

SPIS TREŚCI

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Summary

of the article: **A court precedent – nature and meaning**

This article discusses the nature of a court precedent and its practical meaning for the common law systems and the continental Europe. The author emphasises that the positions of the judges participating in the formation of the precedents in these two systems of law are to a certain extent different from each other given their attitude to the results of the legislator's activities. Due to the element of cooperation between the judicial and legislative branches of the government characteristic for most European states, the court precedent is increasingly often analysed therein ignoring or in any case pushing to the background the distinction between making and applying law (the concept of "a large grey area"). It may be therefore perceived as a manifestation of secondary (replacement) legislation. Currently the precedents are institutionalised to a growing extent as reflected in the provisions of the Act on Proceedings Before Administrative Courts dated 30 August 2002 concerning the Supreme Administrative Court's resolution-adopting role. The author believes the shaping of the precedents in the course of the judicial decisions issued by all courts constitutes a binder for law made in the form of acts and stabilises its functioning and development.

Summary

of the article: **The postulate of clarity of the system of law and the regulation of substituted service (“by advice note”) in the Polish procedural laws**

The postulates formulated with respect to the system of law include, among others, the postulate of its clarity. It must be admitted that the situation when the regulations prevailing in the individual procedures differ from each other without a reason although actually they concern the same issue does not promote the implementation of this postulate. A citizen seeking legal protection in proceedings before an administrative authority or a court should not face additional problems in the course of applying the already complicated regulations.

This problem occurs on the level of regulating the service of process in the individual procedures given that the legislator variously regulated the problem of the time when a letter may be collected by its addressee (the so-called service “by advice note”). This article analyses the regulations of the individual procedural laws (civil, criminal, administrative and the jurisdictional administrative proceedings) and attempts to respond to the question whether there are any actual reasons for such distinction.

Summary

of the article: **Interim protection in the Law on Proceedings Before Administrative Courts in the light of the EU law**

In the Polish system of law the above institution is regulated in Art. 61.3 of the Law on Proceedings Before Administrative Courts allowing a court to withhold, at a plaintiff's request, the execution of the act or activity the complaint concerning which was filed with the administrative court in the case the risk of inflicting serious damage or causing hardly reversible results has arisen. The parallel process of Europeanisation, resulting, among others, from Poland's accession to the EU, forced the discussion on the compliance of the construction of interim protection adopted by the Polish legislator with the EU law requirements.

The starting point for the above discussion is the mutual relationship between a domestic administrative court and an EU court and specifying the principles to be followed when settling a dispute concerning an EU element. Then the author presents the most important decisions of the Court of Justice of the European Union concerning the necessity to grant interim protection both when arguing that the national law is inconsistent with the EU law and questioning before a national court the validity of the EU law on the basis of which the challenged decision was issued. The analysis of the above decisions made it possible to present the critical analysis of the solutions prevailing in the Polish system of law and identify the necessary changes the legislator should consider.

Summary

of the article: **The intertemporal aspects of an administrative court's decision concerning a complaint about the excessive duration of proceedings before a public administration authority**

This article analyses the intertemporal issues related to consideration by a court of a complaint about the excessive duration of proceedings before a public administration authority. This institution was introduced to the proceedings before the administrative courts in the Act Amending the Administrative Procedure Code and the Law on Proceedings Before Administrative Courts dated 3 December 2010 that came into force on 11 April 2011. The interpretative doubts arose due the legislator's failure to include therein the relevant intertemporal regulations.

First the author presents the relation between “inaction” of an administrative authority that so far has been subject to judicial control and the new term “excessive duration of proceedings” concluding that it consists in the administrative authority’s improper involvement in considering an individual case at the level preceding the formal lapse of the time limit to consider such case.

Then, relying on the clause of the state of law expressed in Art. 2 of the Constitution of the Republic of Poland and referring to the purpose of the amendment, the author allows for the possibility that a court may declare the excessive duration of proceedings before a public administration authority that occurred before the effective date of the institution in question, provided the excessive duration continued until the date of considering the complaint. If the excessive duration was remedied before that date, the proceedings before the administrative court are discontinued. It is irrelevant if the complaint was filed before 11 April 2011 (including the charge of inactivity of a public administration authority) or after this date. When the excessive duration of proceedings before a public administration authority ceased before 11 April 2011, the complaint must be dismissed.

Finally, the author argues complementarily that when a court allows the complaint against the inactivity of a public administration authority or excessive duration of proceedings it determines whether a “gross violation of law” was committed, but only taking into account the actions or omission of such public administration authority until 17 May 2011 because the Act on Financial Liability of Public Officers for Gross Violations of Law dated 20 January 2011 (Journal of Laws No. 34, item 173) that came into force on 17 May 2011 introducing such requirement includes the intertemporal regulations in this respect.

Summary

of the article: **Verification of final decisions concerning academic degrees**

Plagiarism is theft of another person's writings or ideas consisting in the plagiarist claiming to be the author of someone else's work. Apart from being morally wrong, plagiarism has the legal consequences in all three basic domains of law. On the administrative law level it involves the possibility of instituting extraordinary proceedings aimed at stripping the plagiarist off his or her scientific title or degree.

The mechanisms of preventing this negative phenomenon are being sought. The legislator has introduced new solutions aimed at extensive verification of the academic papers of doubtful authorship and reliability.

The regulation analysed in this article should be in principle evaluated positively. The legislator reasonably separated the grounds for reversing the decision on awarding a scientific title or degree to these concerning the doctor, habilitation or professor's thesis itself and these based on the charge of plagiarism concerning the remaining academic achievements.

However, transposing to the administrative proceedings the institution of court proceedings with established normative contents in the form of declaring the proceedings invalid and using this term to refer to a decision in the form of reversing an administrative decision must be evaluated negatively.