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SPIS TREŚCI

STUDIA I ARTYKUŁY

Prof. dr hab. Robert Stefanicki (Uniwersytet Wrocławski)

Interakcje między egzekwowaniem prawa konkurencji w drodze publicznoprawnej i prywatnoprawnej	9
Summary	22

Dr Wojciech Kręcisz (sędzia, Naczelny Sąd Administracyjny)

Kary i opłaty za zajęcie pasa drogowego na cele niezwiązane z użytkowaniem dróg w orzecznictwie sądów administracyjnych	23
Summary	39

Dr Marta Kopacz (adiunkt, Uniwersytet Warmińsko-Mazurski w Olsztynie)

Legalność działania organów administracji publicznej w postępowaniu administracyjnym a kontrola tej legalności sprawowana przez sądy administracyjne	40
Summary	54

Dr Magdalena Sieniuc (adiunkt, Uniwersytet Łódzki)

Charakter prawny decyzji rektora szkoły wyższej w sprawie stwierdzenia nabycia uprawnień równoważnych uprawnieniom wynikającym z posiadania stopnia doktora habilitowanego	55
Summary	71

Mgr Paweł Razowski (doktorant, Uniwersytet Wrocławski, adwokat)

Koncepcja wzruszalności czynności procesowych w postępowaniu sądowoadministracyjnym	72
Summary	85

VARIA

Dr Joanna Wegner-Kowalska (adwokat)

Obowiązek nadzoru nad schroniskiem dla zwierząt przez organ inspekcji weterynaryjnej – rozważania na tle wyroku WSA w Łodzi z dnia 20 listopada 2012 r., sygn. akt II SA/Łd 841/12	87
---	-----------

ORZECZNICTWO

I. Trybunał Sprawiedliwości Unii Europejskiej (wybór i opracowanie: Andrzej Wróbel)	
Dyrektywa 2004/38/WE – Prawo obywateli Unii i członków ich rodzin do swobodnego przemieszczania się i pobytu na terytorium państw członkowskich – Prawo pobytu w państwie członkowskim obywatela państwa trzeciego będącego bezpośrednim zstępnym osoby mającej prawo pobytu w tym państwie członkowskim – Pojęcie osoby pozostającej „na utrzymaniu”	
Wyrok TSUE z dnia 16 stycznia 2014 r. w sprawie C-423/12 <i>Flora May Reyes przeciwko Migrationsverket</i>	99

II. Europejski Trybunał Praw Człowieka (wybór i opracowanie: <i>Agnieszka Wilk-Ilewicz</i>) Prawo do skutecznego środka odwoławczego Wyroki ETPC: z dnia 26 października 2000 r. w sprawie <i>Kudła przeciwko Polsce</i> , skarga nr 30210/96; z dnia 5 stycznia 2010 r. w sprawie <i>Jaremovicz przeciwko Polsce</i> , skarga nr 24023/03; z dnia 15 października 2013 r. w sprawie <i>Karolina Nadolska</i> <i>i Bronek Lopez Nadolska przeciwko Polsce</i> , skarga nr 78296/11	106
III. Trybunał Konstytucyjny (wybór: <i>Irena Chojnacka</i> , opracowanie: <i>Mieszko Nowicki</i>) 1. Wyrok Trybunału Konstytucyjnego z dnia 13 listopada 2013 r. (sygn. akt P 25/12) [dot. kwalifikowania danych będących elementem wykonywania kompetencji Prezydenta RP jako informacji publicznej podlegającej udostępnieniu]	109
2. Wyrok Trybunału Konstytucyjnego z dnia 28 listopada 2013 r. (sygn. akt K 17/12) [dot. opłat za gospodarowanie odpadami komunalnymi]	111
IV. Sąd Najwyższy (wybór i opracowanie: <i>Dawid Miąsik</i>) Postanowienie Sądu Najwyższego z dnia 6 listopada 2013 r. (sygn. akt III SK 59/12) [dot. pytań prejudycjalnych Sądu Najwyższego do Trybunału Sprawiedliwości UE na tle dyrektywy ramowej w sprawie regulacji sieci i usług łączności elektronicznej]	119
V. Naczelny Sąd Administracyjny i wojewódzkie sądy administracyjne A. Orzecznictwo Naczelnego Sądu Administracyjnego (wybór: <i>Stefan Babiarz</i> , opracowanie: <i>Marcin Wiącek</i>) 1. Uchwała składu siedmiu sędziów NSA z dnia 9 grudnia 2013 r. (sygn. akt I OPS 3/13) [dot. nałożonego na gminy obowiązku zapewnienia dojazdu dzieci do szkół]	127
2. Uchwała składu siedmiu sędziów NSA z dnia 13 stycznia 2014 r. (sygn. akt II GPS 3/13) [dot. braku prawa do skargi do sądu administracyjnego na postanowienia wydane w toku kontroli działalności gospodarczej przedsiębiorców]	129
B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: <i>Bogusław Gruszczyński</i> , opracowanie: <i>Marcin Wiącek</i>) 1. Wyrok WSA w Gdańsku z dnia 12 czerwca 2013 r. (sygn. akt III SA/Gd 48/13) [dot. skutków złożenia wniosku o przekazanie sprawy rozgraniczeniowej do rozpoznania sądowi powszechnemu]	135
2. Wyrok WSA w Łodzi z dnia 4 lipca 2013 r. (sygn. akt II SA/Łd 535/13) [dot. postępowania w sprawie wydania zezwolenia na realizację inwestycji drogowej]	139
3. Wyrok WSA w Szczecinie z dnia 24 lipca 2013 r. (sygn. akt I SA/Sz 681/13) [dot. obowiązku urzędowej publikacji uchwały w sprawie zmian w budżecie miasta]	143
4. Wyrok WSA w Bydgoszczy z dnia 23 września 2013 r. (sygn. akt II SA/Bd 574/13) [dot. skutków zmiany stanu prawnego w sprawach związanych z wydawaniem praw jazdy]	146
5. Wyrok WSA we Wrocławiu z dnia 8 listopada 2013 r. (sygn. akt I SA/Wr 1551/13) [dot. granic związania oceną prawną wyrażoną we wcześniejszym orzeczeniu sądu wydanym w tej samej sprawie]	148
VI. Wnioski Prezesa NSA i pytania prawne sądów administracyjnych skierowane do Trybunału Konstytucyjnego (opracowała <i>Irena Chojnacka</i>) Pytanie prawne Naczelnego Sądu Administracyjnego, postanowienie z dnia 15 stycznia 2014 r. (sygn. akt II GSK 686/13) [dot. ustawy o grach hazardowych]	152
VII. Glosy <i>Dr Krzysztof Radzikowski (doradca podatkowy)</i> Głosa do wyroku Trybunału Konstytucyjnego z dnia 18 lipca 2013 r. (sygn. akt SK 18/09) [dot. opodatkowania dochodów nieujawnionych]	158

Mgr Dominika Łukawska-Białogłowska (asystent, Uniwersytet Łódzki)

Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 29 maja 2013 r.
(sygn. akt I FSK 138/13) [dot. związania organu oceną prawną wyrażoną przez
sąd administracyjny]

165

KRONIKA

Kalendarium sądownictwa administracyjnego (styczeń – luty 2014 r.)

(opracował *Przemysław Florjanowicz-Błachut*)

173

BIBLIOGRAFIA

Publikacje z zakresu postępowania administracyjnego i sądownictwa administracyjnego

(styczeń – luty 2014 r.) (opracowała *Marta Jaszcukowa*)

183

TABLE OF CONTENTS

STUDIES AND ARTICLES

Professor Robert Stefanicki, Ph.D. (University of Wrocław)

Interactions between the enforcement of competition law in public and private law proceedings	9
Summary	22

Wojciech Kręcis, Ph.D. (judge, Supreme Administrative Court)

Penalties and charges for occupying a traffic lane for purposes not related to road usage in the case law of administrative courts	23
Summary	39

Marta Kopacz, Ph.D. (assistant professor, University of Warmia and Mazury in Olsztyn)

Legality of public administration bodies' actions in administrative proceedings and control of this legality exercised by administrative courts	40
Summary	54

Magdalena Sieniuc, Ph.D. (assistant professor, University of Łódź)

Legal nature of the decision of the president of a higher education facility regarding pronouncing the acquisition of rights equivalent to the rights resulting from holding the degree of associate professor	55
Summary	71

Paweł Razowski, M.Sc. (Ph.D. student at the University of Wrocław, lawyer)

The concept of challengeability of procedural actions in administrative court proceedings	72
Summary	85

VARIA

Joanna Wegner-Kowalska, Ph.D. (lawyer)

Obligation to supervise animal shelters by a veterinary inspection body – deliberations against the judgment of the Voivodeship Administrative Court in Łódź of November 20th, 2012 files no. II SA/Łd 841/12	87
---	----

JUDICIAL DECISIONS

I. Court of Justice of the European Union (selected and prepared by: Andrzej Wróbel)	
Directive 2004/38/EC – right of citizens of the Union and their family members to move and reside freely within the territory of the member states – Right of residence in a member state of a third country citizen who is a direct descendant of a person holding the right of residence in this member state – Term of a “dependant”	
Judgment of CJEU of January 16 th , 2014 in the case C-423/12 <i>Flora May Reyes vs Migrationsverket</i>	99

II. European Court of Human Rights (selected and prepared by: <i>Agnieszka Wilk-Ilewicz</i>)	
Right to an effective remedy	
Judgments of ECHR: of October 26 th , 2000 in the case <i>Kudła vs Poland</i> , complaint no. 30210/96; of January 5 th , 2010 in the case <i>Jaremwicz vs Poland</i> , complaint no. 24023/03; of October 15 th , 2013 in the case <i>Karolina Nadolska and Bronek Lopez Nadolska vs Poland</i> , complaint no. 78296/11	106
III. The Constitutional Tribunal (selected by: <i>Irena Chojnacka</i> , prepared by: <i>Mieszko Nowicki</i>)	
1. Judgment of the Constitutional Tribunal of November 13 th , 2013 (files no. P 25/12) [re.: qualifying data constituting an element of exercising the competency of the President of the Republic of Poland as public information subject to disclosure]	109
2. Judgment of the Constitutional Tribunal of November 28 th , 2013 (files no. K 17/12) [re.: fees for municipal waste management]	111
IV. The Supreme Court (selected and prepared by: <i>Dawid Miąsik</i>)	
Judgment of the Supreme Court of November 6 th , 2013 (files no. III SK 59/12) [re.: prejudicial questions of the Supreme Court to the European Court of Justice against the framework directive regarding regulations for networks and services of electronic communications]	119
V. The Supreme Administrative Court and Voivodeship Administrative Courts	
A. Judicial decisions of the Supreme Administrative Court (selected by: <i>Stefan Babiarczyk</i> , prepared by: <i>Marcin Wiqcek</i>)	
1. Resolution of the panel of seven judges of the Supreme Administrative Court of December 9 th , 2013 (files no. I OPS 3/13) [re.: the obligation imposed on municipalities to ensure children transport to schools]	127
2. Resolution of the panel of seven judges of the Supreme Administrative Court of January 13 th , 2014 (files no. II GPS 3/13) [re.: the absence of the right to file a complaint against a decision issued in the course of a control over entrepreneurs' business activities to an administrative court]	129
B. Judicial decisions of Voivodship Administrative Courts (selected by: <i>Bogusław Gruszczyński</i> , prepared by: <i>Marcin Wiqcek</i>)	
1. Judgment of the Voivodeship Administrative Court in Gdańsk of June 12 th , 2013, files no. III SA/Gd 48/13 [re.: the results of submission of a petition for forwarding a demarcation case to be examined by a common court of law]	135
2. Judgment of the Voivodeship Administrative Court in Łódź of July 4 th , 2013, files no. II SA/Łd 535/13 [re.: proceedings in the case for issuing a permission on implementation of a road investment]	139
3. Judgment of the Voivodeship Administrative Court in Szczecin of July 24 th , 2013, files no. I SA/Sz 681/13 [re.: the obligation of official publication of a resolution regarding changes in a city budget]	143
4. Judgment of the Voivodeship Administrative Court in Bydgoszcz of September 23 rd , 2013, files no. II SA/Bd 574/13 [re.: the effects of changing legal status in the cases related to issuing driver's license]	146
5. Judgment of the Voivodeship Administrative Court in Wrocław of November 8 th , 2013, files no. I SA/Wr 1551/13 [re.: the limits for binding with legal assessment expressed in a previous court judgment issued in the same case]	148
VI. Applications of the President of the SAC and preliminary questions of administrative courts to the Constitutional Tribunal (prepared by <i>Irena Chojnacka</i>)	
Preliminary question of the Supreme Administrative Court, judgment of January 15 th , 2014 (files no. II GSK 686/13) [re.: the act on gambling]	152

VII. Glosses

Krzysztof Radzikowski, Ph.D. (tax adviser)

Gloss to the judgment of the Constitutional Tribunal of July 18th, 2013 (files no. SK 18/09) [re.: taxation of undisclosed sources of revenue]	158
--	-----

Dominika Łukawska-Białogłowska, M.Sc. (assistant, University of Łódź)

Gloss to the judgment of the Supreme Administrative Court of May 29th, 2013 (files no. I FSK 138/13) [re.: binding an administrative body with legal assessment expressed by an administrative court]	165
--	-----

CHRONICLE

The schedule of events in the administrative jurisdiction (January – February 2014) (prepared by: <i>Przemysław Florjanowicz-Błachut</i>)	173
--	-----

BIBLIOGRAPHY

List of publications in the area of administrative procedure and the proceedings before administrative courts (January – February 2014) (prepared by <i>Marta Jaszczukowa</i>)	183
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Summary

of the article: **Interactions between the enforcement of competition law in public and private law proceedings**

The European model of legal protection of competition principles was substantially based on the mechanism of implementing them in the public interest. Despite the fact that the provisions of EC Treaty (currently the Treaty on the Functioning of the European Union¹ – hereinafter: TFEU) governing this matter have not changed for several dozen years, the concept of exercising them evolved by including – in the full body of measures that are to strengthen market competition – also the instruments of civil law oriented towards protecting persons harmed as a result of violation thereof.

The axiology of the treaty law was being enriched as a result of the case law established by the Court of Justice, where it was consistently assumed, that implementation of Treaty regulations governing competition in the public interest may not prevent aggrieved persons from seeking compensation for suffered losses. The direct effect of art. 101 and 102 of TFEU means that for individuals they constitute the source of rights the enforcement of which belongs to the competence of national courts in member states.

The concept of complementary application of TFEU provisions in the scope of competition was elaborated in the Papers of European Commission – Green and White related to the development of common principles in the field of facilitating claiming compensation by individuals aggrieved as a result of this law violation. A recently published draft directive of the European Parliament and the Council regarding some of the regulations governing claiming compensation due to violation of competition law provides for an approximation of the regulations of member states to ensure effective enforcement of Union competition principles by optimizing interactions between both modes for implementing this law. The proposed model is to guarantee to the victims of violations the possibility to effectively claim full compensation for incurred damage. However, the positive connotations stemming from the recitals of the act are not confirmed to a sufficient extent in the proposed regulations.

This original material highlights the issue – so far not resolved on the Union level – of broader access of entities aggrieved on an individual basis as a result of competition violation to the information and documents, required for the purposes of court proceedings, collected in relation to public law proceedings undertaken by the Commission or national authorities for competition issues.

¹ Consolidated version of TFEU of May 9th, 2008, OJEU C 115, p. 47.

Summary

of the article: **Penalties and charges for occupying a traffic lane for purposes not related to road usage in the case law of administrative courts**

Included in the act on public roads, the regulation referring to charges and penalties for lane occupation for “other than road” purposes, implementing a specific goal of the legislator’s policy, is expressed in the principle of road lane protection, and as a consequence in precisely restricting the rights to occupy it. Fundamental is the principle that lane occupation requires the road operator’s permission and is subject to a fee, whereas its occupation without permission or not in conformity with the conditions specified therein, results in imposing a fine. From the adopted legal solutions it appears that the fee for lane occupation constitutes a kind of a compensation for occupying it for other than road-related purposes, whereas the fine, irrespective of the repressive function, fulfills also a compensation function, because it is a compensation for the damage caused as a result of failure to adhere to the order to obtain permission and obligation to pay due charge.

The opinion that administrative fines constitute an ailment for a committed administrative tort is accompanied by the assumption that a fine is imposed irrespective of the blame for it, because this liability is of objective nature. However, it is brought up that the reason for imposing administrative penalty should be the occurrence of an subjective blame-related element, and the entities against whom charges are leveled should be able to defend themselves and prove that the failure to fulfil the obligation results from circumstances that were beyond their control. Controlling the legal compliance of decisions imposing fines for road lane occupation, administrative courts *ad casum* refer to arguments related to subjective culpable action and “contra-type” argument.

From the perspective of the normative grounds for shaping the road operator’s will with respect to expressing/not expressing the consent to lane occupation for other than road-related purposes, the control of administrative courts covers mainly the limits of administrative discretion, under which an administrative body operates, and the correctness of the establishment of the fees for road lane occupation. The regulation referring to rates of fees, as well as detailed principles for establishing due fees is also of fundamental importance for administrative court control over the size of fines for road lane occupation without permission or contrary to the conditions specified therein.

Summary

of the article: **Legality of public administration bodies' actions in administrative proceedings and control of this legality exercised by administrative courts**

The article discusses the relationship between a legal action of a public administration body and the control of this legality exercised by an administrative court. The examined issues have been narrowed down to the activities of public administrative bodies consisting in issuing administrative decisions in the proceedings carried out under the provisions of the act of June 14th 1960 – Code of Administrative Procedure. These decisions, after the judicial remedies applicable under these proceedings have been exhausted, may be the subject of a complaint to an administrative court filed and examined according to the provisions of the act of August 30th 2002 – Law on Proceedings before Administrative Courts. It has been noticed that a body, applying law to issue an administrative decision, does not have any legal remedies at its disposal that aim at correcting the legal status of the examined case. However, the administrative court, exercising control over such a decision, has such measures at its disposal, which results both from the entitlements related to the status of a judge, as well as from the attributes of courts as judicial bodies. Therefore, a thesis has been proposed, stating that the legal action of a public administrative body when issuing a decision is not always tantamount to the dismissal of a complaint against such a decision by the administrative court – interpreted as the result of a control confirming the legality of the body's' actions related to the issuing of the decision. Following the discussion on selected legal regulations binding for public administrative bodies in the course of resolving administrative cases and for administrative courts in the course of examining court and administrative cases, a conclusion has been proposed, that the result of court and administrative control of the legality of public administrative bodies' actions is significantly impacted by the legality of law under which the bodies take these actions. It has been highlighted that the fact of recognizing by the court the contradiction of legal norms applicable to a given case leads to the complaint being considered, which means that in fact it results in the responsibility in this scope being transferred onto the public administrative body, whose actions were the subject of the complaint. It has been therefore established that in the course of court and administrative proceedings public administrative bodies are burdened with the mistakes resulting both from an improper application of the law as well as from an improper rule making.

Summary

of the article: **Legal nature of the decision of the president of a higher education facility regarding pronouncing the acquisition of rights equivalent to the rights resulting from holding the degree of associate professor**

The objective of the article is to make an attempt to specify the legal nature of the decision of the president of a higher education facility regarding pronouncing the acquisition of rights equivalent to the rights resulting from holding the degree of associate professor [in Polish academic environment – the so-called habilitated doctor] and the effects that result from this nature, with special emphasis placed on the possibility of having this act verified by the Central Commission for Degrees and Titles in the form of an administrative decision subject to the control of an administrative court, exercised under the provisions of the act of August 30th, 2002 – Law on Proceedings before Administrative Courts. To pursue this research objective first the circumstances conditioning the issuing of a decision in line with art. 21a of the act on degrees and titles have been discussed, including the issues related to the scope of rights equivalent to the rights resulting from the fact of holding the degree of associate professor. Further analysis concerned the issues related to the mode of making such a decision, of the entry into force as well as raising objections and repealing it by the Central Commission for Degrees and Titles by way of an administrative decision that may be appealed against in an administrative court.

The performed analysis of the full body of the issues covered with the title subject as well as the evaluation of the views presented so far in the judicature, provided arguments in favour of recognizing the decision of the president of a higher education facility regarding the acquisition of rights equivalent to the rights stemming from the fact of holding the degree of associate professor as an administrative decision. The proceedings as a result of which this decision is issued are specific administrative proceedings, marked by a distinctiveness with respect to the mode of conferring the degree of associate professor (and the resulting entitlements) by way of a resolution of the department board, adopted also pursuant to a special administrative procedure.

Summary

of the article: **The concept of challengeability of procedural actions in administrative court proceedings**

This study refers to one of the forms of defectiveness of procedural actions in administrative court proceedings, namely the challengeability of procedural actions. As a result of conducted deliberations the author came to the conclusion that legal solutions adopted in the Law on Proceedings before Administrative Courts (l.p.a.c.) with respect to the sanction of challengeability of procedural actions constitute quite a consistent legal structure from the perspective of the nature of judicial competence of administrative courts as well as the protection of the legal interest of an individual in administrative court proceedings. However, certain reservations are raised by the regulation of the sanction of challengeability of procedural actions taken under administrative court proceedings. These reservations refer particularly to the application of the sanction of challengeability of the judgment of an administrative court in the case of invalidity of administrative court proceedings, which may blur the difference between qualified violation of law, providing the basis to apply invalidity sanction, and lighter forms of law violations, as well as the current wording of art. 172 of l.p.a.c. and art. 258k § 3 l.p.a.c. in the scope in which they specify absence of case submission to the judicature of administrative courts „by reason of a person or subject-matter”, which in turn is quite vague and inconsistent with the regulation of one of the reasons for invalidity of administrative court proceedings in the form of impermissibility of legal action (art. 183 § 2 item 1 l.p.a.c.). However, in the case of the application of the sanction of challengeability of an administrative court judgment in the case of invalidity of administrative court proceedings it should be indicated that this solution corresponds to the regulation of the legal judicial competence of the Supreme Administrative Court. Moreover, it is not a decisive factor for the protection of individual legal interest in administrative court proceedings, because the application of the challengeability sanction by revoking the judgment of an administrative court gives way to resolve the dispute over the compliance with the law of the challenged form of public administration enforcement anew. In turn, with respect to the observed inconsistency of legal solutions provided for in art. 172 l.p.a.c. and art. 285k § 3 l.p.a.c. with the regulation in art. 183 § 2 item 1 l.p.a.c. it should be proposed *de lege ferenda* that the current wording of art. 172 l.p.a.c. and art. 285k § 3 l.p.a.c. stipulating the absence of case submission to the judicature of administrative courts „by reason of a person or subject-matter” should be replaced with the stipulation, according to which “the legal action was impermissible by reason of a person or subject-matter”.