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Report

The Annual General Meeting of Judges of the SAC was held on 22 April 2013 in the Meeting Hall at the seat of the Supreme Administrative Court. The General Meeting adopted, by way of a resolution, the *Information on activities of the administrative courts in the year 2012* presented by professor Roman Hauser, the President of the SAC.

Apart from the President of the SAC and three Vice-Presidents: professor Marek Zirk-Sadowski, Andrzej Kisielewicz, Ph.D. and Mr Włodzimierz Ryms, as well as judges of the SAC and the Presidents the VACs, the Annual General Meeting of Judges of the SAC was attended by official guests – the representatives of the constitutional authorities of the state and the representatives of the associations of the legal professions: Mr Bronisław Komorowski – the President of the Republic of Poland, Mr Cezary Grabarczyk – the Deputy Speaker of the Sejm, senator Aleksander Pociej representing the Speaker of the Senate, Wojciech Hajduk, the Undersecretary of State at the Ministry of Justice representing the Prime Minister and the Minister of Justice, professor Andrzej Rzepliński, the President of the Constitutional Tribunal, Mr Stanisław Dąbrowski – the First President of the Supreme Court, Ms Małgorzata Niezgódka-Medek – the Vice-President of the National Judicial Council representing the President of the National Judicial Council, Ms Marzena Kowalska – the Deputy Attorney General, professor Irena Lipowicz – the Civil Rights Commissioner, Mr Jacek Jezierski – the President of the Supreme Audit Office, Mr Stefan Jaworski – the Head of the State Election Committee, Mr Andrzej Lewiński – the Deputy Inspector General for the Protection of Personal Data, Ms Hanna Majszczyk – the Undersecretary of State at the Ministry of Finance, Ryszard Kalisz, MP – the Head of the Sejm Committee for Justice and Human Rights, Mr Piotr Gryska – the Vice-President of the Government Legislation Centre, Mr Krzysztof Łaszkiewicz – the Secretary of State at the Chancellery of the President of the Republic of Poland, Mr Roman Kapeliński – Director of the Legislative Office at the Senate Chancellery representing the Head of the Senate Chancellery, Mr Antoni Cyran – the Head of the Chancellery of the First President of the Supreme Court, Mr Maciej Graniecki – the Head of the Constitutional Tribunal Office, Mr Kazimierz Czaplicki – the Head of the National Election Office, Mr Bartosz Sowier – the Director of the Office of the Ombudsman for Children, Mr Andrzej Dorsz – the Director of the Bureau of Law and Political System at the Chancellery of the President of the Republic of Poland, Mr Jacek Trela – the Vice-President of the National Bar Association, Mr Maciej Bobrowicz – the President of the National Council of Legal Advisors, Ms Anna Korbela – the President of the National Chamber of Patent Attorneys and Mr Tomasz Michalik – the President of the National Council of Tax Advisors.

Upon official opening of the Annual General Meeting and greeting the guests professor Roman Hauser, the President of the SAC, presented information on the activities of the Supreme Administrative Court and the Voivodship Administrative Courts in the year 2012, emphasising that this presentation was aimed at assessing the last year's activities and determining the directions for the years to come (the full speech is available on page 9 of this issue).

The first of the invited guests to take the floor was Mr Bronisław Komorowski, the President of the Republic of Poland. At the beginning he emphasised, quoting Piotr Skarga's sentence that "Justice is the foundation of Poland", that the administrative courts to a significant degree participate in building these foundations being this part of the administration of justice which under the Constitution acts as the guardian of the legal functioning of the public administration. He stated that the decision-making activity of the administrative courts represented a significant input in the strengthening of the Polish state and for this reason the citizens highly value the predictability of the judicial decisions which formulate clear criteria which in similar cases will be identically applied. He stressed that an administrative court plays the role of a tool effectively controlling and counterbalancing the executive branch of the government. It was with approval that he noted the tendency to expand the boundaries of protection of an individual's right that is also visible in the decision-making and resolution-adopting activities of the SAC and the decisions of the VACs. In particular, he positively evaluated the fact that the decisions of the administrative courts promoted the principle *in dubio pro tributario*, that the guarantees of a right to trial were expanding and that the Constitution was directly applied. He emphasised the importance of the correct understanding of the provisions of law and the stability of law. He was convinced that due to its resolution-adopting activity the SAC to a significant degree improves the depth of the legal awareness and the certainty of law.

In his opinion the institution of signalling available to the administrative courts allowing them to have actual influence on the improving functionality of the administrative procedures demonstrating the effort the administrative courts make in order to guarantee that every citizen has the right to a fair administrative procedure is of equal importance for the shape of the relations between the state and the citizens and the protection of an individual's rights. He also stated that it was a kind of guarantee that an authority which had breached law would not avoid punishment. In his opinion this right available to a court strengthens the actual implementation of the constitutional principle of the trust the citizens have in the state.

The President informed that exercising his legislative initiative he would submit to the Sejm, once the work at the Chancellery of the President and the consultations of the political parties are completed, the draft Act Amending the Act on Proceedings Before Administrative Courts. At the end he wished that the citizens appeared before the administrative courts with hope and the officials with certain amount of anxiety.

Then the President of the SAC read out to those gathered the letter from Ms Ewa Kopacz, the Speaker of the Sejm, to the Annual General Meeting of Judges of the Supreme Administrative Court (a copy of the letter is available on page 21 of this issue).

Then professor Andrzej Rzepliński, the President of the Constitutional Tribunal, took the floor. At the beginning he emphasised that the Constitutional Tribunal noted that the decisions of the SAC were increasingly based on the arguments derived directly from the Constitution or the decisions of the Constitutional Tribunal. He illustrated his claim using an example the judgement of the SAC dated 1 February 2012 (II OSK 2160/10) in which the SAC used the constitutional arguments as the basis to formulate a critical opinion on the practice of the municipalities which for many years avoided adopting the zoning plans. He evaluated as extremely important from the perspective of the Constitutional Tribunal the jud-

gement of the seven judges of the SAC dated 25 June 2012 (I FPS 4/12) in which they formulated the view on the effects of the Constitutional Tribunal postponing the expiry date of an unconstitutional provision of law and admitted that the issue of the effects of such postponing was one of the most difficult problems related to the interpretation and application of the Constitution. In the reasons for its judgement the SAC assumed that the postponing had no "automatic" legal effects (in the form of an obligation to apply the defective provision in the postponing period or in the form of refusal to apply such provision) and the courts and the administrative authorities, on a case by case basis, should take into consideration the reasons for such postponing, the exceptional nature of this institution, the type and extent of the violation of the constitutional standards as well as the importance of such provision for the proper functioning of the entire branch of law. The President of the Constitutional Tribunal pointed out that the contribution to the court interpretation of the constitutional principles of issuing regulations that the Constitutional Tribunal finds interesting is the judgement of the SAC dated 31 January 2012 (II GSK 334/11) in which the SAC declared that the authority issuing a regulation must not only look for guidelines in the act implementing a given act of secondary law of the European Union but also take into account the contents of the norms included in the implemented act, notwithstanding the fact if the authorising provision included in the implementing act explicitly provides so. The President of the Constitutional Tribunal noted that the above examples proved that the administrative courts remained the main partners of the Constitutional Tribunal when it came to guarding the constitutional standards and their protection against abuse by the public authorities because they control the legality and constitutionality of the administrative acts.

He praised the administrative courts for implementing the judgements of the Constitutional Tribunal whose general binding force and finality are unquestionable. He noted that the administrative courts even attribute the "law-making" character to the judgements of the Constitutional Tribunal illustrating his view with the judgement of the SAC dated 9 October 2012 (I FSK 2132/11) in which the SAC stated that the expression "general applicability" used in the Constitution approximates the value of these judgements to the source of the generally applicable law within the meaning of Art. 87.1 of the Constitution, as regards the scope of the addressees who should respect and implement the passed judgements. As an example of the practical implementation of the judgement of the Constitutional Tribunal (dated 16 December 2009, K 49/07) he quoted the judgement of the SAC dated 19 April 2012 (II OSK 1916/11) in which the SAC, departing from the literal interpretation of the Act on Benefits for the Persons Deported to Perform Forced Labour During World War II and Imprisoned in the Labour Camps by the Third Reich and the Soviet Union dated 31 May 1996, adopted an interpretation that made it possible to award the benefits to the persons deported to perform forced labour from the territory of the Second Republic of Poland.

In the further part of his speech the President of the Constitutional Tribunal declared that the Constitutional Tribunal showed respect to the powers of the administrative courts which demonstrated itself in the fact that the full bench of the Constitutional Tribunal discontinued the proceedings initiated with the constitutional complaints filed by the persons who the President of the Republic of Poland refused to appoint as judges (decision of the Constitutional Tribunal dated 19 June 2012, SK 37/08) deciding the SAC must first express its opinion if the administrative courts are authorised to control the decisions of the President of the Republic of

Poland refusing to appoint a person as a judge. He emphasised that the decisions of the SAC and the VACs were the source of important arguments in the process where the Constitutional Tribunal controls the constitutionality of law.

In the final part of his speech the President of the Constitutional Tribunal focused on the analysis of the administrative courts' legal questions to the Constitutional Tribunal being the basic mechanism of cooperation between these two bodies. He informed that in 2012 the administrative courts referred 8 legal questions to the Constitutional Tribunal. Only in 2 cases the Constitutional Tribunal decided to discontinue the proceedings initiated by the administrative courts due to the fact that its decision was no longer necessary because the Constitutional Tribunal had declared the relevant provisions unconstitutional in the judgement pronounced before the Constitutional Tribunal even managed to consider these legal questions (decisions of the Constitutional Tribunal dated 12 January 2012, P 9/10 and dated 13 September 2012, P 32/10).

The President of the Constitutional Tribunal informed that the average time of waiting for the Constitutional Tribunal to consider a legal question was app. 19 months. Therefore referring a groundless or irrelevant question may violate a party's right to obtain a court decision without undue delay. He stated that the legal questions referred in 2012 were of high quality. Each of them tackled important constitutional problems, including these concerning the protection of marriage (decision of the SAC dated 26 July 2012, II GSK 964/11, the Constitutional Tribunal: P 40/12), family (decision of the VAC in Poznań dated 12 September 2012, II SA/Po 543/12, the Constitutional Tribunal: P 38/12), access to public information (decision of the SAC dated 22 March 2012, I OSK 20/12, the Constitutional Tribunal: P 25/12) or imposing an administrative fine and a penalty for a fiscal offence on the same person for the same act (decision of the VAC in Gliwice dated 21 May 2012, III SA/Gl 1979/11). The President of the Constitutional Tribunal emphasised that the legal questions signal the problem with the quality of the normative acts, including these of their defects which are unacceptable in the light of the constitutional standards of proper legislation. These defects include insufficient definiteness of regulations (decision of the VAC in Poznań dated 10 October 2012, II SA/Po 583/12, the Constitutional Tribunal: P 43/12) or defectiveness in constructing the interim regulations (decision of the VAC in Gorzów Wielkopolski dated 23 August 2012, II SA/Go 362/11, the Constitutional Tribunal: P 36/12). He expressed his conviction that the bad practices of the legislator undermined the trust of the citizens in all the institutions of the state, in particular when these practices were reflected in the defective tax regulations. He noted that out of 9 legal questions the administrative courts referred before 2012 which were pending before the Constitutional Tribunal a few concerned the constitutionality of tax regulations (decisions of: the SAC dated 18 December 2009, I FSK 1609/08; the VAC in Kraków dated 16 November 2010, I SA/Kr 1387/10; the VAC in Białystok dated 21 June 2011, I SA/Bk 99/11 and the VAC in Kraków dated 12 May 2011, I SA/Kr 38/11). Concluding, the President of the Constitutional Tribunal stated that the ambiguity, incoherence and constitutional impropriety of the legislative solutions is even more onerous, because the taxes affect the household budgets and commercial transactions. Furthermore, in his opinion the state was unable to obtain the intended budgetary revenues using inefficient fiscal regulations. Closing his speech, he congratulated the judges of the administrative courts on their judicial decisions in 2012.

Then Mr Stanisław Dąbrowski, the First President of the Supreme Court, took the floor. Praising the SAC for its judicial attainment, he remembered that the administrative courts as a structural element of the idea of a state of law ensure the protection of an individual's rights in the domain of public law. He pointed out that the meeting held on that day was a good opportunity to draw attention to the common problems affecting the functioning of the presidents of all courts and resulting from the decisions of the administrative courts in the area concerning the information obligations of the courts in the context of the Act on Access to Public Information. He stated that in practice it was difficult to draw the line between the need to ensure the openness of public life and the need to protect private, family and personal life of the persons holding public functions as well as other persons entering into factual and legal relations with public entities. He spoke approvingly of one of the recent decisions of the SAC (judgement of the SAC dated 5 March 2013, I OSK 2872/12 and judgement of the VAC in Warsaw dated 13 September 2012, II SA/Wa 1002/12) in which the SAC ruled that a citizen invoking the provisions concerning access to public information must be granted access to the data including the dates of birth of the individual judges of the Supreme Court in connection with their appointment as judges. He emphasised the need to discuss the relations between the Act on Access to Public Information and the specific acts concerning the so-called protected information. He remembered that the administrative courts in their decisions in the cases where one of the parties was the President of the Supreme Court opted for the supremacy of the provisions of the Act on Access to Public Information. He pointed out that the next important issue in this area is – in the light of the constitutional standards – the performance of the information obligations imposed on the courts in the area of making public the information on court proceedings, decisions made and case lists. He stated that the practical solutions in the area of the so-called anonymisation of the court decisions may require reconsideration not only in the context of the mentioned provisions of the Constitution, but also the existing or drafted solutions at the level of EU law. He underlined that in his opinion the present legal status provoked the question of the extent to which the existing regulations concerning the structure of courts and the court procedures may be recognised as separate regulations in the light of the Act on Access to Public Information.

In the further part of his speech the First President of the Supreme Court signalled the problem of the administrative courts respecting the right to trial to the extent it is to serve also the public authorities whose acts, actions or inaction and excessive duration of proceedings may be controlled by courts. He emphasised that the right to trial is not merely the right of the citizens or the organisations of the citizens bringing various proceedings to the administrative courts, but it is also supposed to serve the bodies of the controlled public authorities. At the end, congratulating the administrative courts on the high professional level of their decisions, the First President of the Supreme Court wished the administrative courts further strengthening of their authority and positive shaping of the sense of the legal safety in the community and economic life in Poland.

Then Mr Wojciech Hajduk, the Undersecretary of State at the Ministry of Justice representing Donald Tusk, the Prime Minister, and Jarosław Gowin, the Minister of Justice, took the floor. He read out to those gathered the letter from the Prime Minister to the Annual General Meeting of Judges of the Supreme Administrative Court (a copy of the letter is available on page 22 of this issue).

The next guest to take the floor was professor Irena Lipowicz, the Civil Rights Commissioner. Referring to the data on the number of tax cases compared to other categories of cases the SAC and the VACs cognised in 2012 presented by the President of the SAC she criticised the institution of individual tax interpretations referring to its controversial character in the light of the constitutional system of the sources of law. The significant percentage of the issued interpretations is appealed against to courts and finally revoked as a result of the SAC's judgement which provokes the question whether it makes sense to incur the costs of this institution, including these related to its court control by the administrative courts exercised professionally and in order to protect the rights of an individual. She stated that if tax regulations require issuing so many interpretations, then they must be quickly amended.

She referred to the creation of the system of free legal aid. She wished the Minister of Justice had not declared that Poland would abandon the creation of such system in the nearest years. Such attitude exposes Poland to the risk of international-law liability and generates financial burdens for the citizens who are not well oriented in the prevailing procedures and frequently, without sufficient funds to obtain legal aid, are not aware of their rights. She pointed out that one third out of 58,000 complaints that the Civil Rights Commissioner receives each year are made by such persons. If they could use free legal aid, their cases might be effectively handled at the pre-court stage. She appealed to the President and the Prime Minister asking them to reconsider the problem of creating the system of free legal aid and she requested the representative of the Minister of Finance to assess the costs the state budget incurs as a result of the lack of free access to the administration of justice. She expressed the opinion that entrusting the non-governmental organisations with running free legal aid centres would reduce costs without generating unnecessary bureaucracy and would positively impact the administration of justice. The costs are growing due to the lack of an effective system of administrative mediation. The mediation proceedings are cheaper, bring the parties to an amicable resolution of the dispute and render a part of the work performed by the state apparatus unnecessary, thus reducing the costs of the administration of justice. She criticised the system of assessing a judge who allowed mediation in civil and criminal proceedings, and in particular to treat an adjournment in the proceedings as an excessive duration of proceedings. She informed that as far as the system of mediation and free legal aid was concerned Poland, as an EU Member State, was behind Bulgaria and Romania.

Then she focused on the problem of the so-called administrative cash penalties which requires urgent reconstruction in the context of thousands of complaints the Office of the Civil Rights Commissioner receives every year. Neither an administrative sanction nor an administrative cash penalty are statutorily defined. There is no unified system of imposing these penalties and the institution of exculpation in the event of force majeure. Each entity on whom a penalty is imposed should be allowed to appeal against the final decision imposing such administrative penalty. There should be introduced an institution of time-barring of liability for an administrative tort and the possibility to enforce the imposed cash penalty. She expressed the conviction that the time had come for the Administrative Procedure Codification Committee to be created. She pointed out that the citizens have a negative attitude towards the lack of clear criteria of liability for an administrative tort and imposition of administrative cash penalties. The lack of a uniform nomenclature concer-

ning this type of penalties in the applicable laws and regulations makes the citizens disoriented. Due to the lack of clear criteria in this area not only the authorities but mainly the courts do not have the tools allowing them to properly assess the amount of the imposed penalty. She emphasised that the present state of affairs in this area may involve the international-law liability because in the light of Recommendation No. R (91) 1 of the Committee of Ministers to Member States on Administrative Sanctions dated 13 February 1991 they are increasingly often treated as penal sections. Furthermore, she pointed out that the European Court of Human Rights in Strasbourg started defining a criminal case more widely as a result of which Poland may be potentially held liable for the violation of the guarantees set out in Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

She also mentioned the decisions in which the administrative courts, referring to the standards of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the judicial decisions of the European Court of Human Rights in Strasbourg restored – in the opinion of the Civil Rights Commissioner – justice in the matters which stirred up controversy in the light of the sanction-like nature of the fee for the non-payment of the recycling fee (judgement of the SAC dated 5 May 2012, II OSK 2377/12).

At the end Madame Commissioner drew attention to the problem of the legal protection and the rights available to the foreigners staying in Poland in the guarded centres and the prison-like regulations prevailing there. She appealed to the judges asking them to show sensitivity in the cases involving foreigners, especially these facing the risk of deportation and who – unlike the foreigners who are free – are so uncertain of their future.

Ms M a ł g o r z a t a N i e z g ó d k a-M e d e k – the Vice-President of the National Judicial Council appreciated the decision-issuing productivity of the administrative courts due to which they are perceived as the part of the administration of justice functioning effectively and quickly and having the systemic structure fully implementing the principle of their separation and independence from other authorities. Then she read out the letter from Mr A n t o n i G ó r s k i , the President of the National Judicial Council, who pointed out that the systemic and jurisdictional autonomy of the three highest court instances in Poland: the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court might result in discrepancies between their interpretations of law, which must be avoided because it results in legal disorientation with all its negative effects. When such a situation arises, the way in which one supreme court treats a different view of another supreme court in the sense of the argumentation which does not discredit a different position, is of importance. He quoted as an example the resolution of the seven judges of the SAC dated 15 June 2011 (I OPS 1/11) that the status of Saturday is equivalent to that of a statutory holiday in the light of the Administrative Procedure Code. In this event the court took into account the systemic and purpose-related grounds and the fact that the public administration offices are closed on Saturdays and the post offices are open only in big cities. Adopting this resolution the SAC did not share the opinion of the Supreme Court in the same case (concerning the method of calculating a time limit under the provisions of the civil law) expressed in the resolution of the seven judges of the Supreme Court dated 25 April 2003 (III CZP 8/03). The Supreme Court decided Saturday was not a statutory holiday in the light of the Civil Code. In his letter the President of the National Judicial Council approved of the resolution of

the SAC and appreciated the courtesy and elegance of its argumentation in relation to a different standpoint. He was convinced that the domination of such attitude in the entire legal and community discourse would be a positive phenomenon.

Having read out the letter of the President of the National Judicial Council, Ms Małgorzata Niezgódka-Medek, who is also a judge of the SAC, pointed out that the National Judicial Council was aware of the length of the nomination procedure and its negative effects. It is the effect of the new Act on the National Judicial Council adopted two years ago and this part of the law on the system of common courts which applies to appointing judges of administrative courts. She pointed out that the solutions adopted in these acts reflect on the one hand the constitutional guarantees of ensuring equal and transparent procedure of access to public service and on the other hand result in lengthening the process of filling the vacant judicial positions which undermines another constitutional guarantee, i.e. that a case be cognised by an independent and autonomous court without undue delay. She emphasised that the Ministry of Justice was working on amendments to the provisions concerning the nomination procedure aimed at its facilitation.

The last of the invited guests to speak was Ms M a r z e n a K o w a l s k a – the Deputy Attorney General representing Mr A n d r z e j S e r e m e t, the Attorney General. She pointed out that both the bodies of the administration of justice and the public prosecutors were elements of the system of bodies of legal protection. She remembered that the detailed preconditions and forms of a public prosecutor's participation in the proceedings before administrative courts were set out in the Law on Proceedings Before Administrative Courts which reserves certain remedies to the exclusive competence of the Attorney General. She emphasised that due to these regulations the Attorney General found the resolution-adopting activity of the SAC particularly close. In the course of his term he thrice exercised the right to request the SAC to adopt a resolution. These requests concerned the provisions of the laws and regulations on road traffic, social security and personal income tax.

She also informed that in 2012 the attorneys from the Office of Attorney General participated in the sessions of seven judges of the SAC and presented their opinion in 29 cases concerning a resolution to be adopted by the SAC. In most of these cases the SAC shares the attorneys' opinion. She noted that the maters on which resolutions were adopted increasingly often concerned the norms of European law as a result of which a reference to the judicial decisions of the EU courts and the EU law must be made.

Then she emphasised the positive effects of the decisions of the administrative courts on the process of application of law by the public prosecutors who actively exercise the rights available under the Law on Proceedings Before Administrative Courts, filing complaints to the VACs and appeals against their non-final and non-binding decisions as well as petitioning for their participation in the court proceedings. She noted that the purpose of the participation of a public prosecutor in the proceedings before an administrative court at every stage should be the implementation and strengthening the principle of protection of the rule of law and the human and citizen rights, where this participation does not replace the parties in the exercising of their procedural rights.

She informed that in 2012 the public prosecutors initiated 572 proceedings before the VACs. The courts allowed 379 out of 442 cognised complaints. In turn in 2012 the SAC received 32 cassation complaints, cognised 27 of them and allowed 18. She also noted that in 2012 the public prosecutors participated in 693 cases be-

fore the VACs and in 48 sessions of the SAC. She hoped that the above non-criminal area of activity of the public prosecutor's office, aimed at protecting the interests of the Republic of Poland, will positively affect its image as the institution protecting the rule of law.

After a break that followed the official part, the meeting was reopened. The General Meeting of Judges of the SAC unanimously resolved to approve the *Information on activities of the administrative courts in the year 2012*.

Then the General Meeting of Judges of the SAC elected the members of the SAC's Board for the term 2013-2016, as well as presented opinions and selected the candidates for the vacant positions of the judges of the SAC in the Financial, Economic and General Administrative Chamber.

The SAC's Board for the term 2013-2016 will consist of: Maria Czapska-Górnikiewicz, Joanna Kabat-Rembelska, Irena Kamińska, Andrzej Kuba, Sylwester Marciniak, Jan Rudowski, Marek Stojanowski, Aleksandra Wrzesińska-Nowacka and Janusz Zajda.

The President of the SAC closed the General Meeting of Judges of the SAC.

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Summary

of the article: **The procedural issues of the court control of the acts of local law**

This article presents the issues of the court control of the acts of local law made by the local government authorities, the voivods and the territorial bodies of the special government administration, discussed in the systemic aspect, in the context of the law on Proceedings Before Administrative Courts dated 20 August 2002 (consolidated text: Journal of Laws of 2012, item 270 as amended) and the systemic acts: the Act on Local Government in Municipalities dated 8 March 1990 (consolidated text: Journal of Laws of 2013, item 594), the Act on Local Government in Poviats dated 5 June 1998 (consolidated text: Journal of Laws of 2013, item 594), the Act on Local Government in Voivodships dated 5 June 1998 (consolidated text: Journal of Laws of 2013, item 596) and the Act on Voivodes and the Government Administration in Voivodships dated 23 January 2009 (Journal of Laws of 2009, No. 31, item 206 as amended) and with reference to the decisions of the administrative courts.

The author notices numerous, often controversial problems of controlling the acts of local law, resulting from their legal nature and numerous legal bases of such control and proposes their solutions. The article discusses the legal grounds of the court control of the acts of local law and the scope of this control, presents the categories of the entities authorised to initiate the court control of the acts of local law and the differences in the legal regulations of their capacity to file a complaint as well as the time limits and procedures of filing complaints against the acts of local law. The author analyses, for the first time in specialist literature to such extent, the specific procedural problems related to filing complaints against the acts of local law, including these related to withholding the execution of these acts and suspending the court proceedings, as well as the powers of the courts adjudicating on the complaints against the acts of local law.

The author extensively discusses the disputes concerning the admissibility of filing complaints against the legislative inaction of the local government and government administration authorities and supports the thesis that the present legal status does not provide for the grounds to adjudicate in this respect.

Summary

of the article: **The court control of the acts of local law – the substantive-law aspect**

The primary issue amongst the issues of the substantive-law character arising in the course of the court control of the acts of local law is the necessity to determine explicitly if the controlled act has the features of an act of local law. The explicit determination of this issue precedes all further controlling actions aimed at verifying if the conditions of its legality were observed. Given that in practice explicit qualification of a given act to the category of local law causes serious difficulties resulting in fundamental discrepancies in court decisions, this article aims to identify the basic features a given act must display in order to be qualified as an act of local law. This analysis intends to create a universal model that applied to a given act would make it possible to determine its legal nature.

The first of the most important features of the acts of local law is their normative character consisting in the necessity to include directive-like utterances imposing on their addressees a specific behaviour: order, prohibition or authorisation. It is a condition precedent of qualifying such an act to the category of local law, but of course an insufficient one, because these legal norms many not be discretionary. They must be abstract, universal and generally applicable. If an act of local law is to be legal, it must be based on an explicit authorisation of at least statutory rank, and this statutory law-making competence in principle may not be sub-delegated. Given that the legislator did not explicitly specify that the acts of local law implement parliamentary acts, their relation to an act may be more free that in the case of regulations. It does not mean, however, that they may be autonomous, because in relation to a parliamentary act they always have an implementing role.

The presented catalogue of features the acts of local law must display is not a perfect model fully applicable in every situation. It turns out that the category of the sources of local law is very complicated and diverse, escaping a fully uniform specification. For this reason the article also includes a study of cases – exceptions to these rules, and, therefore, the acts, which – escaping these general characteristics – should be qualified as the acts of local law.

Summary

of the article: **The authorisation to issue a local-government act of local law in the context of the Constitution of the Republic of Poland**

The author interprets the provisions of the Constitution setting out the principles of issuing the acts of local law by the local government bodies.

Pursuant to Art. 94 of the Constitution: "The bodies of local government and territorial bodies of government administration, acting on the basis of and within limits specified by the statute, shall enact the acts of local law applicable to their territorially defined areas of operation. The principles of and procedures for enacting the acts of local law shall be specified by statute". The acts of local law referred to therein are only the general and abstract acts. The resolutions including the individual and specific norms are not acts of local law.

In principle, an act of local law issued in the absence of a statutory provision including the authorisation to issue such an act is illegal. The same goes for an act whose legal basis was cancelled. The exception to the above principle are the acts concerning "the internal system of the units of local government" (Art. 169.4 of the Constitution). The power to issue them stems directly from the Constitution, so it does not need to be repeated in a statute

The Constitution introduces a lower standard for the necessary contents of a provision including an authorisation to issue an act of local law than in the case of the delegation to issue an implementing regulation to a statute. As a result, the standard of evaluating the consistency of the regulations with the statutes developed in literature and judicial decisions may not be directly applied to controlling the legality of the acts of local law. Furthermore, if following the amendment to the authorising provision the act of local law remains consistent with such provision, then it is not even illegal – and therefore, moreover, it did not cease to be binding. On the other hand, the inconsistency, if any, of an act with the amended authorisation should be qualified as "illegality" which, contrary to the lack of binding force, must be declared in the applicable court proceedings or before the Constitutional Tribunal.

Summary

of the article: **The problem of competition of charges and a complaint in the Act on Enforcement Proceedings in Administration**

The correctness of actions taken or decisions made in the enforcement proceedings in administration is controlled using various remedies playing their roles at various stages of these proceedings. Their common assumption is coherence, consistency and adequacy to the purposes or needs to initiate supervision over enforcement and the instruments of coercion applied therein. It is also important to ensure the appropriate procedural guarantees to the parties to the proceedings, in particular the obligor.

However, the Act on Enforcement Proceedings in Administration involves the problems of conflict consisting in the overlapping scopes of application of the provisions regulating various types of the means of appeal, resulting from the weaknesses of the adopted solutions or the improper practice of the enforcement bodies or the bodies controlling this sphere of the administrative courts. Such cases are the application of Art. 122.3, 128.4, 139.2, 143.2 and 150.2 of the Act on Enforcement Proceedings in Administration operating three different means of appeal.

In this perspective the purpose of the article is to disclose the sources of the potential conflict of norms resulting from the analysed provisions, to systematise the disputable issues signalled by the doctrine or the judicial decisions and to outline the criteria used to delimit the analysed remedies.

What the author finds particularly important is the need to preserve coherence in the systems of the means of appeal against the Act on Enforcement Proceedings in Administration and limiting or eliminating the results of the conflict. In his opinion the priority of the interpretation and application of the commented provisions should be the desire to maintain the clarity and cohesion of the means of appeal in order to provide adequate and effective protection.

The value of the duly structured and applied remedies consists in balancing two values: the stabilisation of the legal status of an individual and providing that individual with such guarantees protecting against the illegal performance of the enforcement actions which implement the system of the remedies understandable for the individuals and predictable in the application and results.

Summary

of the article: **The role of the files of the case for the effects of the administrative-court control of the functioning of public administration**

This article discusses the problems of using the files of the case in the administrative-court control of the functioning of public administration. The authors point to the principle of adjudicating on the basis of the files of the case which also include the administrative files of the case prevailing in the proceedings before administrative courts. They conclude that these files play a crucial role in the process of controlling the functioning of public administration because an administrative court in principle is not competent to determine the facts of the case in an administrative case in which it adjudicates. This is the role of a public administration body. Given the general principle of written form prevailing in the administrative procedure, the facts of the case should be reflected in the administrative files of the case.

The authors formulate the thesis that the completeness and proper maintenance of the administrative files of the case is an important condition of the effective control of legality of the functioning of a public administration body. Then they determine the basic principles of the correct creation of the administrative files of the case conducted on the basis of the Administrative Procedure Code and the actions taken before an administrative court aimed at their proper completion. They point out that the provisions of the Administrative Procedure Code in principle do not include legal regulations directly referring to the principles of creating administrative files. The obligation to create and maintain such files stems directly from the general principle of the written form. Relying on the provisions of the Administrative Procedure Code the authors discussed the desired methods of recording the entire course of actions from instituting the proceedings, through the explanatory proceedings until the making of the decision. Referring to the proceedings before administrative courts they specify the entities who must complete the files necessary to consider the case and the scope of actions they must take. They also presented the consequences of their negligence in this respect which in certain circumstances may result in cancelling the decisions of the VACs by way of the control of the instances.

Recapitulating, they concluded that the proper completion of the administrative files of the case may significantly affect the correctness of the conducted control of legality of functioning of a public administration body and, as a result, the correctness of the decision made by a VAC. However, it was assumed that the prior correct creation of the administrative files by the authority in charge of the administrative proceedings is also the condition of the effectiveness of such control.

Summary

of the article: **Making available a summary judgement in the light of the Act on Access to Public Information and the Criminal Procedure Code – commentary against the background of the awards of public and administrative courts**

In this article its author analyses whether a summary judgement constitutes public information and must be made available under the Act on Access to Public Information given that it is made available under Art. 418a of the Criminal Procedure Code. Furthermore, the author compares making the summary judgement available under the Act on Access to Public Information and the Criminal Procedure Code, paying special attention to the differences between these institutions.

A summary judgement has a special character. The difference shows in the procedure of its issuing – by one judge in the sitting, but without the participation of the parties, the components are different than in an ordinary judgement, and in may not include the rationale. The summary judgement is not pronounced, but it is made available under Art. 418a of the Criminal Procedure Code, its copy is left for 7 days in the court's secretariat. The legislator's intention was for this provision to implement the principle of public access, but it gives rise to doubts. In turn, the purpose of making available public information, referred to in Art. 6 of the Act on Access to Public Information, is to implement the right of an entitled person to get acquainted with public information. A judgement is a court decision made in the name of the Republic of Poland determining the legal responsibility of the accused and is one of the procedural decisions which in turn are the so-called imperative declarations of will. It is signed by a judge or judges (or judges and lay judges) within the scope of their powers. A public functionary is a person holding a position in the public service sector which involves liability for actions taken in public interest, where the distinguishing criterion is based on the character of duties and the scope of liability of the specific person. Under Art. 115.13 of the Criminal Code judges and lay judges are public functionaries. A judgement is recorded in the form specified by law, in particular it must be always passed in writing. As a result, a court judgement passed in a criminal case, including a summary judgement, is undoubtedly an official document in the light of Art. 6.2 of the Act on Access to Public Information. If a court judgement upon being announced becomes an official document, and consequently public information, it may be made available at any time on the basis of the relevant provisions of the Act on Access to Public Information, subject to the restrictions set out therein. However, Art. 418a of the Criminal Procedure Code does not introduce, in the light of Art. 1.2 of the Act on Access to Public Information, different principles and procedure of access to public information and any court judgement is public information. As a result, the same summary judgement may be made available both under the Criminal Procedure Code and the Act on Access to Public Information.