

SPIS TREŚCI

Wystąpienie Prezesa NSA prof. Janusza Trzcíńskiego na uroczystości otwarcia w dniu 26 października 2009 roku nowej siedziby NSA – gmachu przy ul. Gabriela P. Boduena 3/5 w Warszawie	9
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STUDIA I ARTYKUŁY

<i>Prof. dr hab. Bogusław Banaszak (Uniwersytet Wrocławski)</i> Konstytucyjne ujęcie zasady niezawisłości sędziowskiej w Polsce	13
Summary	24
<i>Mgr Tomasz Czech (radca prawny)</i> Odpowiedzialność za opłaty podwyższone za korzystanie ze środowiska	26
Summary	42
<i>Mgr Tomasz Grzybowski (asystent sędziego NSA; Uniwersytet Łódzki)</i> Zagadnienie prawotwórstwa sędziowskiego a instytucja uchwał Naczelnego Sądu Administracyjnego	44
Summary	61
<i>Mgr Bartosz Kusyk (asystent, Uniwersytet Wrocławski)</i> Doręczenie pod adres (numer) skrytki pocztowej w postępowaniu sądowoadministracyjnym	62
Summary	75

ORZECZNICTWO

I. Europejski Trybunał Sprawiedliwości Akty prawa wtórnego (wyroki ETS z dnia: 1. 5 marca 1999 r., sprawa C-153/98P <i>Guerin automobiles przeciwko Komisji Europejskiej</i> , s. 77; 2. 13 grudnia 1989 r., sprawa C-322/88 <i>Grimaldi przeciwko Fonds des maladies professionnelles</i> , s. 78) (wybór i opracowanie: Władysław Czapliński)	77
II. Europejski Trybunał Praw Człowieka Udzielenie nagany za krytykę pracodawcy – naruszenie art. 10 Konwencji (wyrok ETPC z dnia 16 lipca 2009 r. w sprawie <i>Helena Wojtas-Kaleta przeciwko Polsce</i> , skarga nr 20436/02) (Opracowała Agnieszka Wilk)	80

III. Trybunał Konstytucyjny (wybór i opracowanie: <i>Irena Chojnacka</i>)	
1. Legitymacja procesowa gminy (wyrok TK z dnia 29 października 2009 r. sygn. akt K 32/08)	83
2. Zatrzymanie prawa jazdy dłużnikowi alimentacyjnemu (wyrok TK z dnia 22 września 2009 r. sygn. akt P 46/07)	84
IV. Sąd Najwyższy (wybór: <i>Andrzej Wróbel</i> , opracowanie: <i>Dawid Miąsik</i>)	
Wyrok Sądu Najwyższego z dnia 11 sierpnia 2009 r. sygn. akt III UK 27/09 [dot. usług weterynaryjnych niebędących działalnością gospodarczą]	91
V. Naczelny Sąd Administracyjny i wojewódzkie sądy administracyjne	
A. Orzecznictwo Naczelnego Sądu Administracyjnego	
Uchwała pełnego składu sędziów NSA z dnia 26 października 2009 r. sygn. akt I OPS 10/09 [dot. podstaw skargi kasacyjnej]	94
B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: <i>Bogusław Gruszczyński</i> , opracowanie: <i>Marcin Wiącek</i>)	
1. Wyrok WSA w Poznaniu z dnia 25 kwietnia 2008 r. sygn. akt II SA/Po 24/08 [dot. skierowania kierowcy na kontrolę kwalifikacji w związku z naruszeniem przepisów ruchu drogowego]	117
2. Wyrok WSA w Szczecinie z dnia 21 stycznia 2009 r. sygn. akt I SA/Sz 523/08 [dot. „bezprzedmiotowości” decyzji podatkowej jako przesłanki stwierdzenia jej wygaśnięcia]	120
3. Wyrok WSA w Gliwicach z dnia 2 marca 2009 r. sygn. akt IV SA/Gl 904/08 [dot. kompetencji nadzorczych wojewody w postępowaniu związanym z przyjęciem statutu gminy]	124
4. Wyrok WSA w Bydgoszczy z dnia 28 kwietnia 2009 r. sygn. akt II SA/Bd 131/09 [dot. uznania za producenta rolnego jednego z małżonków pozostających w rozdzielności majątkowej]	129
5. Wyrok WSA w Lublinie z dnia 23 czerwca 2009 r. sygn. akt II SA/Lu 167/09 [dot. kalkulacji opłaty za korzystanie ze środowiska w związku z odprowadzaniem ścieków]	133
VI. Wnioski Prezesa NSA i pytania prawne sądów administracyjnych skierowane do Trybunału Konstytucyjnego (opracowała <i>Irena Chojnacka</i>)	
Pytanie prawne WSA w Warszawie, postanowienie z dnia 23 października 2009 r. sygn. akt VII SA/Wa 937/09 [dot. opłaty lotniczej]	138
VII. Glosy	
<i>Mgr Adam Bartosiewicz</i>	
<i>Mgr Ryszard Kubacki</i>	
Głosa do wyroku NSA z dnia 7 lipca 2009 r. sygn. akt II FSK 395/08	
[dot. wydatków związanych z podniesieniem kapitału zakładowego]	140
<i>Dr Bartosz Draniewicz (radca prawny)</i>	
Głosa do postanowienia NSA z dnia 28 lutego 2008 r. sygn. akt II OSK 216/08	
[dot. zarządzenia pokontrolnego inspekcji ochrony środowiska jako aktu podlegającego zaskarżeniu do sądu]	147
<i>Mgr Justyna Siemieniako (doktorantka, Wydział Prawa Uniwersytetu w Białymstoku)</i>	
Głosa do uchwały NSA z dnia 9 marca 2009 r. sygn. akt I FPS 4/08	
[dot. odpowiedzialności za zaległości podatkowe spółki z o.o.]	156

KRONIKA

Kalendarium sądownictwa administracyjnego (wrzesień–październik 2009 r.)

(Opracował *Przemysław Florjanowicz-Błachut*) 165

BIBLIOGRAFIA

Wykaz publikacji z zakresu postępowania administracyjnego i sądownictwa administracyjnego

(wrzesień–październik 2009 r.) (Opracowała *Marta Jaszcukowa*) 181

TABLE OF CONTENTS

Speech by professor Janusz Trzcíński, President of the SAC, at the official opening of the SAC's new seat at ul. Gabriela P. Boduena 3/5 in Warsaw on 26 October 2009	9
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STUDIES AND ARTICLES

<i>Professor Bogusław Banaszak, Ph.D. (The Wrocław University)</i>	
The constitutional expression of the principle of independence of the judiciary in Poland	13
Summary	24
<i>Tomasz Czech, M.Sc. (legal advisor)</i>	
Liability for the increased environmental charges	26
Summary	42
<i>Tomasz Grzybowski, M.Sc. (assistant to a judge of the SAC, the Łódź University)</i>	
The legislative role of judges and the resolutions of the SAC	44
Summary	61
<i>Bartosz Kusyk, M.Sc. (assistant, the Wrocław University)</i>	
Serving process to the address (number) of a post-office box in proceedings before administrative courts	62
Summary	75

JUDICIAL DECISIONS

I. The European Court of Justice	
Secondary laws (judgements of the ECJ: 1. dated 5 March 1999, Case C-153/98P <i>Guerin Automobiles EURL v Commission of the European Communities</i> , p. 77; 2. dated 13 December 1989, Case C-322/88, <i>Salvatore Grimaldi v Fonds des maladies professionnelles</i> (Occupational Diseases Fund, p. 78) (selected and prepared by Władysław Czapliński)	
	77
II. The European Court of Human Rights	
The case <i>Helena Wojtas-Kaleta v Poland</i> . Judgment of the ECHR of 16 July 2009 (application No. 20436/02) [re. a reprimand imposed on an employee for criticising her employer – Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms] (prepared by <i>Agnieszka Wilk</i>)	
	80

III. The Constitutional Tribunal (selected and prepared by *Irena Chojnacka*)

1. **The right of a commune to participate in proceedings before administrative courts** – judgement of the Constitutional Tribunal dated 29 October 2009, file No. K 32/09 83
2. **Seizing an alimony debtor's driving licence** – judgement of the Constitutional Tribunal dated 22 September 2009, file No. P 46/07 84

IV. The Supreme Court

- Judgement of the Supreme Court dated 11 August 2009 (file No. III UK 27/09)
[re. the veterinary services which do not constitute business activity]
(selected by: *Andrzej Wróbel*, prepared by: *Dawid Miąsik*) 91

V. The Supreme Administrative Court and the Voivodship Administrative Courts

- A. The judicial decisions of the Supreme Administrative Court (prepared by *Marcin Wiącek*):
 1. Resolution of the full bench of the Supreme Administrative Court of 26 October 2009 (file No. I OPS 10/09) [re. the grounds of a cassation complaint] 94
- B. The judicial decisions of the Voivodship Administrative Courts (selected by: *Bogusław Gruszczyński*, prepared by: *Marcin Wiącek*):
 1. Judgement of the Voivodship Administrative Court in Poznań of 25 April 2008 (file No. II SA/Po 24/08) [re. sending a driver to have his driving skills verified as a result of violating the road traffic regulations] 117
 2. Judgement of the Voivodship Administrative Court in Szczecin of 21 January 2009 (file No. I SA/Sz 523/08) [re. a tax decision being groundless as a condition of declaring its expiration] 120
 3. Judgement of the Voivodship Administrative Court in Gliwice of 2 March 2009 (file No. IV SA/Gl 904/08) [re. the supervisory powers of a head of a voivodship in proceedings for adopting the statutes of a commune] 124
 4. Judgement of the Voivodship Administrative Court in Bydgoszcz of 28 April 2009 (file No. I SA/Bd 131/09) [re. recognising one of the spouses with separate estate as an agricultural producer] 129
 5. Judgement of the Voivodship Administrative Court in Lublin of 23 June 2009 (file No. II SA/Lu 167/09) [re. calculating the environmental charge for sewage disposal] 133

VI. The applications of the President of the SAC and the references for a preliminary

- ruling from the administrative courts to the Constitutional Tribunal
(prepared by *Irena Chojnacka*)
A reference for a preliminary ruling from the VAC in Warsaw (file No. VII SA/Wa 937/09)
[re. the air fare] 138

VII. Glosses

Adam Bartosiewicz, M.Sc.

Ryszard Kubacki, M.Sc.

Glosses to the judgement of the Supreme Administrative Court of 7 July 2009

- (file No. II FSK 395/08) [re. the expense on increasing the share capital] 140
Bartosz Draniewicz, Ph.D. (legal advisor)

Gloss to the decision of the Supreme Administrative Court of 28 February 2008

- (file No. II OSK 216/08) [re. the post-inspection order issued by the Environmental Protection Inspection as an actionable act] 147

Justyna Siemieniako, M.Sc. (PhD. student, the Faculty of Law, the Białystok University)

Gloss to the resolution of the Supreme Administrative Court of 9 March 2009

(file No. I FPS 4/08) [re. liability for the tax arrears of a limited liability company] 156

CHRONICLE

The schedule of events in the administrative jurisdiction (September – October 2009)

(prepared by *Przemysław Florjanowicz-Błachut*) 165

BIBLIOGRAPHY

Publications in the area of the administrative procedure and the proceedings before

administrative courts (September – October 2009) (prepared by *Marta Jaszczukowa*) 181

Summary

of the article: The constitutional expression of the principle of independence of the judiciary in Poland

The constitutional principle of judicial independence refers to the holding of the office but may be expanded to cover the entire bench in a given case (the

independence of the court). In a democratic state this principle is the foundation of the independent existence of the judiciary and means that a judge individually construes the law and evaluates the facts and evidence in the course of his/her duties in the area of administration of justice. The judge decides solely on the basis of the Constitution and the law. This categorical opinion is sometimes unfairly weakened in the judicial decisions by vesting the courts with the right to apply the Constitution directly only when the case the court is competent to hear is not statutorily regulated i.e. when there is a gap in law. The judicial independence covers only the area of adjudication.

The judicial independence is ensured by the guarantees of a judge's position, including the statutory list of requirements a candidate for a judge must meet, appointing judges for an unspecified period of time, irremovability of judges, judicial immunity, prohibition to couple the function of a judge with a political party or trade union membership or public activity that is irreconcilable with the principles of the independence of courts and independence of the judiciary, the prohibition to take additional employment and the financial independence of the judges.

The science of law and the decisions of the Constitutional Tribunal emphasise the internal, personal traits of a judge's character conditioning his/her independence and impartiality. The principle of impartiality is violated not only when a judge shows overt and easy to identify bias towards a party but also in the case of any form of favouring a party, even if as a result of the information and opinions the judge developed in his/her private life.

The political rights and freedoms of the judiciary were not limited, but exercising these rights and freedoms the judges must not offend the independence of the courts and preserve their impartiality. The impartiality and independence may be at risk when a judge takes an active role in the current political disputes, speaks publicly for or against a candidate for a specific position, speaks for or against the manner any public authority exercises its powers, publicly expresses his/her opinion on a religious issue or becomes publicly involved in the activities of a specific charitable organisation. In all these cases a judge expresses his/her opinions and sends a clear signal to the potential parties to the proceedings thus informing them that the future judgment may be determined by his/her views.

Summary

of the article: Liability for the increased environmental charges

This article discusses the liability of an entity using the environment for the increased environmental charges. Such charges are one of the most important financial-legal measures of environmental protection.

The increased environmental charges have a preventive, fiscal and repressive function. They are a sanction of administrative nature for the illegal use of the elements of environment (an administrative tort).

The liability of the entity using the environment for the increased environmental charges results from the illegality of such use. It bears the risk of using the environment without the necessary environmental permit or illegal handling of waste. The obligation to pay the increased environmental charges arises irrespective of whether the lack of the necessary environmental permit is attributable to the entity using the environment or not, even if due to reasons beyond its control. The excessive duration of the proceedings for issuing an environmental permit does not render ineffective the obligation to pay the increased environmental charges. The liability of the entity using the environment for the increased environmental charges has the objective nature. This is supported by the linguistic, systemic and functional interpretation of the environmental protection laws.

If the obligation to pay the increased environmental charges arises due to the conduct of other persons the entity using the environment may seek compensation for the loss it suffered on the general principles set out in the civil law and the labour law. If the loss results from an illegal conduct of a public authority, including the excessive duration of the proceedings for issuing an environmental permit, the State Treasury shall be liable for damages towards the entity using the environment under Art. 417–417¹ of the Civil Code.

The objective nature of the liability of the entity using the environment for the increased environmental charges coupled with the mechanism of liability for damages satisfactorily and proportionately resolves the collision of the constitutional values promoting further protection of environment in Polish law.

Summary

of the article: The legislative role of judges and the resolutions of the SAC

This article discusses the issue of the legislative role of judges in the context of the procedural regulations concerning the resolutions of the Supreme Administrative Court that came into force on 1 January 2004. The reason for this article was the so-called general binding force attributed to these resolutions.

This article presents the thesis that these resolutions (both specific and abstract) in certain circumstances may become functionally close to the source of the generally applicable law. The author claims that due to their general binding force these resolutions have the quality of being general and abstract, attributable to the generally applicable law. In practice an interpretation made in a resolution will hardly ever be changed in the statutorily prescribed manner (actually this has not taken place so far). A legislative decision must be made within the powers available to the increased composition of a bench. Therefore the author analyses the situations when a resolution adopted in violation of the powers vested in the Supreme Administrative Court may be deprived of its general binding force and therefore will not display the features corresponding to the norms of the generally applicable laws. The last factor affecting the potentially legislative nature of a resolution is the normative novelty. This article presents the cases when an interpretation made in a resolution may satisfy this condition as well as the cases when it fits within the limits of the interpretative paradigm accepted in our legal culture.

Concluding the author notes that adopting a resolution on the basis of the applicable procedure and within the limits of authorisation coupled with the normative (logical) novelty in the decision of the extended bench may have a legislative effect. It's dangerous because such conduct must qualify as violation of law while the administrative courts will hardly ever use the resolution revocation procedure. This encourages the author to accept the opinion that the expanded benches should carefully formulate their legislative utterances. The purpose of the resolutions is to clarify the contents of laws and therefore such utterances must remain within the limits of application and interpretation of law.

Summary

of the article: Serving process to the address (number) of a post-office box in proceedings before administrative courts

One of the basic principles of all judicial proceedings, including the proceedings before administrative courts, is the principle of active participation of the parties to the proceedings. This principle is implemented via a number of procedural institutions including, among others, the institution of service of process. A defect in the service of process may translate directly into a party becoming unable to defend its rights and therefore the proceedings in the case becoming invalid. For this reason the legal regulations of the service of process should be clear and precise and the interpretation of the applicable provisions coherent and stable.

Recently in the area of the proceedings before administrative courts there arose the issue of the effective service of process to the address (number) of a post-office box i.e. the box the addressee has in a post office run by a public operator. Neither the legal literature nor the judicial decisions present a common opinion on the effectiveness of such service of process. The recent months have seen the tendency to recognise such service of process as effective. In particular the administrative courts refer to the amended Civil Procedure Code where the legislator permitted to serve process to the address of a post-office box.

This interpretation may not be supported. In order to justify the effectiveness of the service of process to the address of a post-office box in the course of proceedings before an administrative court one may not invoke the relevant normative amendments in the area of the civil procedure. Although the provisions on the service of process applicable to proceedings before the common courts apply accordingly to the proceedings before administrative courts, but not to the extent allowing for a simple transfer of the new regulation of the Civil Procedure Code to the proceedings before administrative courts. In order to prove the effective service of process to a post-office box one may not rely on the extensive interpretation of the term „mail box” included in Art. 73 of the Law on Proceedings Before Administrative Courts. The provisions governing the service of process must be interpreted strictly – the extensive interpretation of these provisions is inadmissible.

Under the prevailing laws the service of process to the address (number) of a post-office box in the course of proceedings before administrative courts is inadmissible. Only the direct and explicit intervention of the legislator may change this situation. At the same time the legislator is expected, and should be requested, to intervene.