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BIBLIOGRAFIA

TABLE OF CONTENTS

STUDIES AND ARTICLES

JUDICIAL DECISIONS

ADMINISTRATIVE COURTS IN EUROPE

CHRONICLE

BIBLIOGRAPHY

Summary

of the article: **The principle of supremacy of EU law**

Applying the principle of supremacy as the conflict-of-law rule is difficult because EU law does not include the full catalogue of these rules leaving their regulation to the national provisions, mainly the constitutional ones. Such position is based on the assumption that the supremacy of EU law may be achieved by applying various national conflict-of-law rules to various elements of EU law while respecting the principle of loyalty and the pro-EU interpretation. The lack of clear conflict-of-law rules in EU law results also from the recognition that we have to do with a new type of law for which both the traditional principles of application of the monistic and dualistic system are insufficient. The Member States treat EU law as it own and implemented law excessively exposes the competence of the state to interpret this law. The formula of transferring competences and the supremacy of the autonomous EU law, characterised by the set of specific features, significantly reduces the influence the Members States have on the understanding of this law.

Instead of creating its own conflict-of-law rules the EU system has gathered over the years, in the form of the judicial decisions of the European Court of Justice, the list of features strengthening its autonomous nature. In particular, no provision of national law may repeal any provisions of EU law. EU law has binding force and its applicability does not need to be confirmed from time to time by any national law. In principle, EU law is a system of international law formulated by the Members States limiting and transferring to the EU a part of their sovereign rights. As such it is binding on the states, their authorities and citizens. The matters transferred to the EU are in principle regulated in the national regulations, but the entry into force of the EU regulations is tantamount to at least the necessity not to apply the national laws, and in particular the impossibility of co-applying the national and the EU regulations, unless they were issued by proxy of the EU as the regulations implementing its normative acts. With respect to the matters transferred to the EU regulations, the state's own (national) former law, if it doesn't respect the EU standards.

Summary

of the article: **Public consultations and the right information on the law-making process compared to the Constitution of Poland and an "open government" postulate**

The authors explain the term "open government" and point to the individual elements of this concept in Polish system of law. The article presents the designata hidden in the terms "open government", "open nature", "public nature" or "transparency" which increasingly often appear in the Polish legal discourse. The authors prove that these term are not completely foreign, although the legal institutions implementing the concept of the "open government" have been widely dispersed in the Polish system of law. Contrary to the public expectations, it is not a consistent matter regulated in a complex manner, especially as far as the so-called "public consultations" within the framework of the widely understood law-making procedures are concerned.

In the authors' opinion the Constitution 1997 creates certain space between the representative and direct democracy therefore making it possible to increase the civic involvement and the responsibility of the government towards the sovereign. The increased pressure on public consultations would strengthen the civic society and lead to optimal law-making solutions, but this ambitious goal may not be achieved without ensuring the proper protection of the elementary political rights, and in particular the right of access to public information and its re-use.

The authors present the critical and approving positions concerning the administrative courts' protection of access to public information on the activities of persons and authorities named in the Constitution, postulating deeper reflection on the fundamental role of the administrative courts in protecting the basic elements of the democratic system.

Summary

of the article: **The premises of legality of an act of local law in the judicial decisions of the administrative courts**

The acts of local law are the normative acts incorporating the regulations generally applicable in the specific part of the state's territory (Art. 87.2 of the Constitution of the Republic of Poland) issued by the local government authorities or the territorial bodies of the government administration. Introducing the key elements of construction of the acts of local law to the Constitution is the expression of founding the exercising of public authority on the local level on the principle of independence of the local government units. AS regards the territorial bodies of the government administration this independence is limited by a voivode's and the Prime Minister's ability to intervene in the contents of the act.

The Constitution authorises the law-making authorities of the local government as well as the executive authorities to issue the acts of local law on the basis and within the limits of the authorisations included in the act and on the principles set out in the systemic laws. It means that the acts of local law are not autonomous, but they are not subject to the rigours concerning the regulations issued by the constitutional authorities referred to in Art. 92.1 of the Constitution, either. The constitutional legislator, entrusting to the units of local government the exercising of a significant part of the public tasks in its own name and on its own responsibility, provided the local authorities with the powers to shape the public relations with the acts of local law.

The authorisation to issue an act of local law may have general nature – empowering an authority to regulate on its own the relations within this authorisation – or a specifically executive nature, where an act regulates the contents of the given matter, authorising the authority issuing an act of local law to regulate the very procedure of exercising. The legislator may also entrust the bodies of local government with making the laws related to the limitations of rights and freedoms, but the power to make the order regulations set out in the systemic laws of the local government may be exercised only in order to prevent, in certain situations, the real threats to the specific values.

The administrative courts determining the legality of the acts of local law exercising the power resulting from Art. 184 of the Constitution respect the constitutional principles stemming from the autonomy of local government. The judicial decisions of the administrative courts emphasise in particular, that an act of local law cannot be recognised as invalid due to the violation of the principles of legislative technique. Alike, changing the authorisation

to issue an act of local law may not serve as the grounds for declaring that it lost its binding force, if such change is not of elementary nature. If the legislator does not include in the amending act a provision declaring that the legal acts issued on the basis of the authorisation subject to modification remain in force, it does not mean that such provision becomes ineffective.

Summary

of the article: **An act of local law becoming invalid as a result of repealing or amending the law authorising to issue such act of local law**

Pursuant to the unquestioned validation rule of the Polish legal order an executive act becomes invalid as a result of repealing or amending the provision of the law authorising to issue such act of local law. In the prevailing normative acts this rule may be identified in Art. 32 of the schedule to the Regulation of the Prime Minister dated 20 June 2002 on "The principles of legislative technique" (Journal of Laws No. 100, item 909, hereinafter the PLT). The legal literature emphasises that Art. 32 of the PLT does not create this rule but only reminds the editor of a normative act thereof. Its applicability is justified by the value being the foundation of the principles expressed in the Constitution: legalism, exclusiveness of an act, certainty of law, a citizen's trust in the state and the law made by the state being the principles considered to be the necessary elements of the principle of the state of law. Its applicability is also justified by the values being the foundation of the constitutional concept of the sources of law. Therefore the courts cannot refuse to apply the validation principle reminded in Art. 3 of the PLT, arguing it is a rule expressed only in the act of a rank of a regulation.

Art. 32 of the PLT provides that an executive act becomes invalid as a result of: 1) repealing the law authorising to issue such an executive act, 2) repealing the provision of the law authorising to issue such an executive act or 3) amending the provision of the law authorising to issue such an executive act consisting in changing the type of the executive act, the scope of the matters transferred for regulation in the executive act or the guidelines concerning the contents of the executive act.

The doctrine of law emphasises that the validation rule reminded in Art. 32 of the PLT applies only to the so-called classical executive acts issued on the basis of the authorisation included in an act and for the purpose of its application and including the general and abstract rules i.e. the regulations referred to in Art. 92 of the Constitution.

Although the relation between a law and an act of local law issued on the basis and within the limits of the authorisations included in the law is "looser" than in the case of a law and a regulation and the acts of local law are not classical executive acts, the validation rule reminded in Art. 32 of the PLT applies also to the acts of local law, both to the executive acts of local law issued on the basis of the detailed authorisation in the specific laws and to the independent acts of local law issued on the basis of the general power expressed in the systemic laws or other specific laws.

Summary

of the article: **The legal nature of the guidelines concerning the operational programmes financed from the EU funds**

This article analyses the legal nature of the guidelines concerning the operational programmes financed from the EU funds, issued by the Minister of Regional Development under the Act on the Development Policy Implementation Principles dated 6 December 2006. First of all it presents the bases of the functioning of the EU cohesion policy, including the principles of the functioning of the operational programmes, their legal nature and the selected problems concerning their implementation. The essential part of the discussion is focused on the presentation of the statutory regulation of the minister's guidelines, being in the author's opinion an element of the system of the implementation of these programmes and its deficiencies. Furthermore - through the prism of analysis of the judicial decisions of the administrative courts and the contents of the guidelines themselves – an attempt was made to define their legal nature in relation to the system of the sources of law stemming from the Constitution.

The guidelines are diversified. Most frequently they are a non-binding interpretation of law of truly commentating nature, presenting the methodology of acting and presenting the recommended behaviour. It is possible to give certain provisions of the guidelines the normative quality, because they express the norms of the general and abstract nature. They do not acquire the rank of the provisions of law within the constitutional meaning of their own accord. Only the conclusion that the guidelines including the normative content are addressed to the entities organisationally subordinate to the Minister of Regional Development, being both the employees of the Ministry as well as the boards of the voivodships, makes it possible to recognise them as the sources of the internally applicable law within the meaning of Art. 93 of the Constitution. However, they are neither generally applicable law nor – contrary to what many adjudicating panels of the administrative courts claim – the specific sources of law, because the Constitution does not provide for such solution. Consequently, the guidelines may not serve as the grounds for any decisions concerning the applicants being private entities, in particular on awarding or refusing to award EU subsidies.

Summary

of the article: **The institution of expropriation under Art. 2.1. of the Constitution of the Republic of Poland 1997 in the decisions of the Constitutional Tribunal**

The purpose of the article was to discuss all aspects of the term "expropriation" and its completion – presenting the understanding of the other terms used in Art. 21.2 of the Constitution.

The introduction to the article defines the understanding – in accordance with the views of the past doctrine of law – the institution of expropriation and the conditions of its admissibility. Against this background the author discusses the nature of deprivation of a right and the condition of its admissibility and responds to the question which limitation or deprivation of a right is not an expropriation within the meaning of the Constitution and in the light of the judicial decisions of the Constitutional Tribunal. Furthermore, the authors mentioned the institutions of nationalisation and requisition.

Then, analysing the institution of expropriation in Art. 21.2 of the Constitution in the light of the judicial decisions of the Constitutional Tribunal the author discusses the following problem related to the understanding of this institution: 1) the subjective element; 2) the type of activity of the expropriating entity and the form of its functioning; 3) the conditions of admissibility of the expropriation: a) the "just expropriation"; b) the "public purposes" and c) the so-called necessity ("admissible only if"). In the conclusions the author points to the practical consequences of understanding the term "expropriation" for the entities applying law i.e. they formulate the general principles for the Polish expropriation law relying on the judicial decisions of the Constitutional Tribunal.