, the object of protection, the conversion procedure itself (the permit to change the purpose of land) in conjunction with the zoning proceedings, the capacity to file a request for a consent to change the purpose of farmland or forest, the obligations related to the exclusion of land from agricultural production, the technical problems of determining the charges and fees, the remedial fees, the entities obliged to reclaim land, the scope of land reclamation and declaring it completed.

Summary

of the article: The importance of the reasons for a decision made by a public administration authority for the judicial decisions of the administrative courts

In the initial part of this article the author argues that the reasons for an administrative decision are its basic component the purpose of which is to present the motives behind this and not any other decision. The prevailing legal regulation included in Art. 107.3 of the Administrative Procedure Code does not reflect this essential element of the reasons and its laconic nature and the formal-procedural style results in practice in the frivolous attitude of the public administration authorities to providing the reasons for their decisions, clearly visible to an administrative court judge.

Apart from the procedural and material aspect making an administrative decision has an intellectual aspect. The authority drafting the decision must collect and segregate facts. The method of classifying and selecting facts is of key importance for the ability to make the decision. At the time of making the decision the collected objective prerequisites become the subjective motives of the authority's actions. This is the essence of making a decision. The evaluation of legality of an administrative decision by the administrative courts requires an answer to the question concerning the motives of the authority's decision which may be sourced from the duly formulated reasons.

Having identified these basic assumptions the presented article discusses the nature of the reasons as an integral part of the decision and juxtaposes the features of the reasons for the various categories of the administrative decisions (free decisions – discretionary, decisions of the 2nd instance, the declaratory decisions and others). The further part presents the issue of the defective reasons and their separate suability.

In the conclusions the author points to the fact that the reasons for an administrative decision should be treated as its integral part which may include the content-related elements. Even if they do not include such elements, they should point to all the antecedences and motives for the act and its intended results. The duly formulated reasons are the procedure of the authority's self-imitation used by the administrative courts. The court which does not verify the facts receives with the reasons the signal to seek the answer to the question if any fact or piece of evidence was omitted or if any fact or piece of evidence was misinterpreted or if any mistake was made as to the fact or if the given fact actually justified this and not any other decision. Depending on the answer, if the reasons for the decision are not provided it would be extremely difficult to evaluate the correct selection of the legal material by the authority who made the decision. The reasons allow to control the correctness of subsumption and to control the process of interpretation. Finally, the reasons should present the purposes and results of the decision the authority expects to achieve.