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VARIA

ORZECZNICTWO

SĄDOWNICTWO ADMINISTRACYJNE W EUROPIE

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Report

On 23 April 2014, the annual General Assembly of 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, the *Information on the activities of administrative courts in 2013,* presented by the President of the Supreme Administrative Court, Prof. Roman Hauser, was adopted by way of resolution.

The solemn assembly, in addition to the President of SAC, Vice-Presidents: Andrzej Kisielewicz, PhD and Włodzimierz Ryms, as well as judges of the Supreme Administrative Court and the Presidents of Voivodeship Administrative Courts, was attended by invited guests – representatives of the constitutional state authorities and corporate law agencies: the Deputy Speaker of the Sejm of the Republic of Poland Mr. Cezary Grabarczyk, on behalf of the President of Poland, Mr. Bronisław Komorowski – the Secretary of State in the Chancellery of the President of Poland Mr. Krzysztof Łaszkiewicz, on behalf of the Prime Minister – the Head of the Chancellery of the Prime Minister Mr. Jacek Cichocki, the acting First President of the Supreme Court, Supreme Court judge Prof. Lech Paprzycki, the President of the Constitutional Tribunal, judge of the CT Prof. Andrzej Rzepliński, on behalf of the Chairman of the National Council of the Judiciary – the Vice-President of the NCJ, judge of the SAC Małgorzata Niezgódka-Medek, the Vice-President of the Constitutional Tribunal, judge of the CT Prof. Stanisław Biernat, the Deputy Prosecutor General Mr. Robert Hernand, the Chairman of the National Electoral Commission – retired judge of the CT Stefan J. Jaworski, Mr. Stanisław Trociuk – Deputy Human Rights Defender, Mr. Jacek Krawczyk – Vice-President of the Government Legislation Centre representing the Secretary of the Council of Ministers, Mr. Krzysztof Kwiatkowski –President of the Supreme Audit Office, Mr. Mateusz Szczurek – Minister of Finance, Mr. Wojciech Rafał Wiewiórowski – Inspector General for Personal Data Protection, Ms. Stanisława Prządka – Chairperson of the Committee on Justice and Human Rights of the Sejm, on behalf of the Head of the Chancellery of the Senate – Director of the Legislative Office of the Chancellery of the Senate Mr. Roman Kapeliński, Mr. Maciej Graniecki – Head of the Office of the Constitutional Tribunal, Mr. Antoni Cyran – Head of the Chancellery of the First President of the Supreme Court, Mr. Kazimierz Czaplicki – Head of the National Electoral Office, Mr. Andrzej Dorsz – Director of the Legal and Legislative Office of the Chancellery of the President, Ms. Martyna Michalak – Deputy Director of the Team of the Children's Helpline and Citizens' Matters, Ms. Wiesława Drożdż – Spokeperson for the Ministry of Finance, Mr. Andrzej Zwara – President of the Polish Bar Council, Ms. Jawiga Gumińska-Pawlic – Chairperson of the National Chamber of Tax Advisers, Ms. Anna Korbela – President of the Polish Chamber of Patent Attorneys.

Having officially opened the meeting and greeted the invited guests, the President of the SAC, Prof. Roman Hauser, presented information on the activities of the Supreme Administrative Court and Voivodeship Administrative Courts in 2013, stressing that its presentation aims at evaluating the activities held in the previous year and determining the priorities of an action plan for the years to come (the full text of the speech, cf. p. 9 of the present issue).

The first invited speaker was the Secretary of State in the Chancellery of the President of the Republic of Poland, Mr. Krzysztof Łaszkiewicz, who read a letter from the President of the Republic of Poland, Mr. Bronisław Komorowski. At the beginning, the President emphasized that the issue of pro-

viding citizens with fair administrative procedures constitutes the foundation for the state under the rule of law, and judicial control of public administration forms the foundation for the protection of individuals' rights.

He stressed that the *Information on the activities of the administrative courts* should be a source of knowledge and inspiration for those who care for the efficient functioning of the Polish state.

While referring to the 10th anniversary of the entry into force of the reform of the administrative justice, he concluded that given the time perspective it should be considered a success, since the administrative courts have become an important element in the structure of the legal state and have carefully assessed public authorities' compliance with the law. In the President's opinion, an important aspect of the judicial practice of the courts is the direct application of the Constitution, as it was the case in the judgement of the SAC dated 18 June 2013, files no. OSK 193/13, in which – on the basis of Art. 7 of the Constitution – the Court found an action of a body unlawful and stated that although this action had remained within its competence, it had borne the hallmarks of arbitrariness and had not been subject to control.

The President emphasized that his legislative initiative submitted to the Sejm, amending the Act – Law on Proceedings before Administrative Courts, which takes into account the current body of rulings of the SAC and the CT, and being a response to social expectations, aims to improve the constitutional model of the administrative justice. New regulations, on which parliamentary work shall soon be completed, should result in improved effectiveness and efficiency of the judicial control of public administration. An important suggestion is to enable Voivodeship Administrative Courts to oblige an administrative body to take a specific action, which will eliminate the common practice of ignoring judicial rulings or delaying proceedings.

Further in the letter, the President of the Republic of Poland pointed out that from the perspective of a quarter of a century after Poland regained freedom one can assume that it is the strengthening of the rule of law and the development of legal culture that play a tremendous role in modernization processes, building the social capital, and improving the quality of public life.

In conclusion, the President drew attention to an important social issue – the issue of the availability of legal aid, especially for indigent people, which – in his opinion – is of particular importance in the field of administrative law, where the citizen is the weaker party in contact with public authorities.

Finally, he reiterated that the SAC's body of rulings has a significant share in the success of independent Poland that over the past 25 years has been strengthening as a democratic state under the rule of law.

Next, the floor was taken by Mr. Jacek Cichocki – Head of the Chancellery of the Prime Minister, who delivered a speech on behalf of the Prime Minister, Mr. Donald Tusk. First, he stressed that this year marks the 10th anniversary of the entry into force of the reform of the administrative justice and the 25th anniversary of the Round Table sessions and partially free parliamentary elections – the beginning of the political transformation forming the basis of the Third Republic of Poland. He pointed out that if it were not for the evolution of the model of the administrative justice since 1980, it would not have been possible to establish the state under the rule of law, ensuring its citizens the position of equal partners in litigation with public administration bodies. Moreover, he underlined that the beginning of the activity of the SAC was an expression of the desire of the Polish people to live in a democratic country, which in consequence led to the establishment of the offices of the Constitutional Tribunal and the Human Rights Defender.

He also stressed that due to the fact that the cognition of administrative courts involves the control of the legality of actions taken by the administration, which in turn remains within the responsibility of the Government, the Prime Minister expects its members to carefully monitor and analyse the body of rulings of the said courts.

As an example of cases in which administrative justice reinterprets the powers of the executive branch, he mentioned administrative decisions of the Prime Minister on granting pensions or retirement pensions pursuant to Art. 82 § 1 of the Law on Pensions from the Social Insurance Fund. He stressed that as regards these particular benefits, which in his opinion have been historically developed as a means of honouring first and foremost people with special merits for the country, not only do the administrative courts assess the legality, but also – in the recent period – they have applied the criterion of fairness of choices made by the Prime Minister.

He also drew attention to a slightly different perception of the scope of the Act on Access to Public Information as seen from the perspective of the Government and the administrative courts. Stressing the importance of the constitutional principle of citizen's access to public information, he pointed out that according to the Government, attempts made to determine the content of telephone conversations of the Prime Minister held within the framework of international bilateral contacts go beyond the intention of the legislative body. While emphasizing the significance of transparency of administrative actions as one of the standards of a modern and democratic state, he concluded that some areas of its functioning do require discretion since any disclosure thereof can result in foreign partners' losing confidence in the Government or can weaken the effectiveness of public administration in economically important matters, e.g. in the case of draft negotiating positions or stances taken in the course of judicial or arbitration proceedings. Later in his speech, Mr. Cichocki drew attention to the Government's legislative actions aimed at widening the access to information and implementing the Central Repository of Public Information. He added that the model and stimulus for the project aimed at granting the citizens greater access to judicial decisions of common courts were the projects carried out by the SAC and VACs (including the Central Database of Judgements of Administrative Courts).

In conclusion, he thanked the judges of the SAC for an effective implementation of the mission of shaping the standards of legislation and public administration, and strengthening the authority of the administrative justice in Poland.

Next, the Deputy Speaker of the Sejm, Mr. Cezary Grabarczyk, read a letter of the Speaker of the Sejm, Ms. Ewa Kopacz, addressed to the General Assembly of Judges of the Supreme Administrative Court. First, Ms. Speaker emphasized that the SAC plays a special role in shaping the mutual relations between the state and the citizens, and its body of rulings significantly affects the functioning of public administration, the standard of protection of the citizens, and the development of science and the creation of law.

She pointed out that according to the reports on the activities of administrative courts in 2013, many areas of social life are under the jurisdiction of administrative courts. She found the growth in the dynamics of the SAC's and VACs' case solving positive and successful. In conclusion, on behalf of the Sejm, Ms. Speaker thanked for yet another year of hard work, she expressed her appreciation for the reliability and commitment in fulfilling judicial obligations and she wished further effective judicial activities.

Next, the floor was given to the President of the Constitutional Tribunal Prof. Andrzej Rzepliński. First, while thanking for the invitation to the meeting

of the judges, who have significantly shaped the State's administrative order that responds to contemporary challenges, he pointed out that also the President of the SAC shares his reflections on the rule of law and its judicial application during annual general assemblies of judges of the Constitutional Tribunal. Therefore, one can see one's own achievements in the body of rulings from the perspective of another, constitutional authority of the judiciary. He stressed that due to the fact that the constitutional legislator delegated the interpretative power over the law to the three highest courts of the Republic of Poland and given the complex jurisdiction environment both in the Polish and the European legal space, judges from all judiciary levels and departments should be aware of their obligation to enter into a dialogue. This is necessary owing to the growing number of judicial decisions, and, consequently, the diversity of approaches and methods of argumentation used for similar legal issues. He pointed out that the body of rulings developed by judges is subject to constitutionally empowered control in the form of suability of judgments, and sentences that are final and binding are analyzed and are subject to the criticism of the doctrine. Justices are therefore not excluded from criticism in the public debate or the transparency of action.

The main part of the speech by Prof. A. Rzepliński was dedicated to the cooperation between the SAC, the VACs and the CT. He illustrated his thesis with administrative and constitutional cases which show how important – from the point of view of a libertarian, democratic, legal and just state – an active dialogue between the courts and their judges can be.

As an example of an effective, though non-institutionalized dialogue in the field of judicial decisions, he mentioned the resolution of the full make-up of the Financial Chamber of the SAC of 3 June 2013, files no. FPS 6/12, in which the SAC, referring to the judgement of the CT dated 21 June 2011, files no. P 26/10, made a pro-constitutional interpretation of Art. 70 § 4 of the Tax Code insofar as it was necessary to provide a positive answer to the question whether in order to interrupt the period of limitation it was obligatory to meet the conditions for the application of an enforcement measure and notification of the taxpayer before the deadline. According to the President of the CT, the resolution of the SAC that took into account the CT's ruling is a reflection of a dialogue related to the body of ruling that ensures an effective and Constitution-compliant protection of taxpayers' rights.

Later in his speech, to illustrate the institutionalized dialogue between the administrative courts and the CT, Prof. A. Rzepliński used the example of the institution of questions of law provided for in Art. 193 of the Constitution. The ruling of the CT dated 4 June 2013, files no. P 43/11, was issued as a result of a question of law referred by the VAC in Krakow on 12 May 2011. In its judgment, the CT held that Art. 4a § 1 item 1 of the Act of 28 July 1983 on Tax on Inheritance and Deeds of Gifts (Journal of Laws of 2009 No. 93, item 768, as amended), in its wording being in force from 1 January 2007 to 31 December 2008, to the extent that it provides for a monthly deadline for submission to the competent head of the tax office the notification of acquisition by inheritance of property or property rights by the spouse, descendants, ascendants, stepchild, siblings, stepfather and stepmother, is incompatible with the principle of trust in the State and its laws, derived from Art. 2 of the Constitution of the Republic of Poland. The President of the CT pointed out that the judgment was used in practice by the SAC in its ruling of 5 September 2013, files no. II FSK 1397/11, in which the Court decided on the case based on a standard of the Tax Code that had been repealed with regard to its scope. The SAC noted that while the CT left the provision obliging to notify of the acquisition of a bequest in order to obtain tax exemption, in this partial derogation the Tribunal did not specify the

deadline for meeting this obligation. By analogy, the SAC decided to recognize that the 6-month deadline introduced before amending the provision of the Act, which was in force since 2009, could be applied retroactively.

Then, he referred to the resolution of the SAC dated 18 February 2013, files no. II GPS 4/12, on the principles of procedural fairness, in which the Court decided that the measure of excluding an employee of a single-person body from proceedings following the application for reconsideration should have been applied before the amendment of the Code of Administrative Procedure, adopted as a result of the rulings of the CT of 15 December 2008, files no. P 57/07 and 6 December 2011, files no. SK 3/11; he also pointed out that the respect for the constitutional principles of procedural fairness and the right to appeal against a decision in the first instance shall refer both to classic devolutive appeal proceedings and to non-devolutive proceedings. The President of the CT noted that in the cited resolution, being guided by the constitutional standards of a renewed and fair consideration of a case, stemming from Art. 2 and 78 of the Constitution, the SAC supplemented and strengthened the protection of the constitutional rights of individuals, the content of which determined the ruling of the CT in the case P 57/07, issued as a result of a question of law referred by the SAC on 5 November 2007.

The last group of cases illustrating the dialogue between the CT and the SAC were rulings of administrative courts on the issue of resuming court and administrative proceedings as a result of a sentence issued by the CT. As the first example, Prof. A. Rzepliński quoted the judgement of the SAC of 22 May 2013, files no. II GSK 239/13, in which the Court – although in the primary proceedings one used a provision of an Act deemed unconstitutional by the judgment of the CT dated 30 October 2012, files no. SK 8 / 12 – dismissed a complaint lodged against the resumption and referring to the CT's view that the right to resume proceedings may be subject to factual restrictions resulting from a specific character of the proceedings complained against, the SAC decided that resuming completed tender proceedings and making different decisions would have violated the rights of other entities that had received funding and benefited from it, and in some cases it would have been impossible.

The President of the CT pointed out that on the basis of judicial decisions issued by the administrative courts in 2013 one can assume that in case of the resumption of proceedings, provided that the CT adjourned a deadline for the loss of the binding force of a provision deemed unconstitutional, these are the administrative courts that assess, depending on the circumstances of the case, whether they are competent to refuse to apply such a norm, regardless of whether it remains formally part of the legal system. As an example, the President of the CT referred to the judgment of the SAC dated 7 June 2013, files no. I OSK 1178/12, in which the Court refused to apply the provision on the execution of the right to compensation for property left outside the present borders of the Republic of Poland within the scope in which the provision made granting compensation for property left beyond the Bug River conditional on the fact of residence in the former territory of the Republic of Poland on 1 September 1939; taking into account the need to protect the constitutional rights and freedoms, the Court found that administration bodies do not have to require the applicants to demonstrate that the former owners of the property met the above-mentioned condition. It was reminded by Prof. A. Rzepliński that the adjournment of the loss of the binding power of an unconstitutional provision referred to in Art. 190 § 3 of the Constitution remains the constitutional competence of the Tribunal and consequently – in his opinion – it cannot be assumed that the exercising thereof is not binding for other public authorities or, in particular, that the Tribunal's shaping of the effect of its decision is not binding for administrative

courts, which may decide otherwise in the context of the ongoing proceedings before them.

In conclusion, the President of the CT congratulated the judges of the SAC and the VACs on their previous judicial decisions and thanked for their contribution towards building the state under the rule of law and for the dialogue and cooperation with the Tribunal, the quality of which translates directly and proportionally into the level of protection of the rights and freedoms of man and citizen, as well as the efficiency and reliability of the operation of the state.

The Vice-President of the National Council of the Judiciary, a judge of the SAC, Ms. Małgorzata Niezgódka-Medek in her speech first expressed thanks to the judges and court employees for their work and dedication, which are reflected in the statistical data contained in the *Information on the activities of administrative courts in 2013*. The efficiency and pace of the proceedings, especially in the VACs, deserve highest praise. She stressed that since the establishment of the SAC 34 years ago and after 10 years of activity of the VACs, administrative courts have become a permanent element of the democratic state under the rule of law. She pointed out that the manner of exercising judicial supervision over administrative courts fully reflects the principle of autonomy and independence of the courts from the executive and the legislature, and the interaction with them – in particular with the President of the Republic of Poland – takes positive, model forms.

She also underlined the fact that the administrative justice, unlike the common courts, in the last reporting period constituted an oasis of peace, free from emotion and political disputes that negatively affect the execution of the right to judgment. She also expressed her appreciation of the administrative courts – in her opinion, they managed to establish and strengthen such a structure within the judiciary which proves that the influence of the executive is not necessary for its proper functioning. From the point of view of the basic tasks of the NCJ, administrative justice is not a source of problems, and complaints or allegations of ethical or disciplinary nature are rare, a situation slightly different from the one observed in common courts.

Next, Ms. M. Niezgódka-Medek focused on achieving the primary objective of the NCJ, i.e. submitting to the President of the Republic of Poland the applications for appointment to the office of judge. Applications for appointment to the office of judge of the administrative court in 2013 accounted for 6% of the total number of applications. 23 applications were submitted: 5 to the office of judge of the SAC, and 18 – VAC. She concluded that the administrative justice is specific. She pointed out that in the debate a recommendation emerges that the position of a judge should be the crowning achievement of the legal profession. In the case of common courts, this view is not reflected in practice, as one does not record an increased number of candidates recruited from other legal professions. As regards the applications for the positions of judges of the SAC, one observes a positive trend that the candidate for the SAC should be a person who has already proven himself/herself as a judge of the VAC. In the case of the applications for the office of judge of the VAC, 8 candidates were judges of common courts (regional and district), and 10 candidates came from other legal professions (legal advisers, a lawyer, three employees of public administration bodies and one researcher). In the opinion of the Vice-President of the NCJ, in the case of judges of the VAC, the assertion that the office of judge is the crowning achievement of the legal profession is well-grounded. This trend is also proves that there is a less typical way of becoming a judge.

She informed that the President of the Republic of Poland signed an act amending provisions relating to the common courts which also apply to administra-

tive courts, and provisions relating to NCJ, which shall accelerate the appointment procedures.

Then, she referred to the issue of re-establishing the post of assistant judge – a judge for a trial period, an institution that ensures that before a candidate is appointed for life to the office of judge, he/she will be able to prove their skills in taking judicial decisions. This institution is of particular importance in the case of candidates who do not have experience in the application of the law, and who performed the functions of an assistant to a judge or a court clerk. She pointed out that according to the draft regulation, the assistant judge would be appointed by the President at the request of the NCJ for a specified period of time. Legislative initiative in this regard has already been lodged by the President to the Parliament. In conclusion, she wished the judges satisfaction in their work.

Another speech was delivered by the President of the Supreme Audit Office, Mr. Krzysztof Kwiatkowski. At the beginning he stated that the SAO examines on annual basis the correctness of the implementation of the budget of the SAC and for many years the budget has been duly executed. He stressed that the judiciary must make use of the authority that ensures that the citizens accept the decision of the court and do not question it, recognizing that the final and binding decision closes the case. He noted that on the basis of opinion polls one can conclude that there is a crisis of this authority, as the level of confidence in the courts is now between 20 and 30%, while in 2011 it amounted to ca 50%. In his opinion, this situation resulted from recent, not always satisfactory solutions as regards the structure of the common courts in Poland, as well as from critical, yet light-hearted, comments of some politicians relating to the judiciary. He pointed out that, in turn, the level of authority enjoyed by the administrative justice is significantly higher than in the case of common courts. He concluded that one should wish the common justice to enjoy such authority as the administrative justice does.

Next, the floor was taken by the Deputy Prosecutor General, Mr. Robert Hernand. He pointed out that the role of the Prosecutor in administrative and court proceedings has been set out in the Law on the Prosecutor's Office and in special regulations and laws. He underlined that one notes progress in relation to the number of administrative and court cases in which prosecutors play active role. The activity in this field is also reflected in the Prosecutor General's motions to adopt a resolution in the extended composition of the SAC to clarify the regulations the use of which caused a non-uniformity of judicial decisions, as well as in the participation of prosecutors of the National Prosecution Office in proceedings before the Supreme Administrative Court. The Prosecutor General finds it especially satisfying when the Prosecutor's legal views are consistent with the legal view of the SAC. In conclusion, he wished the judges satisfaction in their work.

The next speaker, the Deputy Human Rights Defender, Mr. Stanisław Trociuk, stressed that the protection of the Constitution and its values is possible not only in proceedings before the Constitutional Tribunal, but also thanks to Constitution-friendly court and administrative decisions, which observation is confirmed by the fact – noted with satisfaction by the Defender – that often the legal and constitutional arguments decide the interpretation of the law adopted by the administrative courts. As an example, he pointed to the following resolutions of the SAC: dated 3 June 2013, files no. I FPS 6/12, whose outcome was affected by the principle of the protection of trust in the state and its laws (Art. 2 of the Constitution); of 18 February 2013, files no. II GPS 4/12, in which the determinant was the correct implementation of the constitutional right to appeal against judgements and decisions made in the first instance (Art. 78 of the Constitution); and to the resolu-

tion adopted at the request of the Defender dated 9 December 2013, files no. I OPS 8/13, in which the dominant legal view was justified by the right to the protection of health and equal access to health care services financed from public funds (Art. 68 § 1 and 2 of the Constitution).

He recalled that the Defender is one of the entities authorized to submit requests to adopt resolutions in the extended composition of the SAC to clarify the regulations, the use of which caused a non-uniformity of judicial decisions. In the Defender's opinion, this power is an instrument protecting the rights of the individual, since a non-uniform interpretation of the law leads to the violation of the principle of equality before the law. He reported that in 2013 8 applications to adopt a resolution were submitted to the SAC by the Office of the Defender .

Moreover, he pointed to the valuable practice of notifying the Defender of applications submitted to the Chambers, which enables the Defender – who, unlike the Prosecutor, is not a mandatory participant in the proceedings – to participate in the proceedings and to present a citizen-friendly approach to the legal issues being resolved. At this point, he remarked that there are instances of resolutions of the SAC in which the performed interpretation raises doubts as to its compatibility with the Constitution. An example can be the resolution of the full make-up of the Financial Chamber of the SAC dated 14 December 2009, files no. II FPS 7/09, in which the Court identified the issue of an individual tax interpretation with its being drawn up by the authority in writing and bearing the date and signature of the authorized person, and not with the fact of communicating this interpretation to the addressee (party). Therefore, the Defender appealed against the regulations interpreted by SAC to the CT (case pending, files no. K 49/12).

In conclusion, the Deputy Defender stated that the office he represents does not have the powers to issue binding decisions; it can only make proposals as to resolving a case with respect to the standards of human rights. At the end, he thanked the judges for their cooperation aimed at ensuring the actual protection of individuals' rights in their relations with the public administration.

After a break that followed the official part, the meeting was resumed. The General Assembly of Judges of the Supreme Administrative Court unanimously passed a resolution on the adoption of the *Information on the activities of administrative courts in 2013* presented by the President of the SAC.

The subsequent part of the meeting was devoted to the appointment of a new member of the NCJ with the participation of representatives of the general assemblies of judges of the VACs and to providing an opinion on and choosing the candidates for the vacant post of judge of the SAC at the General Administrative Chamber.

Janusz Drachal, a judge of the SAC and chairperson of the Court Information Department of the SAC, was appointed the new member of the NCJ.

After the presentation of the candidates and following a vote by the members of the Assembly, the President of the SAC announced that the candidates to the position of judge of the SAC at the General Administrative Chamber will be presented to the National Council of Judiciary in the following order: 1) Iwona Marzena Bogucka – judge of the VAC in Gliwice, 2) Grzegorz Stanisław Czerwiński – judge of the VAC in Warsaw, 3) Dorota Teodora Jadwiszczok – judge of the VAC in Gdańsk.

This concluded the meeting.

Prepared by *Przemysław Florjanowicz-Błachut*
(Judicial Decisions Bureau of the SAC)

Summary

of the article: **Effectiveness of European Union law and Polish administrative and court-administrative procedure**

Domestic administrative and court-administrative procedures are harmonized to a minor extent with the EU law. However, these procedures are being affected by the EU law even in the absence of a EU regulation harmonizing domestic law in this respect. This interaction takes place by means of the EU standard of effectiveness, which obliges domestic courts to assess procedural solutions of internal law in terms of their compliance with the said standard. The issue of the impact of the EU standard on the domestic level of legal protection is today one of the most frequently discussed matters concerning the EU law. It has also been gaining importance in the body of rulings of Polish courts.

This paper aims at an analysis of the duty and power of administrative courts resulting from the EU law to evaluate Polish procedural law solutions and the criteria according to which courts should assess the compliance of such solutions with the EU law. The paper presents the principle of procedural autonomy of the EU Member States and the principle of effectiveness of EU law; further, it reviews the conditions of effectiveness and equivalence as factors enabling the recognition that domestic legislation complies with the requirement of effectiveness. It also contains examples from the Polish body of rulings as regards the assessment of domestic procedural rules as to their compliance with the EU standard in question.

Summary

of the article: **The interpretation of tax law and its determinants**

The interpretation of tax law constitutes an essential element of compliance with tax law and of its enforcement. Tax law has not developed any special, self-specific methods or contexts of interpretation; however, the thetic and interfering nature of legal regulations, as well as the state's exclusive right to define the scope of tax liability exert a decisive impact on the interpretation of this law.

Interpretation of tax law is not a normative term or concept since tax law does not regulate the methods in which an interpretation should be done. Nevertheless, this interpretation has a profound normative significance recognized by the legislator, as its results might have a major impact on the way of resolving issues in the area of tax law.

Summary

of the article: **Conflict between an application to reinstate the listing of a case and an appeal in administrative-court proceedings**

So far, in the legal decisions issued by the administrative courts, it was assumed that in a situation where a party concurrently submits an appeal against a judgement issued as a result of the failure to fulfil the listing of the case and an application to reinstate the listing of the procedural actions, the latter must be rejected as inadmissible.

It was emphasized that procedural actions involving a simultaneous submission of an appeal and an application to reinstate the listing of a case were mutually exclusive, both due to the competitiveness of the proposals contained therein, aiming to induce opposite procedural effects, and the internal contradiction of the foundations thereof. The general outline of the institution to reinstate the listing in the Code of Administrative Procedure refers to a similar regulation contained in the Code of Civil Procedure. While dealing with this issue, administrative courts referred to the Supreme Court's body of rulings.

One cannot forget, however, about the specifics of court and administrative proceedings and mechanically accept all concepts developed in the Supreme Court's body of rulings. In the author's opinion, this justifies a critical approach to the hitherto exercised practice concerning the conflict between an appeal and an application to reinstate the listing of a case. From among numerous methods of solving the problem, when a party simultaneously takes two procedural actions, the most appropriate solution seems to be that the first instance court initiates the appeal and considers the application to reinstate the listing of the case when the decision on the cassation appeal (or complaint) becomes final and binding.

One should seek the solution not at the level of inadmissibility of a simultaneous execution of two procedural actions, but at the level of inadmissibility of a joint examination thereof.

The conclusion that the premises of an appeal and an application to reinstate the listing are mutually exclusive only means that these two activities may not prove to be effective. Therefore, if both procedural actions meet the formal requirements provided for them, it is necessary to execute them properly, in the above-indicated manner.

The proposed solution would make it possible to avoid many problems resulting from the need to reject an application to reinstate the listing as premature and – which is also important – would significantly contribute to ensuring the efficiency of proceedings by eliminating the need for the issuance of secondary rulings, which, being subject to appeal, unnecessarily engage the Supreme Administrative Court.

Summary

of the article: **Applicative judgements of the Constitutional Tribunal**

The article refers to the so-called applicative judgements, which were included in the body of rulings of the Constitutional Tribunal between 2002 and 2007. These rulings provoked a heated discussion in which the Tribunal's use of this form of settling disputes as to the practical consequences of the stated unconstitutionality of a given provision of law was generally questioned. This article provides a detailed definition of the above-mentioned rulings. Moreover, it outlines the context underlying the use of this type of rulings, as well as it attempts to explain why such rulings were issued given that the Constitutional Tribunal had the tools to bring about specific effects as regards the stated unconstitutionality of a given provision of law.

The author explains why applicative judgements met with a wave of criticism both from the representatives of the doctrine and the practitioners, and why this form, contained in the operative part of the judgement, was not permanently included in the Tribunal's rulings. He outlines the main arguments brought against the aforementioned judgements and argues against the arguments in favour of using this form of defining the effects of the stated unconstitutionality of a given provision of law. Furthermore, the author enumerates the issues resulting from complying with an applicative judgement, which are related to the guarantees included in Art. 190 item 4 of the Constitution. The article examines various implications as to the use of the contents of rulings containing an applicative clause in situations where the matters underlying the issue of an applicative judgement were also considered by the European Court of Human Rights.

While taking a stance on the possibility of using other measures or forms of rulings, the author of the article finds it difficult to expect that the Tribunal, in the absence of relevant political and administrative changes, would again use this specific form of judgement which lays down the consequences of the stated unconstitutionality of a given provision of law in terms of practical effects.