

NACZELNY SĄD ADMINISTRACYJNY

ZESZYTY NAUKOWE

Sądownictwa

_____ Administracyjnego _____

dwumiesięcznik

rok XI nr 5 (62)/2015

Warszawa 2015

WYDAWCA
Naczelny Sąd Administracyjny

KOMITET REDAKCYJNY
Barbara Adamiak, Stefan Babiarczyk, Stanisław Biernat, Irena Chojnacka, Jan Filip,
Andrzej Gomułowicz (zastępca redaktora naczelnego), Bogusław Gruszczyński, Roman
Hauser, Andrzej Kisielewicz, Małgorzata Sawicka-Jezierczuk (sekretarz redakcji), Andrzej
Skoczylas, Janusz Trzciniński (redaktor naczelny), Maria Wiśniewska, Andrzej Wróbel

Korekta: *Justyna Woldańska*

ADRES REDAKCJI
Naczelny Sąd Administracyjny
00-011 Warszawa, ul. G.P. Boduena 3/5
tel. 22 826-74-88, fax 22 826-74-54, e-mail: msawicka@nsa.gov.pl

© Copyright by Naczelny Sąd Administracyjny
Warszawa 2015

ISSN 1734-803X
Nr indeksu 204358

„Zeszyty Naukowe Sądownictwa Administracyjnego” znajdują się w wykazie czasopism
punktowanych przez Ministerstwo Nauki i Szkolnictwa Wyższego
na potrzeby oceny parametrycznej jednostek naukowych.
Liczba punktów za publikację wynosi 6.

W celu upowszechniania za granicą opracowań ukazujących się w „Zeszytach Naukowych
Sądownictwa Administracyjnego” (ZNSA) Wydawca uzgodnił z redakcją „The Central European
Journal of Social Sciences and Humanities” (CEJSH) internetową publikację ich streszczeń
w języku angielskim.

Wersją podstawową (referencyjną) czasopisma jest wersja papierowa.



Wolters Kluwer SA
01-208 Warszawa, ul. Przyokopowa 33
www.wolterskluwer.pl

Dyrektor Działu Czasopism:
Klaudiusz Kaleta, tel. +48 604 290 764, kkaleta@wolterskluwer.pl
Sekretariat: tel. 22 535 82 03

Szczegółowe informacje o prenumeracie czasopism można uzyskać
pod numerem infolinii 801 044 545, faks 22 535 80 87, handel@wolterskluwer.pl

Skład i łamanie: Andytex, Warszawa
Druk ukończono w październiku 2015 roku. Nakład 1000 egz.

SPIS TREŚCI

STUDIA I ARTYKUŁY

<i>Prof. dr hab. Barbara Adamiak (Uniwersytet Wrocławski)</i>	
Refleksje na temat dopuszczalności postępowania administracyjnego	9
Summary	25
 <i>Dr hab. Piotr Korzeniowski (profesor, Uniwersytet Łódzki)</i>	
Krajobraz i walory krajobrazowe jako przedmiot ochrony prawnej przyrody	26
Summary	41
 <i>Dr Andrzej Nędzarek (asystent specjalista ds. orzecznictwa, Naczelny Sąd Administracyjny)</i>	
Formy udziału w postępowaniu administracyjnym organizacji społecznej jako przedstawiciela interesu społecznego	43
Summary	59
 <i>Dr Agnieszka Wilk-Ilewicz (adiunkt, Politechnika Warszawska)</i>	
Udział społeczeństwa w procesie uzyskania decyzji środowiskowej	61
Summary	76
 <i>Mgr Aleksander Jakubowski (asystent sędziego, Naczelny Sąd Administracyjny)</i>	
Decyzje w przedmiocie grantów naukowych	77
Summary	94
 Edward Janeczko, sędzia NSA (1935–2015)	95

ORZECZNICTWO

I. Trybunał Sprawiedliwości Unii Europejskiej (wybór i opracowanie: Andrzej Wróbel, Piotr Wróbel)	
Odesłanie prejudycjalne – Postępowanie karne dotyczące przestępstw w dziedzinie podatku od wartości dodanej (VAT) – Artykuł 325 TFUE – Prawo krajowe przewidujące bezwzględne terminy przedawnienia mogące skutkować bezkarnością przestępstw – Potencjalne naruszenie interesów finansowych Unii Europejskiej – Obowiązek sądu krajowego powstrzymania się od stosowania każdego przepisu prawa krajowego mogącego naruszać obowiązki nałożone na państwa członkowskie przez prawo Unii Wyrok TSUE z dnia 8 września 2015 r. w sprawie C-105/14 <i>postępowanie karne przeciwko Ivo Taricco i in.</i>	97
 II. Europejski Trybunał Praw Człowieka (wybór i opracowanie: Agnieszka Wilk-Ilewicz)	
Nieskuteczność skargi na przewlekłość postępowania Wyrok ETPC z dnia 16 czerwca 2015 r. w sprawie <i>Rutkowski i in. przeciwko Polsce</i> (skargi nr 72287/10, 13927/11 oraz 46187/11)	107

III. Trybunał Konstytucyjny (wybór: <i>Irena Chojnacka</i> , opracowanie: <i>Mieszko Nowicki</i>) Wyrok TK z dnia 11 marca 2015 r. (sygn. akt. P 4/14) [dot. zgodności z Konstytucją przepisów ustawy o grach hazardowych]	109
IV. Sąd Najwyższy (wybór i opracowanie: <i>Dawid Miąsik</i>) Wyrok SN z dnia 5 marca 2015 r. (sygn. akt III UK 136/14) [dot. prawnej podstawy weryfikacji decyzji ostatecznej organu rentowego]	122
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 22 czerwca 2015 r. (sygn. akt II FPS 1/15) [dot. opodatkowania przychodów sportowców]	127
2. Uchwała składu siedmiu sędziów NSA z dnia 22 czerwca 2015 r. (sygn. akt II FPS 3/15) [dot. możliwości zaliczenia do kosztów uzyskania przychodu pracodawcy nagród wypłacanych pracownikom z dochodu po opodatkowaniu]	135
B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: <i>Bogusław Gruszczyński</i> , opracowanie: <i>Marcin Wiącek</i>)	
1. Wyrok WSA w Bydgoszczy z dnia 24 października 2012 r. (sygn. akt I SA/Bd 718/12) [dot. zwolnienia od PIT wartości nieodpłatnych świadczeń z tytułu szkoleń i przygotowania zawodowego dorosłych]	139
2. Wyrok WSA w Warszawie z dnia 5 grudnia 2013 r. (sygn. akt VIII SA/Wa 621/13) [dot. dostępu do informacji publicznej]	142
3. Wyrok WSA w Poznaniu z dnia 2 lipca 2014 r. (sygn. akt IV SA/Po 223/14) [dot. orzeczenia zespołu orzekającego w publicznej poradni psychologiczno-pedagogicznej w przedmiocie indywidualnego nauczania]	144
4. Wyrok WSA w Warszawie z dnia 12 sierpnia 2014 r. (sygn. akt I SA/Wa 3188/13) [dot. wydzielenia drogi wewnętrznej z nieruchomości objętej podziałem]	149
5. Wyrok WSA w Lublinie z dnia 12 marca 2015 r. (sygn. akt III SA/Lu 875/14) [dot. zmiany danych zawartych w zgłoszeniu celnym]	153
VI. Glosy	
<i>Dr hab. Małgorzata Masternak-Kubiak (profesor, Uniwersytet Wrocławski)</i> Głosa do wyroku Trybunału Konstytucyjnego z dnia 11 marca 2015 r. (sygn. akt P 4/14) [dot. zgodności z Konstytucją przepisów ustawy o grach hazardowych]	157
<i>Dr Elżbieta Klat-Górska (adiunkt, Uniwersytet Wrocławski)</i> <i>Dr hab. Lidia Klat-Wertelecka (profesor, Uniwersytet Wrocławski)</i> Głosa do wyroku Naczelnego Sądu Administracyjnego z dnia 11 lipca 2013 r. (sygn. akt I OSK 342/12) [dot. niedopuszczalności prowadzenia postępowania administracyjnego w trybie nadzwyczajnym w stosunku do rozstrzygnięcia SKO w sprawie aktualizacji opłaty rocznej z tytułu użytkowania nieruchomości]	169
<i>Dr hab. Przemysław Szustakiewicz (profesor, Uczelnia Łazarskiego w Warszawie)</i> Głosa do wyroku Naczelnego Sądu Administracyjnego z dnia 25 kwietnia 2014 r. (sygn. akt I OSK 2499/13) [dot. wzajemnych relacji pomiędzy ustawą o dostępie do informacji publicznej a ustawą o ochronie danych osobowych]	175

KRONIKA

Kalendarium sądownictwa administracyjnego (lipiec–sierpień 2015 r.) (opracował <i>Przemysław Florjanowicz-Błachut</i>)	183
---	-----

BIBLIOGRAFIA

Publikacje z zakresu postępowania administracyjnego i sądownictwa administracyjnego (lipiec–sierpień 2015 r.) (opracowała <i>Marta Jaszcukowa</i>)	189
---	-----

TABLE OF CONTENTS

STUDIES AND ARTICLES

<i>Professor Barbara Adamiak, PhD (University of Wrocław)</i>	
Reflections on the admissibility of administrative proceedings	9
Summary	25
<i>Piotr Korzeniowski, PhD (University of Łódź)</i>	
Landscape and the values of landscape as subjects of legal conservation	26
Summary	41
<i>Andrzej Nędzarek, PhD (assistant-specialist for case-law, Supreme Administrative Court)</i>	
The forms of participation in administrative proceedings of a community organisation as a representative of public interest	43
Summary	59
<i>Agnieszka Wilk-Ilewicz (assistant professor, Warsaw University of Technology)</i>	
Public participation in the process of obtaining an environmental decision	61
Summary	76
<i>Aleksander Jakubowski, MA (assistant to a judge, Supreme Administrative Court)</i>	
Decisions concerning research grants	77
Summary	94
Edward Janeczko, judge of the Supreme Administrative Court (1935–2015)	95

JUDICIAL DECISIONS

I. The Court of Justice of the European Union (selected and prepared by <i>Andrzej Wróbel, Piotr Wróbel</i>)	
Reference for a preliminary ruling – Criminal proceedings on VAT crimes – Article 325 TFEU – National law determining definite time-barring periods, which may result in criminal impunity – Potential breaches of financial interest of the European Union – The duty of national courts to abstain from applying national provisions that may contravene the obligations imposed on the Member States under EU law	
Judgment of the Court of Justice of the European Union of 8 September 2015 in the case C-105/14 <i>criminal proceedings against Ivo Taricco and others</i>	97
II. The European Court of Human Rights (selected and prepared by <i>Agnieszka Wilk-Ilewicz</i>)	
Ineffectiveness of complaints concerning the excessive length of proceedings	
Judgment of the European Court of Human Rights of 16 June 2015 in the case <i>Rutkowski and others v Poland</i> (applications nos. 72287/10, 13927/11 and 46187/11)	107

III. The Constitutional Tribunal (selected by <i>Irena Chojnacka</i> , prepared by <i>Mieszko Nowicki</i>) Judgment of the Constitutional Tribunal of 11 March 2015 (files no. P 4/14) [the constitutionality of the provisions of the Gambling Act]	109
IV. The Supreme Court (selected and prepared by <i>Dawid Miąsik</i>) Judgment of the Supreme Court of 5 March 2015 (files no. III UK 136/14) [the legal reasons for verification of the pension authority's final decision]	122
V. The Supreme Administrative Court and voivodeship administrative courts	
A. Judicial decisions of the Supreme Administrative Court (selected by <i>Stefan Babiarz</i> , prepared by <i>Marcin Wiącek</i>)	
1. Resolution of a panel of seven judges of the Supreme Administrative Court of 22 June 2015 (files no. II FPS 1/15) [the taxation of sportspersons' income]	127
2. Resolution of a panel of seven judges of the Supreme Administrative Court of 22 June 2015 (files no. II FPS 3/15) [the possibility of the employer to include the bonuses paid to employees from the income after tax in tax deductible expenses]	135
B. Judicial decisions of voivodeship administrative courts (selected by <i>Bogusław Gruszczyński</i> , prepared by <i>Marcin Wiącek</i>)	
1. Judgment of the Voivodeship Administrative Court in Bydgoszcz of 24 October 2012 (files no. I SA/Bd 718/12) [the exemption of gratuitous benefits from courses and vocational training of adults from PIT tax]	139
2. Judgment of the Voivodeship Administrative Court in Warsaw of 5 December 2013 (files no. VIII SA/Wa 621/13) [the access to public information]	142
3. Judgment of the Voivodeship Administrative Court in Poznań of 2 July 2014 (files no. IV SA/Po 223/14) [the adjudications of a body adjudicating on individual teaching in a psychological and pedagogical counselling centre]	144
4. Judgment of the Voivodeship Administrative Court in Warsaw of 12 August 2014 (files no. I SA/Wa 3188/13) [isolating internal road on real estate property under breakdown]	149
5. Judgment of the Voivodeship Administrative Court in Lublin of 12 March 2015 (files no. III SA/Lu 875/14) [the change of data in customs declaration]	153
VI. Glosses	
<i>Professor Małgorzata Masternak-Kubiak, PhD (University of Wrocław)</i> Gloss to the judgment of the Constitutional Tribunal of 11 March 2015 (files no. P 4/14) [the constitutionality of the provisions of the Gambling Act]	157
<i>Elżbieta Klat-Górska, PhD (University of Wrocław)</i> <i>Professor Lidia Klat-Wertelecka, PhD (University of Wrocław)</i> Gloss to the judgment of the Supreme Administrative Court of 11 July 2013 (files no. I OSK 342/12) [the inadmissibility of administrative proceedings with extraordinary rendition of decisions of local-government appeal courts on adjusting annual payments for the use of real estate property]	169
<i>Professor Przemysław Szustakiewicz, PhD (Łazarski University in Warsaw)</i> Gloss to the judgment of the Supreme Administrative Court of 25 April 2014 (files no. I OSK 2499/13) [the mutual relations between the Act on Access to Public Information and the Personal Data Protection Act]	175

CHRONICLE

Schedule of events in the administrative jurisdiction (July–August 2015) (prepared by <i>Przemysław Florjanowicz-Błachut</i>)	183
---	-----

BIBLIOGRAPHY

Publications in the area of administrative and court-administrative proceedings
(July–August 2015) (prepared by *Marta Jaszcukowa*) 189

Summary

of the article: **Reflections on the admissibility of administrative proceedings**

The article presents a theoretical overview of the issue of the admissibility of administrative proceedings.

The discussion includes the following issues: the concept of administrative proceedings and the constitutional basis for their admissibility, the function of legislation governing the admissibility of administrative proceedings and the requirements as to the admissibility of administrative proceedings.

Summary

of the article: **Landscape and the values of landscape as subjects of legal conservation**

Landscape protection regulations are part of the environmental law system. Protecting landscape and preserving its values is not only the aim of conservation, but also the fulfilment of legal obligation. It is demonstrated in the present study that the term “landscape protection” is much broader than “protection of the values of landscape” and “preservation of the values of landscape,” which are subject to legal conservation.

The subject of environmental law is systemically related to landscape protection and the protection of the values of landscape. Therefore, it is subject to legal control, which is exercised under legislation or legal relationships aimed to protect the elements of the natural environment.

International law is one of the most important instruments in landscape protection, which determines the scope of regulations under EU law and national laws of the Member States to a large extent. In particular, landscape protection is the subject of the European Landscape Convention, drawn up on 20 October 2000 in Florence. Landscape is principally protected under legal and administrative norms, most frequently due to aesthetic reasons or to maintain rational management of natural resources. Landscape protection and the protection and preservation of the values of landscape are very important from the investment and construction standpoint. It is worth remembering that the preservation of the values of landscape is part of environmental compensation activities as well.

When investigating what constitutes “values of landscape,” one needs to point to a certain group of common goods within the environmental law, which according to the legislator are as follows: ecological, aesthetic and cultural values of the area and related terrain, formations and environmental elements. They can be either natural or man-made.

Individual objectives of environment protection are combined in the environmental law act and make up a systemic group of objectives, comprising landscape protection and the protection and preservation of the values of landscape. The main objective, nevertheless, is the obligation to protect the environment.

The protection of the values of landscape is a part of the legal obligation to protect the environment. Landscape protection includes maintaining the properties of a particular landscape. Therefore, the obligation to protect the values of the landscape may be considered as having both a subjective and an objective scope. The objective scope of the legal obligation principally refers to the activities conducted by public administrative bodies within the environmental protection, i.e. the effect and character of the aforementioned activities. In particular, it includes the preservation and protection of the values of landscape against external and internal threats and hazards.

The matters presented hereunder are of somewhat general nature and require more detailed and extensive further analysis. There is no doubt, however, that there needs to be more work done on the legal status of the landscape protection and the protection of the values of landscape. The legal status may change in relation to the newly undertaken legislative initiative, which aims at adopting the act on the amending some other acts so as to improve the means to protect the landscape.

Summary

of the article: **The forms of participation in administrative proceedings of a community organisation as a representative of public interest**

A community organisation participating in administrative proceedings as a public interest representative is a fairly new establishment, nowhere to be found in traditional administrative law theories. It entered Polish law with the Act of 14 June 1960 – the Code of Administrative Proceedings. Community organisations participated in administrative proceedings in other socialist countries as well, and it was considered one of the methods to democratise the administration. Nevertheless, it is worth noting that in some modern administrative procedures of Western European countries, collective entities are recognised as possible advocates of public interest. Furthermore, the participation of community organisations in environmental cases is fairly common in European Union countries.

The article analyses proceeding initiatives of community organisations in relation to their participation in administrative proceedings as a party, i.e. the power to request initiating administrative proceedings and participating in the already pending administrative proceedings. Additionally, it was scrutinised whether it is possible, under the relevant act, for a community organisation non-participating in the administrative proceedings, to express its view on the case, upon the relevant administrative body approval. The article also mentioned the institution of notifying the community organisation on the underlying proceedings that may be of their concern by the administrative bodies. It was recognised that through participating in administrative proceedings community organisations intend to exercise social control over public administration, which nowadays has become a significant component of a civic society and has laid constitutional grounds for the functioning of the democratic rule of law.

It was concluded that the concept of public administrative control, or social control exercised by community organisations participating in administrative proceedings, earned its true meaning only after the democratic transformations of 1989, and ironically, its function, underlying the assumptions that justified the introduction of this legal institution to Polish law in 1960, was fully carried out under the changed constitutional order. The conclusion is that the institution under scrutiny has a long history in Polish law and is worth retaining its function, even more so under civic society and the changed constitutional order of democratic Poland. Therefore, it should not be merely associated with the previous era, but on the contrary, it is a powerful and modern instrument of influencing the government by the society.

Summary

of the article: **Public participation in the process of obtaining an environmental decision**

When discussing the issues of environmental decisions, it is necessary to address the matter of public participation, which is understood as a rule, the purpose of which is to solve environmental problems with the help of the public. Ensuring that the public participates in environmental protection not only is a result of the obligation imposed on Poland due to joining the European Union, but also concerns shaping the definition of public administration, with regard to its organisation and function, as a body that is willing to cooperate, collaborate and contribute. This means that the public needs to participate in the decision-making process of the national authorities. The public means both individual citizens and groups organised under non-governmental organisations.

Summary

of the article: **Decisions concerning research grants**

The legal frame for individual decisions of the National Centre for Science (NCS), National Centre for Research and Development (NCRD) and the relevant minister for science, granting funding for a research or research and development project (a research grant), is rather disputable from the legal standpoint. Nevertheless, it lays down the procedures for granting funds.

The Supreme Administrative Court firmly opted for the abovementioned decisions to be considered as administrative decisions, made not only under the provisions of specific Acts, but also under the Code of Administrative Proceedings. The view of the Court was based on the outcome of the linguistic, systemic and historic interpretation.

The research presented herein confirms that the findings of the Supreme Administrative Court were accurate. Furthermore, the interpretation of the intent and function and the constitutional analysis suggest that the decisions of the NCS, the NCRD or the competent minister for science in the relevant cases are in fact administrative decisions under the Code of Administrative Proceedings. The thesis, therefore, confirms what the doctrine and case-law have identified with respect to the legal form of the administration activities. Yet, after comparing Polish, German and French solutions, it is clearly visible that despite all regulations being similar, the standards of Polish regulations, under the approval of the Code of Administrative Proceedings, are higher and guarantee appropriate resolution of cases, are beneficial to the society (as the best grant is funded) and respect the rights of the parties of the proceedings.

As a consequence, the demand for statutory exclusion of the Code of Administrative Proceedings from the above-mentioned proceedings or limiting the scope of review of judicial proceedings is strongly criticised. Such legislative procedure would be no less than incompetent and ineffective and would result in significant gaps in the proceedings or would deny individuals their constitutional rights.

It has been concluded in the article that sustaining and improving the activities of the above-mentioned administrative bodies requires *de lege ferenda* a clear, literal translation of the thesis, concerning utilising the Code of Administrative Proceedings in relevant cases, to the applicable specific Acts.