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Summary

of the article: **Interpretative judgments of the Constitutional Tribunal in judicial decisions of administrative courts and the Supreme Court**

In its interpretative judgements the Constitutional Tribunal questions in the ruling the constitutionality of a provision only to a specific extent (a specific part) or identifies in the conclusion these of its meanings (interpretations) which are constitutional. Therefore the Constitutional Tribunal decides on the interpretation of the provisions although no legal norm directly refers to this meaning. This makes it possible to keep in force such provision to the remaining extent or in a specific interpretation and this way to prevent the formation of a legal gap.

The Constitution does not refer in Art. 190.1 to any types of judgements and treats all judgements the same when it comes to their final legal force. This constitutional norm raised voices claiming that passing interpretative judgements the Constitutional Tribunal exceeds the scope of its constitutional powers because the Constitution lacks any legal grounds for interpretative judgements. Most representatives of the science of law approve of the existence of interpretative judgements of the Constitutional Tribunal.

For obvious reasons, when passing interpretative judgements the Constitutional Tribunal recognises them as fully constitutional. The Constitutional Tribunal presented its position in this case in many rationales for such judgements specifying there their practical results.

In its judgements the Supreme Administrative Court presents the opinion that the Constitutional Tribunal's interpretation in the conclusion of the judgement (which is a part of an inoperative judgment) is generally applicable. Administrative courts increasingly frequently claim that an interpretative judgement is binding not only in the case in which it was passed. Administrative courts do not always share the opinions characterised above and their adjudicating practice displays controversies concerning interpretative judgements.

Judicial decisions of the Supreme Court show changing opinions on the nature of interpretative judgements and their practical meaning. Finding the rulings of the Supreme Court approving the interpretative judgements of the Constitutional Tribunal would not be difficult. The adjudicating benches of the Supreme Court or its resolution-adopting bodies increasingly frequently do not approve of this position, in particular in new decisions. Judicial decisions of the Supreme Court seem to be dominated by negative attitudes towards interpretative judgements.

Summary

of the article: **A foreigner's temporary protection against expulsion**

The article presents the evaluation of the Polish legislation governing the principles of granting temporary protection to foreigners in the situation when an administrative decision ordering a foreigner to leave the territory of the Republic of Poland is subject to court verification. The principles of entry and stay of foreigners and granting them protection adopted by the Polish legislator point to the existing diversification of the regulations governing a foreigner's right to stay in Poland upon the issuing of a final decision involving the obligation to leave the territory of the Republic of Poland. The ultimate standard of protection applies to the citizens of the EU Member States and their family members. A lower standard of protection is granted to persons seeking to receive the refugee status and the lowest protection is granted to all other foreigners who do not fall into any of the above categories.

The state's obligation to ensure effective access to court and guarantees related to court proceedings, including protection of a foreigner against expulsion when the court procedure is in progress, stems from various sources of law complementing each other. The author emphasises that granting temporary protection to a foreigner, given lengthy national administrative and court procedures in both instances, results in the lasting temporariness of stay which in no way may be perceived as a desirable situation. In order to counteract this situation, including the abuse of procedural rights by foreigners, awarding automatic temporary protection in the course of consideration of the case by the courts of all consecutive instances does not seem reasonable. The author is in favour of establishing the procedure of individual temporary protection granted for certain categories of cases with the simultaneous principle of automatic protection before the first-instance courts. However, such solution should be coupled with the prohibition to execute a decision ordering a foreigner to leave the territory of the Republic of Poland before the lapse of the time limit for submitting a complaint to a court and if such a complaint is submitted – with the prohibition to execute such a decision until the request for temporary protection is finally and validly recognised.

Summary

of the article: **Compensation for real property designated for internal roads**

The purpose of this article was to present the principles of paying compensation for real property designated for internal roads. The author discusses the effect of the judgement of the European Court of Human Rights dated 6 November 2007 in case *Bugajny and others vs. Poland* (application No. 22531/05) on judicial decisions of administrative courts on the obligation to pay compensation for real properties which as a result of their division were designated for internal access roads for other real properties.

The analysis of judicial decisions of administrative courts and opinions of the legal doctrine led to the conclusion that currently compensation for a real property designated for an internal road may be paid on the joint satisfaction of two preconditions: such an internal road is connected to the public road network and it is available to the general public. Therefore, these are factual (and not legal) circumstances – such as the transfer of title to the designated real property to the State Treasury or a local government unit or establishing an easement over it – that determine the payment of the compensation. At the same time the author emphasises that due to the lack of clear principles of paying compensation and in particular the lack of clear normative grounds the decisions to the above extent are arbitrary and refer to factual circumstances of a specific case.

Summary

of the article: **The limits of cognizance and adjudication of an administrative court in cases concerning controlling resolutions adopted by local government units**

This article analyses the limits of cognizance and adjudication of an administrative court in cases concerning complaints against resolutions adopted by local government units from the perspective of three key problems arising in this context. Firstly – the extent to which a court may go beyond the limits of a complaint and control also the parts of the act that were not complained against. Secondly – the admissibility of controlling an act that was not complained against directly, but closely related to the object of the complaint. Thirdly – the scope of the legal force of a judgement (*res iudicata*) in cases concerning controlling acts of local government units.

The basic theses of the article are as follows: the scope of cognizance and adjudication of administrative courts cases concerning controlling acts of local government units is generally determined by the “object-related” concept of a case before an administrative court in the light of which the essence of the case is the complex control of the legality of the resolution complained against. The scope of cognizance and adjudication of an administrative court is therefore determined by the object of the complaint – the resolution and not the assessment of violation of the complaining party’s individual interests. The court may control the entire act even if the complaint concerns only a part thereof. The court may not expand the scope of control to the resolutions that were not complained against directly because then it would go beyond the limits of the case. Analysing this problem from the perspective of legal force of a judgement (*res iudicata*), preventing the same resolution that was previously controlled by a court from being complained against once more, requires certain deviations from the “theoretically pure” object-related concept. Preserving the actual guarantees of the right to trial, including to complain against a resolution violating the complaining party’s legal interest, requires the verification of the actual scope of the cognizance and adjudication of the court.

Summary

of the article: **A non-existent act in administrative law**

This article discussed the construction of a non-existent act in administrative law. The analysis of the doctrine and judicial decisions leads to the conclusion that there are two theoretical concepts of a non-existent act: broad and narrow. This article analyses them critically from the perspective of the constitutional principle of the democratic state of law, including the principle of a citizen's trust in the state, at the same time taking into consideration the output, including the most recent one, of the German, Austrian and French doctrines. The authors also refer to the "absolute invalidity of a decision".

The concept of a non-existent act is practically applied in the work of administrative courts. The holistic review of judicial decisions referring to this term shows that it also makes it possible to distinguish between a narrow and a broad perception of a non-existent administrative act. The majority of the defects which in the opinion of a part of the doctrine result in qualifying a decision as a non-existent act, are included in the adjudicating practice in the grounds for declaring an act invalid – and not non-existent. At the same time the review of the rulings leads to the conclusion that the problem of a non-existent act demonstrates itself in particular on two levels: the delivery of the decision and addressing it to a deceased person.

The authors also analysed judicial decisions of common courts which allowed them to notice that the concept of a non-existent act replaced there the institution of the "absolute invalidity of a decision". At the same time the authors emphasise that common courts should refrain from deciding on the legal existence of an act because this is the duty of administrative authorities and courts.

In the authors' opinion the key issue in analysing an act in order to decide if it is non-existent is defining the subject who created it and its results. The discussion in the article led to the conclusion that a non-existent act may be defined as a factual phenomenon not intended to have any legal effects that may not be linked to a public administration authority and that simultaneously in the external sphere has all the appearances of an administrative act. At the same time the authors clearly distinguish between a non-existent act and the so-called implied act which refers to an act with specific legal contents in spite of the lack of physical form.