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SĘDZIÓW NACZELNEGO SĄDU ADMINISTRACYJNEGO
W DNIU 22 KWIETNIA 2015 R. W WARSZAWIE

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Report of the proceedings

On 22 April 2015, the annual General Assembly of the Judges of the Supreme Administrative Court was held in the Assembly Hall at the seat of the Supreme Administrative Court in Warsaw. During the meeting, *Information on the activities of administrative courts in 2014*, presented by the President of the Supreme Administrative Court, Professor Roman Hauser, was adopted by way of a resolution.

The solemn meeting was attended by – in addition to the President of the Supreme Administrative Court, the Vice-Presidents: Jacek Chlebny, PhD, Janusz Drachal, Maria Wiśniewska and professor Marek Zirk-Sadowski, as well as judges of the Supreme Administrative Court and Presidents of voivodeship administrative courts – the following invited guests – representatives of constitutional State organs and associations of legal practitioners: on behalf of the President of the Republic of Poland Bronisław Komorowski – Krzysztof Łaszkiewicz, Secretary of State at the Chancellery of the President of the Republic of Poland; on behalf of the Marshal of the Sejm – Deputy Marshal of the Sejm of the Republic of Poland Marek Kuchciński; on behalf of the Marshal of the Senate – Senator Piotr Zientarski, President of the Legislation Committee of the Senate; on behalf of the Prime Minister – Cezary Grabarczyk, Minister of Justice; First President of the Supreme Court Professor Małgorzata Gersdorf; on behalf of the President of the Constitutional Tribunal – Maciej Graniecki, Head of the Office of the Constitutional Tribunal; two Vice-Chairmen of the National Council of the Judiciary of Poland – Piotr Raczkowski and Krzysztof Wojtaszek; on behalf of the Prosecutor General – Deputy Prosecutor General Marzena Kowalska; Professor Irena Lipowicz – Human Rights Defender; Marek Michalak – Ombudsman for Children; on behalf of the Secretary of the Council of Ministers – Vice-President of the Government Legislation Centre Piotr Gryska; Senator Professor Michał Seweryński – Chairman of the Human Rights, the Rule of Law and Petitions Committee; Stanisława Prządka – Chairperson of the Justice and Human Rights Committee of the Sejm of the Republic of Poland; Stanisław Piotrowicz – Deputy Chairperson of the Justice and Human Rights Committee of the Sejm of the Republic of Poland; Hanna Majszczyk – Undersecretary of State at the Ministry of Finance; Antoni Cyran – Head of the Chancellery of the First President of the Supreme Court; judge Waldemar Żurek – Spokesperson of the National Council of the Judiciary of Poland; Grzegorz Borkowski – Head of the Office of the National Council of the Judiciary of Poland; Roman Kapeliński – Director of the Legislative Office of the Chancellery of the Senate; Urszula Góral – Director of Social Education and International Co-operation Department at the Office of the Inspector General for Personal Data Protection; Dariusz Sarajewski – President of the National Council of Legal Advisers; Andrzej Zwara – President of the Polish Bar Council; Jadwiga Glumińska-Pawlic – President of the National Chamber of Tax Advisers; Anna Korbela – President of the Polish Chamber of Patent Attorneys.

After an official inauguration, the President of the Supreme Administrative Court, Professor Roman Hauser, presented the information about the activities of the Supreme Administrative Court and of voivodeship administrative courts conducted in 2014. The content of the speech *in extenso* may be found on p. 9 of this ZNSA issue.

The first guest to take the floor was the Secretary of State at the Chancellery of the President of the Republic of Poland – Krzysztof Łaszkiewicz, who read a letter from the President of the Republic of Poland Bronisław Komorowski. The content of the letter *in extenso* may be found on p. 24 of this ZNSA issue.

The second speaker was Senator Piotr Zientarski, President of the Legislation Committee of the Senate, who read a letter from the Marshal of the Senate Bogdan Borusewicz. The content of the letter *in extenso* may be found on p. 26 of this ZNSA issue.

Afterwards, Minister of Justice Cezary Grabarczyk read a letter from the Prime Minister Ewa Kopacz addressed to the participants of the meeting. The content of the letter *in extenso* may be found on p. 27 of this ZNSA issue.

The next speaker was Professor Małgorzata Gersdorf, First President of the Supreme Court. Her speech was devoted to questions related to the mutual relationship between the Supreme Court and the Supreme Administrative Court. First of all, referring to Article 184 of the Constitution of the Republic of Poland, which determines the role of the Supreme Administrative Court and of other administrative courts, she noticed that forms of activity of the broadly understood State and complicated relations between legal norms make it increasingly difficult to separate spheres of competence of administrative courts and of common courts and the Supreme Court. According to the President, this phenomenon is influenced by the fact that public administration bodies more and more often use private law instruments to fulfil public law objectives. By way of example, she indicated the legal institution of subsidy and the broadly understood privatisation of public services, including those in the field of road transport, education and collection of public levies. This results in the blurring of the boundary between public and private law and the replacement of administrative law by private law. The President pointed out that the administrative court's cognition is determined in particular by the lack of equal position of the parties of a legal relationship. However, it is possible to doubt whether the unilateral impact of a given public administration body on the legal relationship is lower in the case of fulfilment of a public objective under an agreement, and whether the sole form in which a given legal relationship was established should determine the qualification of the case and court proceedings. Professor M. Gersdorf noticed that the subsidy law shows to what point the criteria for distinguishing private and public law and for allocating competences between administrative and common courts, considering a certain constitutional presumption of the latter's competences resulting from Article 177 of the Constitution of the Republic of Poland, are transitory and uncertain. By way of conclusion, she stated that the unequal status of the parties is no longer an adequate criterion for distinguishing civil and administrative cases, and that the privatisation of public tasks causes a necessity to discuss relationships between particular types of courts within the judicial system. Afterwards, the President

paid attention to the scarcity of legal solutions for resolving conflicts of competence between administrative and common courts. She noted that Article 199[1] of the Civil Procedure Code, Article 66 § 4 of the Administrative Procedure Code and Article 58 § 4 of the Law on the System of Common Courts solve only negative conflicts (and not the positive ones) and force an entity interested in benefiting from legal protection to test public bodies in order to have the lack of competence of one of them stated. The President referred to a Resolution of the Supreme Court (files no. III CZP 44/08), in which it is stated that the predictability of individuals' rights constitutes an element of the concept of state based on the rule of law, not on arbitrariness. She expressed the view that the present system should provide for an equivalent of the former Competence Council. Furthermore, she suggested a possible solution in the form of resolutions of joined panels of the Supreme Administrative Court and of the Supreme Court, adopted at the request of Presidents of these courts. According to the President, the introduction of such instruments to the ordinary law would not be pointless nor inconsistent with the Constitution. The First President of the Supreme Court paid attention also to the debatable question of an increasing number of bilateral legal actions of a dominantly public law nature. In her opinion, considering the subject of such actions (rant agreements, agreements on transfer of public schools, concession agreements) and their public law component, such cases should be solved rather by administrative courts than by common courts and the Supreme Court. At the end of her speech, the President, highlighting that administrative judiciary constitutes a great achievement of the independent Republic of Poland, mentioned the Act amending the Law on Proceedings before Administrative Courts adopted on 9 April 2015. She noticed that Article 145a of the Act, which allows courts to judge, in special situations, on the merits (and not only reverse and remand a judgment), is a symbolic starting point of a new era in the history of the Polish administrative judiciary and that it will impact the manner of understanding the constitutional term "control over the performance of public administration".

Afterwards, the floor was taken by the Head of the Office of the Constitutional Tribunal M a c i e j G r a n i e c k i, who read the speech of the President of the CT Professor A n d r z e j R z e p l i ń s k i addressed to the participants of the meeting. The content of the letter *in extenso* may be found on p. 28 of this ZNSA issue.

The next speech was delivered by Human Rights Defender Professor I r e n a L i p o w i c z. At the beginning, she indicated that the *Information on the activities of administrative courts in 2014* provides an opportunity to assess the condition of public administration in Poland. Referring to the statement of the President of the Supreme Administrative Court, according to which the percentage (22.2%) of repealed acts of public authorities remains at the same level as in previous years, Professor Lipowicz noticed that such an elimination or correction of activities of public authorities by administrative courts could be expected rather with regard to less well equipped local administration bodies, and not to ministries or central public administration bodies. She indicated that, in the case of certain departments, the number of repealed acts amounts to several dozen percent. For example, she mentioned the Ministry of Finance, which is at the same time a promoter of tax law reforms in favour of taxpayers. The Human Rights Defender referred also to the problematic character of tax interpretations. According to her,

there are serious problems related to the modernisation of central administration bodies. She paid attention to the issue of ministry officials' responsibility for inappropriate administrative acts. The foregoing is confirmed by the criticism included both in judgments of the Supreme Administrative Court and in speeches of the Human Rights Defender. Irena Lipowicz mentioned an increasing need to conduct central administration reforms on such a scale as the one observed in the case of local government administration. Afterwards, she noted a growing number of actions for failure to act lodged against public administration bodies. She indicated that this issue is present also in complaints submitted to the HRD and its nature often concerns the entire system and goes beyond an individual administrative case. Thus, it requires a systemic approach comprising organisational, personnel and financial measures. In response to the HRD's questions posed in the name of citizens and concerning the failure to act, some central administration bodies (e.g. the National Broadcasting Council, the National Enfranchisement Commission, Mazowieckie Voivodeship Office) admit that they are not able to timely examine submitted applications for staffing and financial reasons and, as a result, time limits specified in the Code of Administrative Proceedings are grossly exceeded. Professor Lipowicz stated that, in the case of many bodies created after 1989 – in addition to the classic government and local government administration – we are dealing with a systemic crisis of their operation. She suggested that, due to the aforementioned phenomenon, it may be necessary to redeploy officials from less burdened bodies, in which their competences are not effectively used, to more burdened ones (e.g. Ministry of Infrastructure), i.e. allocation of forces and funds within public administration. Furthermore, the Human Rights Defender stated that the perspective from which administrative courts rule and the legal instruments which the courts have at their disposal make it possible to detect inappropriate allocation of forces and funds as well as dysfunctions of public administration. Professor Lipowicz called on administrative courts to actively use the institution of signalling, as such activity is currently decreasing (in 2013, voivodeship administrative courts issued only 5 signalling decisions). As a consequence – in the opinion of the HRD – the executive does not receive signals concerning dysfunctions of administration and their concentration. At the end of her speech, she expressed hope that the meeting would help to reverse that trend, stating that administrative courts generate information which could constitute an incentive for legislative authorities in the new term to undertake, at the request of executive authorities, actions aimed at a fundamental correction of the use of forces and funds in public administration.

Afterwards, Col. P i o t r R a c z k o w s k i, judge of the Regional Court-Martial in Warsaw, Vice-Chairman of the National Council of the Judiciary of Poland, addressed an occasional speech to those gathered at the meeting. He stated that the data concerning the performance of administrative courts in 2014 contained in the *Information* presented by the President of the Supreme Administrative Court is impressive and awe-inspiring. The judge mentioned the amendment of the Law on Proceedings before Administrative Courts adopted on 9 April 2015, pointing out that, according to him, mainly the new right of courts to judge on the merits will result in an even more positive public perception of administrative courts. The reason for that will be the fact that the society will perceive

administrative courts as bodies which, in certain situations, substitute public administration bodies.

The last person to take the floor was M a r z e n a K o w a l s k a – Deputy Prosecutor General. First of all, she stated that courts – like the prosecutor's office – constitute an element of the system of legal protection bodies. She pointed out that provisions regulating administrative court proceedings in cases in which it is necessary to protect the rule of law provide for the presence of a prosecutor, although some of the rights are in the case of such proceedings reserved to the Prosecutor General or Prosecution General. Marzena Kowalska informed that the Prosecutor General conveyed to the President of the Supreme Administrative Court 2 requests for the adoption of abstract resolutions, considering discrepancies appearing in judgments with regard to the application of the Environmental Protection Law and with regard to the restitution of expropriated property under the Real Estate Management Act. She stated that on 26 June 2014 the Supreme Administrative Court adopted a socially important resolution at the request of the Prosecutor General of December 2013, stating that "In the case of benefiting from a child care leave in order to take care of more than one child born during a single childbirth, a child care supplemental allowance provided during the child care leave, referred to in Article 10(1) of the Act of 28 November 2003 on family allowances (Journal of Laws of 2013, item 1456, as amended), shall be granted per each of the children" (files no. I OPS 15/13). Furthermore, the Deputy Prosecutor General paid attention to the activity of the Court Proceedings Department at the Prosecution General, the tasks of which include analysing judgments of administrative courts. In 2014, prosecutors of the Prosecution General, exercising their powers in administrative court proceedings, participated in the sessions of expanded adjudication panels of the Supreme Administrative Court and presented their stand in 27 cases with regard to the adoption of resolutions by the President of the Supreme Administrative Court, the HRD and on the basis of decisions of adjudication panels. Afterwards, the Deputy Prosecutor noted that legal issues constituting the subject of resolutions of the Supreme Administrative Court are complex and increasingly related to questions of EU law, which makes it necessary to refer to the European case law and legal acts. Moreover, she highlighted the positive impact of judgments of administrative courts on the law application process. Furthermore, Marzena Kowalska noticed that prosecutors from all prosecutor's offices actively exercise powers granted to them under the Law on Proceedings before Administrative Courts by lodging complaints to voivodeship administrative courts, by filing appeals against their non-final judgments and by participating in court proceedings. She underlined that the participation of a prosecutor in each stage of court proceedings aims at the protection of the rule of law as well as of human and civil rights. In 2014, prosecutors lodged 546 complaints to voivodeship administrative courts and 28 cassation appeals to the Supreme Administrative Court. What is more, they participated in the examination of 879 cases by voivodeship administrative courts and of 58 cases by the Supreme Administrative Court. Marzena Kowalska positively assessed the amendment of the Law on Proceedings before Administrative Courts of 9 April 2015, indicating that solutions adopted therein will contribute to an increase in the already high efficiency and quality of judgments of administrative courts.

After a break, proceedings were resumed and the General Assembly of the Judges of the Supreme Administrative Court unanimously carried a resolution on the adoption of the *Information on the activities of administrative courts in 2014*, presented by the President of the Supreme Administrative Court.

Prepared by *Przemysław Florjanowicz-Błachut*
(Judicial Decisions Bureau
of the Supreme Administrative Court)

Summary

of the article: **Authentic interpretation in the decision-making practice of administrative courts**

One of the most debatable and controversial methods of interpretation is authentic interpretation, the perception and understanding of which by the administrative judiciary are extremely varied. On the one hand, there are rulings in which authentic interpretation is treated as a fully fledged method of interpreting the provisions of the substantive administrative law. On the other hand, some panels deny any relevance to such interpretation and exclude its application.

The main aim of the article is to analyze the case-law of voivodeship administrative courts and the Supreme Administrative Court in which authentic interpretation (including its various types) was taken into account. The conclusions of the analysis are, in the opinion of the author, intended to harmonize and provide a clearer order to the terminological and conceptual framework relating to the method of interpreting legal texts discussed in the article.

The article presents an analysis of the rulings of administrative courts from the years 1999–2014 available in the Central Database of Rulings of Administrative Courts (judgments, resolutions) the grounds for which take into account or refer to authentic interpretation (at legal and regulatory level). It made it possible to identify four autonomous groups of rulings, in the case of which authentic interpretation was perceived and treated by panels as: 1) a fully exploited method of interpreting legal texts in the application of law; 2) the explanation of a decision rendered by a civil court (the so-called interpretation of a judgment); 3) a type of interpretation of only subsidiary nature; 4) a method of interpreting a legal text that is inadmissible and unauthorized under the administrative law.

The article describes particular rulings belonging to the aforementioned groups. It made it possible to formulate general conclusions and proposals, the most important of which, in the opinion of the author, amount to, among others: respecting the decision-making practice whereby the situation where the courts of general jurisdiction (civil courts) explain their judgments (decisions) is referred to as authentic interpretation; challenging the view that documents drawn up in the legislative process should be regarded as providing authentic interpretation; challenging the view that a practice whereby an authority that has introduced particular provisions (including especially local law acts) also explains them is called authentic interpretation or the view that authentic interpretation is equivalent to legal definitions.

Summary

of the article: **Specification of the public utility purpose in the light of the provisions of art. 7(2) of the Decree on land in Warsaw**

The subject of the article is the issue of the correct interpretation of art. 7(2) of the Decree on land in Warsaw. The authors point out that the interpretation of this provision must take into account the Resolution of the Supreme Administrative Court of 26 November 2008, I OPS 5/08. Consequently, the authors argue that a refusal to grant a real right must be based on one of the grounds provided for in the Decree, or else such refusal would be a gross breach of law. The main thesis of the article is that it is unacceptable for administration bodies to rely on the sole fact that the property concerned is intended for public utility purposes. A decision of refusal under the Decree is possible only if grounded on reasons related to a validly adopted and properly published spatial development plan. The provisions of such a plan may be concretized, but only through acts containing general rules.

The authors also point out that the interpretation of art. 7(2) of the Decree on land in Warsaw, even though it was adopted in different political conditions, must take account of the current constitutional directives, including but not limited to the requirement to protect the rights and freedoms of individuals.