# SPIS TREŚCI

MATERIAŁY Z OBRAD DOROCZNEGO ZGROMADZENIA OGÓLNEGO SĘDZIÓW NACZELNEGO SĄDU ADMINISTRACYJNEGO W DNIU 20 KWIETNIA 2010 ROKU W WARSZAWIE



STUDIA I ARTYKUŁY



ORZECZNICTWO

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MATERIALS FROM THE SESSION OF
THE ANNUAL GENERAL MEETING OF JUDGES
OF THE SUPREME ADMINISTRATIVE COURT
HELD ON 20 APRIL 2010 IN WARSAW



STUDIES AND ARTICLES



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## Summary

of the article: The object of the land consolidation proceedings

The land consolidation proceedings are a specific type of administrative proceedings. Its specific nature stems from the method of defining its object and scope. The Act on Consolidation and Exchange of Land dated 26 March 1982 (Journal of Laws of 2003, No. 178, item 1749, as amended) provides that the land consolidation proceedings cover all the real properties comprising the consolidation area. Therefore the „consolidation area" becomes the basic legal category determining the understanding of the procedural institutions. The Act does not construe the legal definition of the consolidated area but only sets out the principles of its determination. This situation is inappropriate as it leads to many ambiguities and results in such practice of application that from many possible ways of understanding the term „consolidation area" selects the version leading to the least serious procedural problems.

Such conduct seems to be the logical choice, especially given that the administrative proceedings do not include any specific regulations taking into account the conducting of the proceedings in the specific factual situation i.e. when sometimes there are a few hundred parties to the proceedings with the same number of plots (real properties) being consolidated. However, this understanding

of the „consolidation area" fails to take into account the legal consequences of the consolidating decision. For this reason it seems most appropriate to assume that the „consolidation area" is a normative category that for the purpose of the land consolidation proceedings must be understood unanimously i.e. as the area comprising the plots of land comprising the consolidation area under Art. 3 of the Act. Such understanding of the „consolidation area" allows to avoid the procedural problems arising when the consolidation area is treated as a technical term, related to the surveying works being an important element of each land consolidation proceedings.

Assuming such understanding of the object of the land consolidation proceedings affects the entire land consolidation proceedings, especially the method of determining the contents of the consolidating decision and the decision-making powers of the relevant body of appeal and the court in these proceedings. Pointing to this aspect of the problem is a deviation from the established practice.

## Summary

of the article: The principles of letting premises included in a communal housing resources – selected issues related to court decisions and control of administrative courts

The problems of managing the communal housing resources have been the issues of great significance and importance from the public perspective, given that not all the members of the local government community are capable of satisfying the basis need i.e. the residential premises on their own. At the same time for many years the public housing resources have been considerably smaller than the number of persons requesting and expecting to be granted residential premises out of these resources. For this reason the issues of managing the public housing resources, and in particular the principles of selecting whose housing needs may be satisfied, in particular in priority before others, are becoming issues of particular importance for public reasons and in the aspect of the prevailing legal solutions. However, the

regulations applicable to the principles of managing, including the letting of, the residential premises included in the public housing resources have been the source of numerous disputes, controversies and discussions for years.

Until the effective date of the Act on Letting of Premises and Housing Benefits of 2 July 1994 the residential premises were let on the basis of an individual administrative act – an administrative decision. As of the effective date of the said Act the residential premises included in the communal housing resources are let under a civil-law lease agreement and this principle was not changed with the entry into force of the Act on Tenant Rights Protection, Communal Housing Resources and Amending the Civil Code of 21 June 2001. The doubts that arose at that time concerning the legal nature of qualifying a person for lease and then entering into the lease agreement were dispelled in the judicial decisions in which the courts assumed that those were civil-law transactions beyond the judicial control of administrative courts. The resolution of seven judges of the SAC dated 21 July 2008 changed the then prevailing line of jurisdiction in the cases regarding letting residential premises included in the communal housing resources assuming that the refusal to qualify a person for entering into the lease agreement is an act of public administration and, therefore, is subject to the control of administrative courts.

This article discusses the resolution of the SAC dated 21 July 2008 and its effects for the letting of residential premises included in the communal housing resources. The changed line of jurisdiction must be in principle evaluated positively, yet at the same time a number of new disputes that must be considered have arisen. This resolution is an example of re-interpretation of provisions concerning the principles of letting the residential premises included in the communal housing resources.

## Summary

of the article: The binding force of a final and valid judgement of an administrative court dismissing a complaint against the decision of a sanitary inspector concerning an occupational disease in proceedings before a court of labour and social insurance

This article attempts to answer the question if the court of labour and social insurance in the case for awarding social benefits under social insurance in respect of an occupational disease may individually decide on the existence or non-existence of the occupational disease or in this respect it is bound with the final decision a sanitary inspector declaring that a person suffers from an occupational disease or that there are no grounds to declare that a person suffers from an occupational disease not appealed against to an administrative court or, if such decision was appealed against to the administrative court, the final and binding decision of the VAC dismissing the complaint against the decision of the sanitary inspector.

This article presents the procedure of recognising occupational diseases and determining the right to social benefits under social insurance in respect of an occupational disease and then quotes the resolutions of the Supreme Court, in particular the resolution of 29 June 1995 (file No. PZP 2/95, OSNP 1996, No. 4, item 57), showing clearly that the decision of the sanitary inspector declaring that a person suffers from an occupational disease or that there are no grounds to declare that a person suffers from an occupational disease is not binding on the court of labour and social insurance recognising the case for awarding social benefits under social insurance in respect of an occupational disease, also when the SAC has rejected the complaint against the decision.

Then, referring to the judicial decisions of the Supreme Court confirming that the common courts are bound with the decisions of the administrative authorities and Art. 7 and 10 of the Polish Constitution, the author comes to the conclusion that the court of labour and social insurance considering an appeal against the decision of an authority competent in the matters of disability pensions in the case for awarding social benefits under social insurance in respect of an occupational disease is bound with the final and valid decision of the sanitary inspector declaring that a person suffers from an occupational disease or that there are no grounds to declare that a person suffers from an occupational disease not appealed against to the administrative court.

The essential part of the discussion is devoted to the institution of the binding force of the final and valid decisions. Its analysis allowed the author to declare that the court of labour and social insurance is not permitted to determine by conducting the proceedings to take evidence that the disease the persons bringing the appeal suffered from and in respect of which he or she demanded benefits under social insurance is an occupational disease. To this extent it is bound with the final and valid decision of the administrative court dismissing the complaint against the decision of the sanitary inspector.

## Summary

of the article: A tax advisor signing the tax return – evolution of opinions

This article analyses the problem arsing when a tax advisor signs a tax return that he filled out and presents the evolution of opinions in this respect. First of all, the article discusses the resolution adopted by the National Council of Tax Advisors on 7 October 2003 in which the NCTA decided that in the light of the then prevailing regulations the tax advisors were permitted to act as attorneys not

only in respect of the pending proceedings but also outside the scope of such proceedings – among others to fill out the tax declarations and tax returns and to sign them on behalf of the taxable persons, taxpayers and tax remitters. The schedules to the resolution are the forms of the powers of attorney. The NCTA's resolution was criticised by both the VACs and the SAC. As a result now it is unclear if the tax advisors are entitled to sign the tax returns. Therefore this article quotes the arguments raised in the legal doctrine in connection with interpreting Art. 2.1.3 of the Act Amending the Tax Code of 16 November 2006. The author points to the fact that that the legal literature includes arguments that when signing the tax return the taxable person at the same time declares that he is aware of the relevant provisions of the Fiscal-Penal Code on liability for providing data inconsistent with the facts and, therefore, emphasises the negative consequences of providing false data. Then the author analyses the effect of the amendments to the Tax Code i.e. Art. 80a and 80b added by the Act of 16 November 2006 on clarifying the controversies concerning the tax advisor signing the tax return and attempts to answer the questions whether the tax advisor is authorised to fill out the tax return and then to file it with the tax office. Concluding the author positively evaluates the amendments to the Tax Code at the same time pointing to the unsolved problem of authorising the attorney to sign the corrected tax returns and specifying in detail the response to the question if the tax advisor is entitled to file the tax return with the tax office „in the name of and for" the taxable person.