NACZELNY SĄD ADMINISTRACYJNY

ZESZYTY NAUKOWE Sądownictwa Administracyjnego

dwumiesięcznik

rok VIII nr 1 (40)/2012
Warszawa 2012

WYDAWCA
Naczelny Sąd Administracyjny

KOMITET REDAKCYJNY
Barbara Adamiak, Stefan Babiarz, Irena Chojnacka, Bogusław Gruszczyński,
Roman Hauser, Małgorzata Sawicka-Jezierczuk (sekretarz redakcji), Andrzej Skoczylas,
Janusz Trzciński (redaktor naczelny), Maria Wiśniewska, Andrzej Wróbel

Tłumaczenie na język angielski: *Michał Mróz*
Korekta: *Justyna Woldańska*

ADRES REDAKCJI
Naczelny Sąd Administracyjny
00–011 Warszawa, ul. G.P. Boduena 3/5
tel. 22 826–74–88, fax 22 826–74–54, e-mail: msawicka@nsa.gov.pl

© Copyright by Naczelny Sąd Administracyjny
Warszawa 2012

ISSN 1734–803X
Nr indeksu 204358

„Zeszyty Naukowe Sądownictwa Administracyjnego" znajdują się w wykazie czasopism
punktowanych przez Ministerstwo Nauki i Szkolnictwa Wyższego
na potrzeby oceny parametrycznej jednostek naukowych.



LexisNexis Polska Sp. z o.o.
Ochota Office Park 1, Al. Jerozolimskie 181, 02–222 Warszawa
tel. 22 572 95 00, faks 22 572 95 68
Infolinia: 22 572 99 99
www.lexisnexis.pl.; e-mail: biuro@LexisNexis.pl
Księgarnia Internetowa dostępna ze strony www.LexisNexis.pl

Druk ukończono w lutym 2012 roku. Nakład 1000 egz.

SPIS TREŚCI

STUDIA I ARTYKUŁY

Prof. dr hab. Andrzej Gomułowicz (Uniwersytet im. Adama Mickiewicza w Poznaniu)
Sędzia a „poprawianie" prawa – zasadnicze dylematy 9
Summary 16

Sędzia Dariusz Chaciński (sędzia WSA w Warszawie)
Zakres ochrony zabytków nieruchomych na tle wybranych orzeczeń WSA w Warszawie 18
Summary 30

Sędzia Tomasz Grossmann (sędzia WSA w Poznaniu)
Charakter prawny terminu do wniesienia sprzeciwu wobec zgłoszenia robót budowlanych – próba reinterpretacji art. 30 ust. 5 prawa budowlanego 31
Summary 39

Dr Agata Kosieradzka-Federczyk (Wyższa Szkoła Informatyki Stosowanej i Zarządzania w Warszawie)
„Raport o oddziaływaniu przedsięwzięcia na środowisko" w orzecznictwie sądów administracyjnych 41
Summary 56

Dr Dariusz Strzelec (adiunkt, Uniwersytet Łódzki)
Stosowanie procedury podatkowej – naruszenia przepisów mogące mieć wpływ na wynik sprawy 57
Summary 70

ORZECZNICTWO

I. Trybunał Sprawiedliwości Unii Europejskiej (wybór i opracowanie: *Andrzej Wróbel)*
1. Dyrektywa 2004/38/WE – Prawo stałego pobytu– Legalny pobyt – Pobyt na podstawie prawa krajowego – Okresy pobytu ukończone przed przystąpieniem do Unii Europejskiej państwa pochodzenia zainteresowanego obywatela Wyrok TSUE z dnia 21 grudnia 2011 r. w sprawach połączonych C-424/10 i C-425/10 *Tomasz Ziółkowski* (C-424/10), *Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja* (C-425/10) *przeciwko Land Berlin*, przy udziale: *Vertreter des Bundesinteresses beim Bundesverwaltungsgericht* 71
2. Wspólny europejski system azylowy – Rozporządzenie (WE) nr 343/2003 – Pojęcie „kraje bezpieczne" – Transfer osoby ubiegającej się o azyl do właściwego państwa członkowskiego –Wzruszalne domniemanie przestrzegania praw podstawowych przez to państwo członkowskie – Protokół (nr 30) w sprawie stosowania Karty praw podstawowych Unii Europejskiej do Rzeczypospolitej Polskiej i Zjednoczonego Królestwa

Wyrok TSUE z dnia 21 grudnia 2011 r. w sprawach połączonych C-411/10 i C-493/10 *N.S.* (C-411/10) *przeciwko Secretary of State for the Home Department* i *M.E.* (C-493/10), *A.S.M., M.T., K.P., E.H. przeciwko Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, przy udziale: *Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (UK)* (C-411/10), *United Nations High Commissioner for Refugees (UNHCR) (UK)* (C-411/10), *Equality and Human Rights Commission (EHRC)* (C-411/10), *Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (IRL)* (C-493/10), *United Nations High Commissioner for Refugees (UNHCR) (IRL)* (C-493/10) 75

II. Europejski Trybunał Praw Człowieka (wybór i opracowanie: *Agnieszka Wilk-Ilewicz*)
„Sąd ustanowiony ustawą"
Wyrok ETPC z dnia 25 października 2011 r., sprawa *Richert przeciwko Polsce* (skarga nr 54809/07) 82

III. Trybunał Konstytucyjny (wybór: *Irena Chojnacka,* opracowanie: *Mieszko Nowicki)*
1. Wyrok TK z dnia 16 listopada 2011 r. sygn. akt SK 45/09 [dot. jurysdykcji, uznawania i wykonywania orzeczeń sądowych w sprawach cywilnych i handlowych (rozporządzenie Rady nr 44/2001)] 86
2. Wyrok TK z dnia 6 grudnia 2011 r. sygn. akt SK 3/11 [dot. udziału osoby piastującej funkcję monokratycznego organu centralnej administracji rządowej w postępowaniu z wniosku o ponowne rozpatrzenie zaskarżonej decyzji wydanej przez tę osobę] 93

IV. Sąd Najwyższy (wybór i opracowanie: *Dawid Miąsik*)
Wyrok SN z dnia 6 października 2011 r. sygn. akt III SK 18/11 [dot. obowiązku zawartego w decyzji o udzieleniu koncesji na dystrybucję energii elektrycznej] 100

V. Naczelny Sąd Administracyjny i wojewódzkie sądy administracyjne
A. Orzecznictwo Naczelnego Sądu Administracyjnego (wybór: *Stefan Babiarz*, opracowanie: *Marcin Wiącek*)
1. Uchwała składu siedmiu sędziów NSA z dnia 5 grudnia 2011 r. sygn. akt II OPS 1/11 [dot. stron postępowania w sprawie wykonania obowiązku meldunkowego] 103
2. Uchwała składu siedmiu sędziów NSA z dnia 12 grudnia 2011 r. sygn. akt II OPS 2/11 [dot. wymierzania opłaty podwyższonej za korzystanie ze środowiska] 109

B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: *Bogusław Gruszczyński*, opracowanie: *Marcin Wiącek*)
1. Wyrok WSA w Gdańsku z dnia 10 grudnia 2009 r. sygn. akt I SA/Gd 636/09 [dot. oprocentowania nadpłaty podatkowej] 114
2. Wyrok WSA w Warszawie z dnia 29 stycznia 2010 r. sygn. akt III SA/Wa 959/09 **[**dot. treści interpretacji indywidualnej Ministra Finansów, zmiany interpretacji po jej zaskarżeniu do WSA oraz zasad doręczania zmienionej interpretacji] 119
3. Wyrok WSA w Szczecinie z dnia 17 lutego 2010 r. sygn. akt II SA/Sz 1180/09 [dot. możliwości zaskarżenia do sądu administracyjnego opinii zespołu orzekającego działającego w ramach poradni psychologiczno-pedagogicznej] 130
4. Wyrok WSA w Szczecinie z dnia 24 listopada 2010 r. sygn. akt II SA/Sz 440/10 [dot. ponoszenia odpłatności z masy spadkowej za świadczenie pomocy społecznej] 136
5. Wyrok WSA w Białymstoku z dnia 14 lipca 2011 r., sygn. akt II SA/Bk 293/11 [dot. zmiany decyzji o warunkach zabudowy na podstawie art. 155 k.p.a.] 140

VI. Wnioski Prezesa NSA i pytania prawne sądów administracyjnych skierowane do Trybunału Konstytucyjnego (opracowała *Irena Chojnacka*)
1. Pytania prawne sądów administracyjnych skierowane w 2011 r. do Trybunału Konstytucyjnego 143
2. Orzeczenia Trybunału Konstytucyjnego w 2011 r. zainicjowane pytaniami prawnymi 144

VII. Glosy

Sędzia Maciej Jaśniewicz (sędzia WSA w Poznaniu)
Glosa do wyroku TK z 12 kwietnia 2011 r., P 90/08 [dot. zbiegu odpowiedzialności karnej i administracyjnej] 149

Dr Artur K. Modrzejewski (adiunkt, Uniwersytet w Białymstoku)
Glosa do wyroku WSA w Gliwicach z 25 czerwca 2009 r., II SA/Gl 113/09 [dot. umorzenia postępowania w sprawie wydania decyzji o warunkach zabudowy] 159

KRONIKA

Kalendarium sądownictwa administracyjnego (listopad-grudzień 2011 r.) **(**opracował *Przemysław Florjanowicz-Błachut)* 165

BIBLIOGRAFIA

Publikacje z zakresu postępowania administracyjnego i sądowoadministracyjnego (listopad–grudzień 2011 r.) (opracowała *Marta Jaszczukowa*) 177

*

Lista recenzentów opracowań opublikowanych w „Zeszytach Naukowych Sądownictwa Administracyjnego" w 2011 r. 183
Skorowidz „Zeszytów Naukowych Sądownictwa Administracyjnego" za 2011 r. (opracował *Paweł Skrzeliński*) (wkładka)

TABLE OF CONTENTS

STUDIES AND ARTICLES

Professor Andrzej Gomułowicz, Ph.D. (Adam Mickiewicz University in Poznań)
A judge and "correcting" law – the essential dilemmas 9
Summary 16

Dariusz Chaciński, M.Sc. (judge of the VAC in Warsaw)
The scope of protection of historic real property and the selected judgements of the VAC in Warsaw 18
Summary 30

Tomasz Grossman, M.Sc. (judge of the VAC in Poznań)
The legal character of the time limit to bring an opposition against the notification of construction works – the attempt to reinterpret Art. 30.5 of the Construction Law 31
Summary 39

Agata Kosieradzka-Federczyk, Ph.D. (Academy of Applied Information Technology and Management in Warsaw)
"The environmental impact report" in the judicial decisions of the administrative courts 41
Summary 56

Dariusz Strzelec, Ph.D. (assistant professor at the Łódź University)
Applying the tax procedure – procedural violations might affect the result of the case 57
Summary 70

JUDICIAL DECISIONS

I. The European Court of Justice (selected and prepared by *Andrzej Wróbel*)
1. Directive 2004/38/EC – Right of permanent residence – Legal residence – Residence based on national law – Period of residence completed before the accession to the European Union of the State of origin of the citizen concerned
Judgment of the Court (Grand Chamber) of 21 December 2011 in joined cases C-424/10 and C-425/10: *Tomasz Ziolkowski* (C-424/10) and *Barbara Szeja and Others* (C-425/10) *v Land Berlin, intervening party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht* (Federal Interests Representative at the Federal Administrative Court) 71
2. Regulation (EC) No 343/2003 – Common European Asylum System – Concept of 'safe countries' – Transfer of an asylum seeker to the Member State responsible – Rebuttable presumption of compliance, by that Member State, with fundamental rights – Protocol (No. 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom
Judgment of the Court (Grand Chamber) of 21 December 2011 in joined cases C-411/10 and C-493/10: *N. S.* (C-411/10) *v Secretary of State for the Home*

Department and M.E. (C-493/10)*, A. S. M., M. T., K. P., E. H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform, intervening parties: Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (UK)* (C-411/10)*, United Nations High Commissioner for Refugees (UNHCR) (UK)* (C-411/10)*, Equality and Human Rights Commission (EHRC)* (C-411/10)*, Amnesty International Ltd and the AIRE Centre (Advice on Individual Rights in Europe) (IRL)* (C-493/10)*, United Nations High Commissioner for Refugees (UNHCR) (IRL)* (C-493/10) 75

II. The European Court of Human Rights (selected and prepared by *Agnieszka Wilk-Ilewicz*)
A tribunal established by law (judgement of the ECHR of 25 October 2011, application No. 54809/07, case of *Richert v. Poland*) 82

III. The Constitutional Tribunal (selected by *Irena Chojnacka*, prepared by *Mieszko Nowicki*)
1. Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (judgement of the Constitutional Tribunal dated 16 November 2011, files No. SK 45/09) 86
2. Participation of a person being a monocratcic central government administration authority in the proceedings initiated by an application to reconsider the challenged decision made by such person (judgement of the Constitutional Tribunal dated 6 December 2011, files No. SK 3/11) 93

IV. The Supreme Court (selected and prepared by *Dawid Miąsik*)
The obligation included in the decision awarding the licence for electric energy distribution (judgement of the Supreme Court of 6 October 2011, files No. III SK 18/11) 100

V. The Supreme Administrative Court and the Voivodship Administrative Courts
A. The judicial decisions of the Supreme Administrative Court (selected by *Stefan Babiarz*, prepared by *Marcin Wiącek)*
1. The parties to the proceedings concerning the performance of an obligation to register one's place of permanent residence with the local authorities (resolution of seven judges of the Supreme Administrative Court of 5 December 2011, files No. II OPS 1/11) 103
2. Imposing an increased environmental fee (resolution of seven judges of the Supreme Administrative Court of 12 December 2011, files No. II OPS 2/11) 109

B. The judicial decisions of the Voivodship Administrative Courts (selected by *Bogusław Gruszczyński*, prepared by *Marcin Wiącek*):
1. Interest on overpaid taxes (judgement of the Voivodship Administrative Court in Gdańsk of 10 December 2009, files No. I SA/Gd 636/09) 114
2. The contents of the individual interpretation issued by the Minister of Finance, changing the interpretation as a result of an appeal brought to the VAC and the principles of serving the changed interpretation (judgement of the Voivodship Administrative Court in Warsaw of 29 January 2010, files No. II SA/Wa 959/09) ... 119
3. The possibility to bring an appeal against the decision of a team of experts at the psychological-pedagogical centre to an administrative court (judgement of the Voivodship Administrative Court in Szczecin of 17 February 2010, files No. II SA/Sz 1180/09) 130
4. Payments from the deceased person's estate for the social aid (judgement of the Voivodship Administrative Court in Szczecin of 24 November 2010, files No. I SA/Sz 440/10) 136
5. Changing the decision on terms and conditions of land development under Art. 155 of the Administrative Procedure Code (decision of the Voivodship Administrative Court in Białystok of 14 July 2011, files No. II SA/Bk 293/11) 140

VI. The applications of the President of the SAC and the legal questions of the administrative courts to the Constitutional Tribunal (prepared by *Irena Chojnacka*)
1. The legal questions of the administrative courts to the Constitutional Tribunal referred in 2011 143
2. The legal decisions of the Constitutional Tribunal initiated by the legal questions 144

VII. Glosses
Maciej Jaśniewicz, M.Sc. (judge of the VAC in Poznań)
Gloss to the judgement of the Constitutional Tribunal of 12 April 2011 (files No. P 90/08) [re. the concurrence of criminal and administrative liability] 149
Artur K. Modrzejewski, Ph.D. (assistant professor at the Białystok University)
Gloss to the judgement of the VAC in Gliwice of 25 June 2009 (files No. II SA/Gl 113/09) [re. discontinuing proceedings to issue a decision on the terms and conditions of land development] 159

CHRONICLE

The schedule of events in the administrative jurisdiction (November–December 2011) (prepared by *Przemysław Florjanowicz-Błachut*) 165

BIBLIOGRAPHY

Publications in the area of the administrative procedure and the proceedings before administrative courts (November–December 2011) (prepared by *Marta Jaszczukowa*) 177

*

List of the reviewers of studies and articles published in the *Scientific Bulletin of the Administrative Courts* in 2011 183
Reference guide of the Scientific Bulletin of the Administrative Courts for the year 2011 (prepared by *Paweł Skrzeliński*)

Summary

of the article: A judge and "correcting" law – the essential dilemmas

The opinion that an administrative court judge does not have the capacity to supplement, "correct" or develop law is expressed strongly and rather generally. These are solely the powers of the legislative branch.

A judge is forced to "correct" law when in the course of the legislative process the legislator violates the standards of political and legal culture. In such event law has qualified defects and therefore the judge does not merely apply law but rather helps to co-create it. His role is not reduced to the plain application of the laws and regulations. But it is true only in the event of particularly complicated, difficult, non-schematic cases and matters. The more general, complicated, unclear, incoherent, full of qualified praxeological and logical gaps the regulations the more specified part of the power to co-create law actually transfers from the parliament to the judge. And this happens because the factor of axiological justification of norms plays an important role. It is a corrective role that the judicial branch is able to play. This axiological correction performed by the judge supplements the "written law". The judge uses the text of the laws and regulations only as the matter in which it searches for the idea of law". What should a judge considering a difficult case being unable to identify a standard of the judicial decision in the rules of law do ? There are three – not only theoretical - solutions

– he may reject the provisions of positive law and found his decision overtly and directly on the axiological values, including these he may infer from the Constitution;

– he may expand or reduce the scope of application of the statutory law in accordance with the requirements of the indisputable axiological norms;

– he may annul the procedural norm inferred from the statutory law justifying his decision by simply referring to the axiological values.

Rooting the sources of law in the social facts allows the judge supplementing law in the process of its application to make two fundamental assumptions. Firstly, "the idea of law" i.e. its essence requires that the doubts concerning the issues to which the law refers defectively, insufficiently be dispelled taking into account the universal, indisputable axiological values. Secondly, the universal, indisputable axiological values apply irrespectively of the generally agreed legislative conventions. This means that the norms resulting from the non-disputable system of values may manifest themselves as the correction of positive law.

Summary

of the article: The scope of protection of historic real property and the selected judgements of the VAC in Warsaw

This article discusses, with a short commentary from the author, the recent decisions of the VAC in Warsaw concerning protection of historic real property from the perspective of three issues:

1) the differences in the scope of national heritage conservator's protection of an individual historic real property and the facilities comprising a historic urban or rural arrangement or a historic building complex;

2) the constitutional aspects of historic buildings protection, in the event of competition with other constitutional principles, such as: the principle of equality, proportionality, protection of property rights, protection of acquired rights and trust in the state;

3) the effect the decisions concerning protection of historic real property in the zoning plan as a form of historic buildings protection have on the investment activity.

The main theses of the article are such that entering a historic urban or rural arrangement or a historic building complex in the register of historic buildings does not exclude the possibility of entering into the register the individual historic real property comprising such arrangements or such a complex. The premise of entering a specific arrangement or complex in the register of historic buildings is the fact that it has historic value as a whole and this value will be destroyed if only the most valuable, most representative or the best preserved elements are isolated out of such arrangement or complex. It translates into the diversification of the scope of the executive powers of the national heritage protection authorities depending on the object of protection. The problems with determining the relevant scope of protection have their source in the temporary provision in the Act on Protection and Care of Historic Buildings dated 23 July 2003 (Art. 142) recognising as historic buildings within the meaning of the present act all the buildings that were entered in the register of historic buildings in the past. It does not regulate the differences in the statutory definitions of historic real property in the historic aspect and, therefore, in the scope of their protection.

Furthermore, the author attempts to challenge the thesis that seems to stem from the judicial decisions of the VAC that the norms concerning the protection of historic buildings are absolute i.e. even the rights acquired without any defects by virtue of the final administrative decision must give priority to them. This absolute priority in protection of historic buildings applies also to the other constitutional principles. In the author's opinion in each single case it is necessary to correctly balance the values resulting from all the constitutional principles in the event of competition with the principle of protection of historic buildings.

The author also confirms the thesis that the relevant decisions in the zoning plan may be the basis for the executive rulings in the area of the national heritage protection given that the zoning plan, as the local law, and at the same time one of the forms of protection historic buildings, determines the method of historic building protection, without the need to refer to the opinions of experts in the field of architecture who would issue opinions as to the effect an investment in the vicinity of a historic building would have on its appearance and visual values.

Summary

of the article: The legal character of the time limit to bring an opposition against the notification of construction works – the attempt to reinterpret Art. 30.5 of the Construction Law

This article presents one of the most important elements of the institution of an opposition against the notification of construction works regulated in Art. 30.5 of the Construction Law dated 7 July 1994 (the "Construction Law") i.e. the time limit specified by the legislator for the architectonic-construction authorities to bring such opposition. The author attempts to propose a new, different from the generally accepted so far, view of the essence and function of the above-mentioned time limit. The author challenges the prevailing opinion that as a result of the lapse of this time limit the authority is unconditionally and definitively deprived of the right to bring the opposition and that actually it is the time limit "to handle the case" of bringing the opposition in all instances jointly. Relying on the literal wording of Art. 30.5 of the Construction Law and pointing to the purpose-oriented arguments the

author attempts to prove that the time limit set forth in the above-mentioned provision does not specify the time to finally handle the case but it is merely an element of construction of the legally relevant "silence" of the authority as a specific form of approving the construction project notified by an investor – having effects analogous to the construction of legal fiction of the positive handling of the case increasingly often applied by the legislator. From this perspective the time limit in question is of importance only at the initial stage of considering a notification that continues until the this time limit lapses ineffectively or the authority brings an opposition. Bringing an opposition and than an appeal against the decision on bringing the opposition initiates the proceedings whose course and speed are determined on the "normal" terms and conditions regulated in the Administrative Procedure Code ("APC") – i.e. in particular the general principle of fast proceedings (Art. 12 of the APC) and the general time limits to handle a case (Art. 35 of the APC) – and bringing another opposition, if any (when the first opposition is rejected) by the appellate authority or a first instance authority to whom the appellate authority transferred the case for reconsideration, is not bound with the time limit of 30 days referred to in Art. 30.5 of the Construction Law.

In the author's opinion the proposed interpretation of Art. 30.5 of the Construction Law makes it possible to harmonise to the fuller degree the private interests of the potential investors expressed mainly in preserving the maximum simplicity and speed of the notification procedure with the public interest, in this case related to providing the administrative authorities with real possibility to exercise effective control and verification (also in the administrative sequence of instances) over the contemplated construction projects notified by the investors.

Summary

of the article: "The environmental impact report" in the judicial decisions of the administrative courts

The environmental impact assessment is the basic instrument of the EU environmental policy – the principle of prevention. The assessment comprises a series of formalised actions. Until now the Polish doctrine has not paid much attention to the basic element of the assessment i.e. the environmental impact report. A significant part of the problems related to the legal nature of the report and its meaning for the correct course of the proceedings to issue the decision on the environmental conditions was solved in the relevant judicial decisions of the administrative courts.

The first problem concerns an author of the environmental impact report. The legislator abandoned the regulation consisting in instructing an expert to prepare a report in favour of the free selection of an author by an investor. The article presents the changes in the judicial decisions following the amendments to law.

The next problem is the legal nature of the report. The author refers to the judicial decisions determining it is a private document and not an official one. The above distinction has significant importance in the proceedings to take evidence because a private document is not covered with the presumption that its contents are consistent with the facts. The author also raised the problem of recognising the environmental impact report as an object of copyright. The judicial decisions providing otherwise emphasise the lack of unanimous approach by the administrative courts in this respect.

The next problem discussed in the article is the credibility and completeness of the environmental impact report and its effect on the correct course of the administrative proceedings. The article quotes the judicial decisions specifying the further steps the authority must take upon discovering that the report does not include all the elements required by law. The author discusses in detail the judicial decisions concerning one of the obligatory elements of the report i.e. specifying the alternative variations of the project.

The last problem discussed in the article concerns the court's control of the administrative proceedings to declare a decision invalid.

Providing the examples of judicial decisions the author attempted to present on the one hand the complexity of the issue in question and on the other – the difficult role of the administrative courts in shaping the lines of adjudication.

Summary

of the article: Applying the tax procedure – procedural violations might affect the result of the case

The problems of irregularities in application of the procedural regulations by the tax authorities are of particular importance for the party being the addressee of the decision concerning its rights and obligations under the tax laws and regulations, in particular correcting the result of self-calculation. As regards the violation of the procedural regulations, determining the consequences of such violation and its effect on the result of the case is not obvious in many situations. While it is possible to point to the most often violated procedural regulations and describe what they consists in, creating any new normative constructions on the basis thereof would be an ineffective legal endeavour. For this reason analysing specific irregularities and evaluating their potential effect against the background of a specific case, provided for in the Act on Proceedings Before Administrative Courts is the absolutely correct assumption. On the other hand one may have material reservations as to the formulated opinions on the legality of certain activities of the tax administration in the course of the tax proceedings, or evaluation of the potential effect of the irregularities on the result of the case. In practice numerous irregularities in applying the procedural regulations and doubts concerning the evaluation whether specific actions may be recognised as violations of the procedural regulations and of the effects they may have result from the fact that in spite of the declarations concerning the meaning of the general procedural principles formulated in the literature, the practice does not always appreciate their importance and usefulness. It should not raise any reservations that a remedy for the problems presented in this article should be the court control of the activities of the tax administration. The administrative courts controlling the legality of the decisions made should always shape the standards of conducting the proceedings relevant for this branch of law taking into account: the interventional nature of the tax law norms, the inquisitive model of proceedings and the presumed correctness of tax returns and the tax book in the proceedings correcting the result of self-calculation.