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SPECJALNE
Z OKAZJI 40-LECIA
NACZELNEGO
SĄDU ADMINISTRACYJNEGO
W POLSCE
1980–2020

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WYBRANE ORZECZNICTWO
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(opracował/prepared by *dr hab. Marcin Wiącek*)

Uchwały / Resolutions

Wyroki Izby Ogólnoadministracyjnej /
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Abstract: The paper presents the history of the administrative courts system in Poland and the challenges it faces. The existence and functioning of the administrative courts system over the last 40 years reflect respect for the concept of a law-abiding state. Administrative courts have a positive impact both on the protection of the rights of individuals against unlawful actions of public authorities and on efficient functioning of public administration. Challenges faced by this system include the need for further reflection on the scope of jurisdiction, the adjudicatory powers, the taking of evidence, and the two-instance nature of the administrative court procedure.

Keywords: administrative courts system, jurisdiction of courts, cassation model of adjudication, taking of evidence, two-instance nature of court proceedings

Abstract: This summary presents changes in administrative court procedure – from framework regulation of certain procedural matters, accompanied by extensive mutatis mutandis application of other procedures, to the idea of establishing a separate administrative court procedure. It is worth noting that references in regulations concerning administrative court system have a long tradition in Poland. The paper discusses provisions applicable in proceedings before the Supreme Administrative Tribunal before the war and then before the Supreme Administrative Court in the period of 1980–1994. Attention has been drawn to the problem of references to mutatis mutandis application of the provisions of the Administrative Proceedings Code and the Civil Proceedings Code in administrative court proceedings pursuant to the Supreme Administrative Court Act of 1995. The author cites opinions of legal scholars that the next administrative court system act should include procedural provisions resulting from mutatis mutandis application of the Administrative Proceedings Code and the Civil Proceedings Code in the then current legal state. The final remarks concern the present legal circumstances. The conclusion emphasizes that the state of uncertainty as to the procedural rights and guarantees for participants in administrative court proceedings led to the decision that the best way forward would be an exhaustive regulation of administrative court proceedings.

Keywords: mutatis mutandis (as appropriate) application, references, history of the administrative court system, Supreme Administrative Court, Supreme Administrative Tribunal

Abstract: This paper pertains to the procedural guarantees relevant to proceedings before administrative courts. Such guarantees are being considered in the context of the following assumptions: 1) access to court, 2) independence and impartiality of the court, 3) fair and public hearing, 4) hearing within a reasonable time limit, 5) assistance in access to court. As emphasized by the author, guarantees of fair trial are firmly rooted in the tradition of cassation rulings, dating back to the Habsburg monarchy. However, standards of international and EU law as well as experience of other legal systems had a significant impact on the development thereof. The author also draws attention to the trend of extending the scope of adjudication on the merits by the courts holding review powers over public administration. It is his opinion that this phenomenon translates into the protection of individual rights and interests.

Keywords: rule of law, procedural guarantees, European standards of administrative court system, jurisdiction of administrative courts, rules of procedure before administrative courts

Abstract: This paper discusses the issue of remit to examine consistency of the law with the constitution, afforded to the Constitutional Court and to administrative courts pursuant to the 1997 Constitution, while taking into account the constitutional provisions previously applicable in Poland. The Constitutional Court reviews the hierarchical consistency of legal norms, and focuses its analysis of statutes, ratified international agreements and legal provisions issued by central state authorities. On the other hand, it is the task of administrative courts to control the operation of administration, including whether resolutions made by local government bodies and normative acts of governmental administration bodies are consistent with statutes. There are situations, however, where the Constitutional Court makes rulings concerning acts within the review remit of administrative courts and those where an administrative court rules on provisions within the competence of the Constitutional Court. As a result, an administrative court may be considered as a constitutional court.

Keywords: Constitution, Constitutional Court, administrative court, competence dispute

Abstract: The paper attempts to assess the hitherto dialogue of Polish administrative courts and the Court of Justice within the preliminary rulings procedure. Before discussing the practice of applying this procedure, its main and specific features, character and significance for ensuring the uniformity of application and interpretation of the Union law were discussed. Then, selected requests for preliminary rulings made by Polish courts were presented in order to illustrate the fields and doubts that inclined administrative courts to make requests for preliminary rulings to the Court of Justice. Furthermore, the conducted analysis covers occurring practical problems related to the application of the preliminary ruling procedure. The article also addresses actual and potential difficulties related to the competitiveness of various forms of judicial dialogue and defines postulates enabling ensuring balance between various forms of dialogue, which can be conducted by administrative courts with other judicial authorities.

Keywords: judicial-administrative procedure, the European Union law, preliminary rulings procedure, dialogue between national courts and the Court of Justice

Abstract: Administrative courts, especially the Supreme Administrative Court, have been conducting a dialogue with the European Court of Human Rights for years. It consists in, on the one hand, Polish courts taking into account theses resulting from the judicial decision of the ECtHR and, on the other hand, in the ECtHR referring to the judicial decisions of Polish courts in judgements issued on the basis of cases with a relevant judicial-administrative thread. In its hitherto activity, the SAC often based on standards established by the ECtHR. It happened, among others, while examining cases regarding the protection of sexual minorities, foreigners or assessment of the lengthiness of proceedings. In the ECtHR's judicial decisions regarding cases which were examined at the national stage by the SAC, one issue prevails – the lengthiness of proceedings. However, the nearest years will bring an opportunity to reinforce the dialogue between both courts, since the Court has recently communicated several applications regarding many crucial problems that had to be resolved by the SAC. Therefore, future judgement issued by the ECtHR may lead to the reinforcement or the necessity to change the jurisprudence of Polish administrative courts.

Keywords: ECtHR, SAC, judicial dialogue, human rights

Abstract: This paper pertains to the relation between administrative courts and the Constitutional Court. In Poland, the Constitutional Court is the only body competent to review with commonly binding force the constitutionality of legal provisions. Courts may submit legal questions to the Constitutional Court in respect of whether a given provision to be applied in a court case is consistent with the Constitution (Article 193 of the Constitution). However, courts are afforded the authority – pursuant to Article 8(2) of the Constitution – to apply the Constitution directly. This authority permits a court to use the constitutional regulation in a case under consideration, which does not entail infringing upon the competence of the Constitutional Court. The paper presents selected cases, where both administrative courts and the Constitutional Court issued their rulings. Examination of those cases proves that administrative courts and the Constitutional Court engage in an effective dialogue in their decisions.

Keywords: Constitution, Constitutional Court, application of the Constitution, Supreme Administrative Court, legal question

Abstract: Uniformity of judicial decisions is one of the most important values that affect the image and authority of the justice system. Mechanisms to ensure uniformity of judicial decisions can be found in not only in strictly procedural solutions, but also in the selected system model, on the one hand, and in informal organizational solutions not regulated by generally applicable law, on the other. A factor, often overlooked in scientific literature, that contributes to ability to ensure elementary uniformity of judicial decisions is an information-technology tool, namely the Central Database of Judicial Decisions of Administrative Courts, which continues to be a unique on Poland's national scale. An analysis of the judicial decisions of administrative courts made in the course of their forty years of activity (with particular emphasis on the 16 years of existence of the two-instance administrative court system) indicates that the existing mechanisms that ensure uniformity of administrative courts' rulings have been effective.

Keywords: uniformity of judicial decisions, Judicial Decisions Bureau of the Supreme Administrative Court, mechanisms to ensure uniformity of judicial decisions, resolutions of the Supreme Administrative Court, two-instance procedure, supervision, autonomy of the administrative court system

Abstract: In cases related to access to public information, administrative courts adjudicate directly on the form of enforcement of public subjective right, which is enshrined in Article 61 of the Polish Constitution. The trends in case-law developed for nearly 20 years illustrate the way of solving key problems on the grounds of the Act on Access to Public Information. Administrative courts have adopted in their case-law a broad subjective scope of beneficiaries of the right of access to public information and a broad meaning of the term "public information". The case-law of the Supreme Administrative Court has been playing (and continues to play) an important role in the understanding of the concepts contained in the Act, because it has educated tens of thousands of public administration bodies, which in their activities may be faced with the need to process a request for public information. The rulings of the Supreme Administrative Court also arouse great interest among the public, manifested by the broadcasting of hearings and announcements of judgements in the media and the production of numerous press and journalistic publications. Statistics on complaints about authorities' failure to act with regard to the provision of public information, as well as about decisions refusing to provide public information, show a general trend of a constant increase in the number of administrative courts' rulings in this area.

Key words: public information, administrative courts, case-law