

NACZELNY SĄD ADMINISTRACYJNY

ZESZYTY NAUKOWE
Sądownictwa
Administracyjnego

dwumiesięcznik

rok IX nr 5 (50)/2013
Warszawa 2013

WYDAWCA
Naczelny Sąd Administracyjny

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Warszawa 2013

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.
Liczba punktów za publikację wynosi 7.

W celu upowszechniania za granicą opracowań ukazujących się w „Zeszytach Naukowych
Sądownictwa Administracyjnego” (ZNSA) Wydawca uzgodnił z redakcją „The Central European
Journal of Social Sciences and Humanities” (CEJSH) internetową publikację ich streszczeń
w języku angielskim.

Wersją podstawową (referencyjną) czasopisma jest wersja papierowa.



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SPIS TREŚCI

STUDIA I ARTYKUŁY

<i>Dr Andrzej Kisielewicz (sędzia Naczelnego Sądu Administracyjnego)</i>	
Kary administracyjne przewidziane ustawą z dnia 19 listopada 2009 r. o grach hazardowych w praktyce orzeczniczej sądów administracyjnych	9
Summary	21
<i>Sędzia Arkadiusz Cudak (sędzia Naczelnego Sądu Administracyjnego)</i>	
Zarzut w postępowaniu egzekucyjnym w administracji	22
Summary	35
<i>Dr Wojciech Sawczyn (adiunkt, Uniwersytet im. Adama Mickiewicza w Poznaniu)</i>	
Czy sędzia sądu administracyjnego podlega odpowiedzialności dyscyplinarnej w szkole wyższej?	36
Summary	44
<i>Dr Małgorzata Janiszewska-Michalska (Wojewódzki Inspektorat Nadzoru Budowlanego w Poznaniu)</i>	
Podstawowe pojęcia prawa budowlanego w orzecznictwie sądów administracyjnych	46
Summary	64
<i>Dr Dominik Gajewski (adiunkt, Szkoła Główna Handlowa w Warszawie)</i>	
Podstawowe założenia unijnych reform dotyczących opodatkowania międzynarodowych podmiotów powiązanych kapitałowo i ich wpływ na materialne i proceduralne polskie prawo podatkowe	66
Summary	82

ORZECZNICTWO

I. Trybunał Sprawiedliwości Unii Europejskiej (wybór i opracowanie: Andrzej Wróbel)	
1. Dyrektywa 91/156/EWG – Termin transpozycji – Skutki – Pojęcie odpadu Wyrok ETS z dnia 18 grudnia 1997 r. w sprawie C-129/96 <i>Inter-Environnement Wallonie ASBL przeciwko Région wallonne</i>	83
2. Stosunki zewnętrzne – Porozumienie w sprawie handlowych aspektów praw własności intelektualnej (TRIPS) jest objęte zakresem kompetencji wyłącznej Unii Wyrok TSUE z dnia 18 lipca 2013 r. w sprawie C-414/11 <i>Daiichi Sankyo Co. Ltd, Sanofi-Aventis Deutschland GmbH przeciwko DEMO Anonymos Viomichaniki kai Emporiki Etairia Farmazon</i>	89
II. Europejski Trybunał Praw Człowieka (wybór i opracowanie: Agnieszka Wilk-Ilewicz)	
Ochrona jednostek przed uciążliwościami wywołanymi działalnością gospodarczą prowadzoną na sąsiedniej nieruchomości Wyrok ETPC z dnia 3 maja 2011 r. w sprawie <i>Apanasewicz przeciwko Polsce</i> (skarga nr 6854/07)	103

III. Trybunał Konstytucyjny (wybór: <i>Irena Chojnacka</i> , opracowanie: <i>Mieszko Nowicki</i>) Wyrok TK z dnia 18 lipca 2013 r. (sygn. akt SK 18/09) [dot. zasad opodatkowania dochodu niezgłoszonego przez podatnika]	111
IV. Sąd Najwyższy (wybór i opracowanie: <i>Dawid Miąsik</i>) Wyrok Sądu Najwyższego z dnia 12 kwietnia 2013 r. (sygn. akt III SK 26/12) [dot. określenia stron postępowania o nieuzasadnione wstrzymanie dostarczania energii prowadzonego przez Prezesa Urzędu na podstawie art. 8 ust. 1 prawa energetycznego]	133
V. Naczelny Sąd Administracyjny i wojewódzkie sądy administracyjne	
A. Orzecznictwo Naczelnego Sądu Administracyjnego (wybór: <i>Stefan Babiarz</i> , opracowanie: <i>Marcin Wiącek</i>)	
1. Uchwała składu siedmiu sędziów NSA z dnia 24 czerwca 2013 r. (sygn. akt I FPS 1/13) [dot. opodatkowania gminnych jednostek budżetowych podatkiem od towarów i usług]	139
2. Uchwała składu siedmiu sędziów NSA z dnia 3 września 2013 r. (sygn. akt I OPS 2/13) [dot. trybu zaskarżenia do sądu administracyjnego w przypadku pozostawienia podania o wszczęcie postępowania administracyjnego bez rozpoznania]	142
B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: <i>Bogusław Gruszczyński</i> , opracowanie: <i>Marcin Wiącek</i>)	
1. Wyrok WSA w Warszawie z dnia 4 stycznia 2013 r. (sygn. akt III SA/Wa 1205/12) [dot. opodatkowania wynagrodzeń nauczycieli akademickich przebywających na urlopach zdrowotnych lub macierzyńskich]	146
2. Wyrok WSA w Szczecinie z dnia 6 lutego 2013 r. (sygn. akt I SA/Sz 737/12) [dot. opłaty skarbowej od złożenia dokumentu stwierdzającego udzielenie pełnomocnictwa]	150
3. Wyrok WSA w Szczecinie z dnia 14 lutego 2013 r. (sygn. akt II SA/Sz 533/12) [dot. braku interesu prawnego nauczyciela do zaskarżenia uchwały o likwidacji przedszkola na podstawie art. 101 ustawy o samorządzie gminnym]	154
4. Postanowienie WSA w Białymstoku z dnia 19 marca 2013 r. (sygn. akt II SO/Bk 6/13) [dot. grzywny z tytułu nieprzekazania przez organ skargi sądowi administracyjnemu]	155
5. Wyrok WSA w Warszawie z dnia 17 kwietnia 2013 r. (sygn. akt II SA/Wa 1144/12) [dot. przetwarzania danych osobowych osób, które wystąpiły z Kościoła lub związku wyznaniowego]	158
VI. Wnioski Prezesa NSA i pytania prawne sądów administracyjnych skierowane do Trybunału Konstytucyjnego (opracowała <i>Irena Chojnacka</i>) Pytanie prawne Wojewódzkiego Sądu Administracyjnego w Poznaniu, postanowienie z dnia 29 maja 2013 r. (sygn. akt II SA/Po 458/13) [dot. ustawy o świadczeniach rodzinnych]	162
VII. Glosy <i>Dr hab. Jerzy Rotko (profesor, Instytut Nauk Prawnych PAN)</i> Glosa do wyroku WSA w Krakowie z dnia 13 grudnia 2011 r. (sygn. akt II SA/Kr 1567/11) [dot. braku podstaw prawnych do wprowadzenia przez radę gminy opłat za podłączenie do sieci wodociągowej]	169
<i>Dr Wojciech Brzozowski (adiunkt, Uniwersytet Warszawski)</i> Glosa do wyroku NSA z dnia 12 marca 2013 r. (sygn. akt I OSK 1997/12) [dot. znaczenia uchwały j.s.t. jako rozstrzygnięcia w sprawie eksponowania symboliki wyznaniowej w przestrzeni publicznej]	178
<i>Mgr Krzysztof Gruszecki (radca prawny)</i> Glosa do wyroku NSA z dnia 5 października 2012 r. (sygn. akt II OSK 1060/11) [dot. konsekwencji przystąpienia do wycinki drzew w braku ostateczności decyzji pozwalającej na ich usunięcie]	185

Mgr Angelika Drelichowska (doktorantka, Uniwersytet Wrocławski)

Mgr Paweł Razowski (doktorant, Uniwersytet Wrocławski)

Głos do postanowienia NSA z dnia 22 lutego 2013 r. (sygn. akt I OSK 2394/12)

[dot. zakresu przedmiotowego dopuszczalności cofnięcia skargi kasacyjnej
w postępowaniu sadowoadministracyjnym] 193

SĄDOWNICTWO ADMINISTRACYJNE W EUROPIE

Sprawozdanie z kongresu „17. Dzień Niemieckiego Sądu Administracyjnego”

(17. Deutscher Verwaltungsgerichtstag), Münster, 5–7 czerwca 2013 r. (Przemysław Ostojski,
Wojciech Piątek) 201

KRONIKA

Kalendarium sądownictwa administracyjnego (lipiec–sierpień 2013 r.)

(opracował Przemysław Florjanowicz-Błachut) 207

BIBLIOGRAFIA

I. Recenzje i noty

**Małgorzata Grego-Hoffmann, Rola pełnomocnika w postępowaniu
sadowoadministracyjnym** (rec. Przemysław Szustakiewicz) 211

Joanna Wegner-Kowalska, Konstytucja w orzecznictwie sądów administracyjnych
(rec. Bartłomiej Opaliński) 214

**XXX lat sądownictwa administracyjnego na Lubelszczyźnie 1983–2013. Księga
jubileuszowa**, pod red. Prezesa WSA w Lublinie (rec. Andrzej Niezgoda) 218

II. Publikacje

Wykaz publikacji z zakresu postępowania administracyjnego i sadowoadministracyjnego
(lipiec–sierpień 2013 r.) (opracowała Marta Jaszcukowa) 222

TABLE OF CONTENTS

STUDIES AND ARTICLES

<i>Andrzej Kisielewicz, Ph.D. (judge of the Supreme Administrative Court)</i>	
Administrative penalties available under the Act on Games of Chance dated 19 November 2009 in the rulings of administrative courts	9
Summary	21
<i>Judge Arkadiusz Cudak (judge of the Supreme Administrative Court)</i>	
Defence in the enforcement proceedings in administration	22
Summary	35
<i>Wojciech Sawczyn, Ph.D. (assistant professor at Adam Mickiewicz University in Poznań)</i>	
Is an administrative court judge subject to disciplinary liability in institutions of higher education?	36
Summary	44
<i>Małgorzata Janiszewska-Michalska, Ph.D. (Voivodship Construction Supervision Inspectorate in Poznań)</i>	
Basic terms of construction law in rulings of administrative courts	46
Summary	64
<i>Dominik Gajewski, Ph.D. (assistant professor at the Warsaw School of Economics)</i>	
The basic assumptions of the EU reforms of taxation of entities linked by capital and their effect on the substantive and procedural Polish tax law	66
Summary	82

JUDICIAL DECISIONS

I. The European Court of Justice (selected and prepared by <i>Andrzej Wróbel</i>)	
1. Directive 91/156/EEC – Period for transposition – Effects – Definition of waste (Judgment of the Court of 18 December 1997 in case C-129/96: <i>Inter-Environnement Wallonie ASBL v Région wallonne</i>)	83
2. The Union's external action – the European Union has sole competence for the Agreement on Trade-Related Aspects of Intellectual Property Rights (Judgement of the Court (Grand Chamber) of 18 July 2013 in case C-414/11: <i>Daiichi Sankyo Co. Ltd, Sanofi-Aventis Deutschland GmbH v DEMO Anonimos Viomikhaniki kai Emporiki Etairia Farmakon</i>)	89
II. The European Court of Human Rights (selected and prepared by <i>Agnieszka Wilk-Ilewicz</i>)	
Protection of individuals against harmful interference caused by a plant operating on an adjacent property (judgement of the ECHR of 3 May 2011, application No. 6854/07, case of <i>Apanasewicz v Poland</i>)	103
III. The Constitutional Tribunal (selected by <i>Irena Chojnacka</i> , prepared by <i>Mieszko Nowicki</i>)	
The principles of taxation of income a taxpayer has not declared (judgement of the Constitutional Tribunal dated 18 July 2013, files No. SK 18/09)	111

IV. The Supreme Court (selected and prepared by <i>Dawid Miąsik</i>)	
Determining the parties to the proceedings for unjustified cessation of energy supply pending before the President of the Energy Regulatory Office under Art. 8.1 of the Energy Law (judgement of the Supreme Court of 12 April 2013, files No. III SK 26/12)	133
V. The Supreme Administrative Court and Voivodship Administrative Courts	
A. Judicial decisions of the Supreme Administrative Court (selected by <i>Stefan Babiarz</i> , prepared by <i>Marcin Wiącek</i>)	
1. Taxation of the municipal budgetary unit with VAT (resolution of seven judges of the Supreme Administrative Court of 24 June 2013, files No. I FPS 1/13)	139
2. The procedure of bringing an action to an administrative court when a petition to institute the administrative proceedings is left without consideration (resolution of seven judges of the Supreme Administrative Court of 3 September 2013, files No. I OPS 2/13)	142
B. Judicial decisions of Voivodship Administrative Courts (selected by <i>Bogusław Gruszczyński</i> , prepared by <i>Marcin Wiącek</i>)	
1. Taxation of salaries of academic teachers on health or maternity leaves (judgement of the Voivodship Administrative Court in Warsaw of 4 January 2013, files No. III SA/Wa 1205/12)	146
2. Stamp duty on filing a document evidencing the granting of a power of attorney (judgement of the Voivodship Administrative Court in Szczecin of 6 February 2013, files No. I SA/Sz 737/12)	150
3. Lack of a teacher's legal interest in challenging a resolution on liquidation of a kindergarten under Art. 101 of the Act on Local Government in Municipalities (judgement of the Voivodship Administrative Court in Szczecin of 14 February 2013, files No. II SA/Sz 533/12)	154
4. Fine imposed on an authority for not forwarding a complaint to an administrative court (decision of the Voivodship Administrative Court in Białystok of 19 March 2013, files No. II SA/Bk 6/13)	155
5. Processing of personal data of persons who left a Church or a religious association (judgement of the Voivodship Administrative Court in Warsaw of 17 April 2013, files No. II SA/Wa 1144/12)	158
VI. Applications of the President of the SAC and preliminary questions of administrative courts to the Constitutional Tribunal (selected and prepared by <i>Irena Chojnacka</i>)	
The Act on Family Benefits (preliminary question from the VAC in Poznań, decision dated 29 May 2013, files No. II SA/Po 458/13)	162
VII. Glosses	
<i>Professor Jerzy Rotko, Ph.D. (Institute of Legal Studies of the Polish Academy of Sciences)</i>	
Gloss to the judgement of the VAC in Cracow of 13 December 2011, files No. II SA/Kr 1567/11 [re. the lack of legal grounds for the municipal council's decision to introduce water supply grid interconnection fees]	169
<i>Wojciech Brzozowski, Ph.D. (assistant professor at Warsaw University)</i>	
Gloss to the resolution of the SAC of 12 March 2013, files No. I OSK 1997/12 [re. the meaning of a resolution of a local government unit as a decision in the case concerning the displaying of religious symbols in public space]	178
<i>Krzysztof Gruszecki, M.Sc. (legal advisor)</i>	
Gloss to the judgement of the SAC of 5 October 2012, files No. II OSK 1060/11 [re. the consequences of commencing the removal of trees in spite of the lack of final and valid permit]	185
<i>Angelika Drelichowska, M.Sc. (doctoral student at Wrocław University)</i>	
<i>Paweł Razowski, M.Sc. (doctoral student at Wrocław University)</i>	
Gloss to the resolution of the SAC of 22 February 2013, files No. I OSK 2394/12 [re. the subject-related scope of the admissibility to withdraw a cassation complaint in proceedings before administrative courts]	193

ADMINISTRATIVE COURTS IN EUROPE

Report from the congress “17th Day of the German Administrative Court”

(17. <i>Deutscher Verwaltungsgerechtstag</i>), Münster, 5–7 June 2013 (<i>Przemysław Ostojski, Wojciech Piątek</i>)	201
--	-----

CHRONICLE

The schedule of events in the administrative jurisdiction (July – August 2013)

(prepared by <i>Przemysław Florjanowicz-Błachut</i>)	207
---	-----

BIBLIOGRAPHY

I. Reviews

Małgorzata Grego-Hoffmann, <i>The Role of an Attorney in Proceedings Before Administrative Courts</i> (review by <i>Przemysław Szustakiewicz</i>)	211
Joanna Wegner-Kowalska, <i>The Constitution in Decisions of Administrative Courts</i> (review by <i>Bartłomiej Opaliński</i>)	214
<i>30 Years of Administrative Courts in the Lublin Region – 1983–2013. Jubilee Book</i> , edited by the President of the SAC in Lublin (review by <i>Andrzej Niezgoda</i>)	218

II. Publications

Publications in the area of the administrative procedure and proceedings before administrative courts (July–August 2013) (prepared by <i>Marta Jaszcukowa</i>)	222
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Summary

of the article: **Administrative penalties available under the Act on Games of Chance dated 19 November 2009 in the rulings of administrative courts**

This article analyses the rulings of the Polish administrative courts made after the judgement of the European Court of Justice. In its judgement of 19 July 2013 in joined cases C-213/11, C-214/11 and C-217/11 the ECJ ruled that Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Council Directive 2006/96/EC of 20 November 2006 (OJ 1998 L 204, p. 37), must be interpreted as meaning that national provisions, such as those of the Act on Games of Chance of 19 November 2009, which could have the effect of limiting, or even gradually rendering impossible, the running of gaming on low-prize machines anywhere other than in casinos and gaming arcades are capable of constituting ‘technical regulations’, within the meaning of that provision, the drafts of which must be the subject of communication as provided for in the first subparagraph of Article 8(1) of the directive, in so far as it is established that those provisions constitute conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine.

Summary

of the article: **Defence in the enforcement proceedings in administration**

This article analyses the legal norms regulating the procedure of examination of defences concerning administrative enforcement in the aspect of exercising one of the most elementary functions of the procedural law, i.e. the protective function. This procedure is highly characteristic and untypical when compared to the other remedies at law. In the current legal status the creditor's statement concerning the defences is binding on the enforcement authority. This puts the creditor in a highly preferential position: in such situations he actually "decides" whether the debtor's defences are justified.

The defences are examined in two stages. Firstly, the enforcement authority must obtain the creditor's position (which puts him in a highly privileged position). In the last stage the relevant enforcement authority examines the defences. The scope of cognition of the enforcement authority depends on the type of the defences the debtor raised. In the situation when the enforcement authority is bound with the creditor's position, it is not entitled to conduct explanatory proceedings in order to establish the grounds to allow the defences and examine the creditor's position. In that case the scope of control in the complaint proceedings and the proceedings before administrative courts is limited.

An analysis of the norms concerning the procedure of examination of the defences shows that in the case of the procedural grounds of the raised defences the applicable provisions guarantee the debtor a proper protection of his rights. The debtor's legal situation is completely different when the debtor raises the substantive-law defences which were not or are not examined in separate administrative or court proceedings. In such situations it is actually the creditor who decides if such legal remedy is justified. The role of the enforcement authority is significantly reduced. Such status does not guarantee full protection of the debtor's rights and therefore the guarantee function of the procedural provisions is distorted. Consequently, the court control of the creditor's decisions concerning his position as to the raised defences will be extremely important.

Summary

of the article: **Is an administrative court judge subject to disciplinary liability in institutions of higher education?**

Pursuant to Art. 6.1, 6.2 and 6.4 of the Law on Proceedings Before Administrative Courts dated 25 July 2002 (the LPBAC) persons holding the scientific title of a professor or a scientific degree of a doctor habilitated may be employed as a judge, also part-time. The author answers the questions if an administrative court judge is subject to disciplinary liability in the institution of higher education where he is employed and if yes, then whether holding him disciplinarily liable requires the consent of the Supreme Administrative Court which under Art. 9 of the LPBAC is the disciplinary court in disciplinary cases of administrative court judges or a judge will be liable disciplinarily to the relevant judicial disciplinary authority. In the author's opinion, applying the principle "argument from major to minor" leads to the conclusion that if an immunity protects a judge when he commits an offence (always) for which he is liable only disciplinarily (Art. 81 of the Law on the System of Common Courts), then it should even more protect the judge from punishment or even participation in disciplinary proceedings conducted by an institution of higher education. Therefore, an immunity should protect a judge also in disciplinary proceedings pending before a scientific institution employing him, but the breaches of his professional duties reported by the institution employing the judge may be qualified as an impairment of the dignity of his office and must be carefully considered by the disciplinary prosecutor of the Supreme Administrative Court who should react firmly when the charges raised against the judge seem justified. Moreover, pursuant to Art. 139.2 of the Law on Institutions of Higher Educations, disciplinary liability of an academic teacher thereunder does not preclude disciplinary or professional liability provided for in separate regulations.

Summary

of the article: **Basic terms of construction law in rulings of administrative courts**

Construction investments are regulated in the Construction Law dated 7 July 1994 which applies to designing, constructing, maintaining and demolishing structures and sets out the principles of functioning of the public administration authorities in these areas. Administrative courts exercise control over the functioning of construction supervision authorities and interpret the provisions of construction law. This interpretation is a guideline for these authorities in the cases they decide in. Judicial decisions of administrative courts concerning the key institutions of construction law are not always uniform and the discrepancies hamper the application of the provisions of the Construction Law.

The Construction Law introduces the principle according to which everyone is entitled to develop a plot of land if he/she demonstrates the right to use this plot of land for construction purposes and the construction project is consistent with the law. The Construction Law includes the catalogue of definitions of 23 terms which define its subject scope. The article discusses the most important terms, including the terms imprecisely defined in the Construction Law and the terms without a legal definition (such as extension of and adding a superstructure to a building structure, assembly, installing, permanent attachment to the ground) interpreted in judicial decisions of administrative courts. The catalogue of definitions in the Construction Law does not include all the terms important for its application. In this event judicial decisions of administrative courts are the basic source of interpretation of the terms not defined by the legislator. The selection of the terms was determined by the importance of a given issue for the practical application of the provisions of the Construction law.

The article presents an analysis of, among others, the term “area impacted by the structure” and of the determination of the scope of parties to administrative proceedings. The difference between legal and actual interest is of key importance for determining the scope of parties to the proceedings in an investment process. Numerous judicial decisions of the Supreme Administrative Court and Voivodship Administrative Courts also refer to the issue of permanent attachment of a structure to the ground. The interpretation of this term determines the necessity to observe certain formalities in the construction of a structure, which is of particular importance in the event of advertising facilities.

Summary

of the article: **The basic assumptions of the EU reforms of taxation of entities linked by capital and their effect on the substantive and procedural Polish tax law**

The article discusses the problems related to the taxation of entities carrying on cross-border business. Currently it is one of the most important issues of the EU tax law. This is related to the fact that this matter is not regulated in a complex manner and has many gaps and inaccuracies and the national laws of the individual Member States regulate these problems fragmentarily. The tax-law systems of the Member States are not harmonised in this respect.

Consequently, the European Commission attempted to reform this matter. It presented a proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB). The proposal for a directive attempts to streamline the tax-law system concerning cross-border business and, therefore, minimise the increasing practice of tax evasion. One of the directive's main assumptions is the harmonisation of the tax systems of all the Member States. The concept of the CCCTB not only implements new tax construction solutions to the national systems but also introduces the new principles of tax proceedings as well as proceedings before administrative courts. In this context the concept of the CCCTB will be of particular importance for the doctrine and rulings of the European and national courts which face problems resulting from the existing system of corporate taxes in the European Union or rather from its lack, because one may only refer to 27 barely harmonised national systems.