

SPIS TREŚCI

STUDIA I ARTYKUŁY

<i>Prof. dr hab. Roman Hauser (Uniwersytet im. Adama Mickiewicza w Poznaniu)</i>	
Orzecznictwo sądowoadministracyjne a proces legislacyjny	9
Summary	17
<i>Prof. dr hab. Jan Paweł Tarno (Uniwersytet Łódzki)</i>	
Rola odpowiedniego stosowania przepisów k.p.a. w postępowaniach w sprawach stopni naukowych (wybrane zagadnienia)	18
Summary	35
<i>Prof. dr hab. Bożena Popowska (Uniwersytet im. Adama Mickiewicza w Poznaniu)</i>	
Publiczne prawo gospodarcze w orzecznictwie	36
Summary	56
<i>Sędzia Jacek Brolik (sędzia NSA)</i>	
Strona i organy postępowania administracyjnego oraz strony postępowania sądowego w przedmiocie indywidualnych interpretacji prawa podatkowego	58
Summary	78
<i>Mgr Wojciech Sebastian Sawczuk (asystent sędziego NSA)</i>	
Właściwość sądów administracyjnych i sądów powszechnych w sprawach rozdziału funduszy unijnych na przykładzie rozdziału środków w ramach polityki rozwoju	79
Summary	88
Sędzia Rafał Batorowicz 1956–2011	89

VARIA

<i>Dr Anna Dumas (sędzia NSA)</i>	
Stosowanie prawa Unii Europejskiej przez Naczelny Sąd Administracyjny oraz wojewódzkie sądy administracyjne	91
Sprawozdanie z konferencji „Europejska sygnatura orzecznictwa (European Case Law Identifier – ECLI) i metadane: harmonizacja sygnatur orzecznictwa krajowego w Unii Europejskiej”, Warszawa, dnia 30 września 2011 r. (Piotr Wróbel)	96

ORZECZNICTWO

I. Trybunał Sprawiedliwości Unii Europejskiej (wybór i opracowanie: Agnieszka Wilk-Ilewicz)	
Właściwe państwa członkowskie a koordynacja systemów zabezpieczenia społecznego (ubezpieczenie fakultatywne, zasiłek rodzinny)	99

1. Wyrok TSUE z dnia 30 czerwca 2011 r. w sprawie C-388/09 <i>Joao Filipe da Silva Martins przeciwko Bankowi Betriebskrankenkasse – Pflegekasse</i> , niepubl.	99
2. Wyrok TSUE z dnia 20 października 2011 r. w sprawie C-225/10 <i>Juan Pérez García przeciwko Familienkasse Nürnberg</i> , niepubl.	103
II. Europejski Trybunał Praw Człowieka (wybór i opracowanie: Agnieszka Wilk-Ilewicz)	
Wyrok ETPC z dnia 26 lipca 2011 r. w sprawie <i>Iwaszkiewicz przeciwko Polsce</i> (skarga nr 30614/06) [dot. pozbawienia statusu kombatanta i kombatanckiej renty inwalidzkiej będącego naruszeniem art. 1 Protokołu nr 1 do Konwencji]	108
III. Trybunał Konstytucyjny (wybór: Irena Chojnacka, opracowanie: Mieszko Nowicki)	
Podatki i opłaty lokalne w odniesieniu do wyrobisk górniczych oraz obiektów i urządzeń znajdujących się w wyrobiskach Wyrok TK z dnia 13 września 2011 r. sygn. akt P 33/09	114
IV. Sąd Najwyższy (wybór: Andrzej Wróbel, opracowanie: Dawid Miąsik)	
Uchwała SN z dnia 13 lipca 2011 r. sygn. akt III CZP 35/11 [dot. niedopuszczalności drogi sądowej w dochodzeniu od Skarbu Państwa przez powiat swoich niepotraconych dochodów związanych z gospodarką nieruchomościami]	125
V. Naczelny Sąd Administracyjny i wojewódzkie sądy administracyjne	
A. Orzecznictwo Naczelnego Sądu Administracyjnego (wybór: Stefan Babiarz, opracowanie: Marcin Wićcek)	
1. Uchwała składu siedmiu sędziów NSA z dnia 13 października 2011 r. sygn. akt II GPS 1/11 [dot. wykonywania transportu drogowego taksówką przy użyciu innego pojazdu niż wskazany w licencji]	128
2. Uchwała pełnego składu Izby Finansowej NSA z dnia 24 października 2011 r. sygn. akt. II FPS 7/10 [dot. opodatkowania pakietów medycznych]	136
3. Postanowienie NSA z dnia 26 stycznia 2011 r. sygn. akt II GSK 102/10 [dot. braku podstaw do kontroli legalności uchwały rady miasta nowelizującej uchwałę, która utraciła moc obowiązującą]	144
B. Orzecznictwo wojewódzkich sądów administracyjnych (wybór: Bogusław Gruszczyński, opracowanie: Marcin Wićcek)	
1. Wyrok WSA w Łodzi z dnia 16 czerwca 2009 r. sygn. akt I SA/Łd 88/09 [dot. zabezpieczenia na majątku podatnika przybliżonej kwoty zobowiązania podatkowego]	147
2. Wyrok WSA w Poznaniu z dnia 17 listopada 2010 r. sygn. akt IV SA/Po 497/10 [dot. odszkodowania wynikającego z przejścia na Skarb Państwa własności nieruchomości wchodzącej w skład linii kolejowej]	154
3. Wyrok WSA w Warszawie z dnia 31 stycznia 2011 r. sygn. akt IV SA/Wa 1365/10 [dot. wznowienia postępowania sądowoadministracyjnego z powodu braku należytej reprezentacji strony oraz skutków wniesienia odwołania od decyzji przez nieuprawniony podmiot]	162
4. Wyrok WSA w Warszawie z dnia 5 kwietnia 2011 r. sygn. akt VI SA/Wa 123/11 [dot. braku kompetencji Komisji Nadzoru Audytowego do zaskarżenia do sądu administracyjnego uchwały o odmowie wpisu do rejestru biegłych rewidentów]	166
5. Postanowienie WSA w Warszawie z dnia 10 czerwca 2011 r. sygn. akt IV SO/Wa 19/11 [dot. wniosku o wymierzenie grzywny Głównemu Sądowi Łowieckiemu na podstawie art. 55 § 1 p.p.s.a.]	168
VI. Glosy	
<i>Dr hab. Wiesław Kisiel (Krakowska Akademia im. A.F. Modrzewskiego)</i>	
Glosa do wyroku NSA z dnia 17 listopada 2010 r. sygn. akt I OSK 954/10 [dot. dekoncentracji uprawnień wojewody na rzecz wicewojewody]	174

<i>Dr Wojciech Kręcisz (adiunkt, Uniwersytet Marii Curie-Skłodowskiej w Lublinie)</i>	
<i>Dr Wojciech Taras (starszy wykładowca, Uniwersytet Marii Curie-Skłodowskiej w Lublinie)</i>	
Głosa do wyroku NSA z dnia 20 kwietnia 2010 r. sygn. akt II OSK 699/09	
[dot. wyłączenia sędziego z art. 18 § 1 pkt 66a p.p.s.a.]	180
<i>Mgr Rafał Kubik (asystent sędziego, WSA w Warszawie)</i>	
Głosa do postanowienia NSA z dnia 26 maja 2011 r. sygn. akt I FZ 129/11	
[dot. kosztów sądowych]	191
<i>Mgr Jacek Drosik (doktorant, Uniwersytet Śląski)</i>	
Głosa do wyroku NSA z dnia 21 stycznia 2011 r. sygn. akt II FSK 2017/10	
[dot. skutku doręczenia pełnomocnikowi z pominięciem strony postanowienia o wszczęciu postępowania podatkowego]	195

KRONIKA

Kalendarium sądownictwa administracyjnego (wrzesień–październik 2011 r.)	
(opracował Przemysław Florjanowicz-Błachut)	201

BIBLIOGRAFIA

Publikacje z zakresu postępowania administracyjnego i sądownictwa administracyjnego	
(wrzesień–październik 2011 r.) (opracowała Marta Jaszczukowa)	215

TABLE OF CONTENTS

STUDIES AND ARTICLES

<i>Professor Roman Hauser, Ph.D. (Adam Mickiewicz University in Poznań)</i>	
Decisions of the administrative courts and the legislative process	9
Summary	17
<i>Professor Jan Paweł Tarno, Ph.D. (Łódź University)</i>	
The role of the proper application of the provisions of the Administrative Procedure Code in the proceedings concerning scientific degrees (selected issues)	18
Summary	35
<i>Professor Bożena Popowska, Ph.D. (Adam Mickiewicz University in Poznań)</i>	
Public business law in judicial decisions	36
Summary	56
<i>Jacek Brolik (judge of the SAC)</i>	
The parties to and the bodies involved in the administrative proceedings and the parties to the court proceedings concerning individual interpretations of tax law	58
Summary	78
<i>Wojciech Sebastian Sawczuk, M.Sc. (assistant to a judge of the SAC)</i>	
The competence of the administrative and common courts in cases concerning distribution of the EU funds as exemplified by distribution of funds within the framework of the development policy	79
Summary	88
Judge Rafał Batorowicz 1956–2011	89

VARIA

<i>Anna Dumas, Ph.D. (judge of the SAC)</i>	
Application of EU law by the Supreme Administrative Court and the Voivodship Administrative Courts	91
Report from the conference “European Case Law Identifier (ECLI) and metadata: harmonisation of case law identification in the European Union” held in Warsaw on 30 September 2011 (<i>Piotr Wróbel</i>)	96

JUDICIAL DECISIONS

I. The European Court of Justice (selected and prepared by <i>Agnieszka Wilk-Ilewicz</i>)	
The relevant Member States and coordination of the social security systems (optional continued insurance, family allowance)	99

1. Judgement dated 30 June 2011, Case C-388/09: <i>João Filipe da Silva Martins v Bank Betriebskrankenkasse – Pflegekasse (Bank Sickness Fund – Nursing Care Fund)</i> , OJ C 252 from 27 August 2011, p. 4	99
2. Judgement dated 20 October 2011, Case C-225/10: <i>Juan Perez Garcia and others v Familienkasse Nürnberg (Family Assistance Fund in Nuremberg)</i> , not published	103
II. The European Court of Human Rights (selected and prepared by Agnieszka Wilk-Ilewicz)	
Depriving the veteran status and the veteran's disability pension violates Art. 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (judgement of the ECHR of 26 July 2011, application No. 30614/06, case of <i>Iwaszkiewicz v Poland</i>)	108
III. The Constitutional Tribunal (selected by Irena Chojnacka, prepared by Mieszko Nowicki)	
Local taxes and charges applicable to the mining headings and the facilities and the equipment located in the mining headings (judgement of the Constitutional Tribunal dated 13 September 2011, files No. P 33/09)	114
IV. The Supreme Court (selected by Andrzej Wróbel, prepared by Dawid Miąsik)	
A poviat enforcing its non-deducted revenue related to real property management from the State Treasury may not recourse to litigation (resolution of the Supreme Court of 13 July 2011, files No. III CZP 35/11)	125
V. The Supreme Administrative Court and the Voivodship Administrative Courts	
A. The judicial decisions of the Supreme Administrative Court (selected by Stefan Babiarczyk, prepared by Marcin Wiącek)	
1. Providing road transport services by taxi using a vehicle different than the one for which the licence was granted (resolution of the Supreme Administrative Court of 13 October 2011, files No. II GPS 1/11)	128
2. Taxation of the healthcare packages (resolution of the Supreme Administrative Court of 24 October 2011, files No. II FPS 7/10)	136
3. Lack of grounds to verify the legality of the City Council's resolution updating the resolution that ceased to be binding (decision of the Supreme Administrative Court of 26 January 2011, files No. II GSK 102/10)	144
B. The judicial decisions of the Voivodship Administrative Courts (selected by Bogusław Gruszczyński, prepared by Marcin Wiącek)	
1. Securing the payment of an estimated tax liability over the taxpayer's assets (judgement of the Voivodship Administrative Court in Łódź of 16 June 2009, files No. I SA/Łd 88/09)	147
2. Compensation for the transfer of title to a real property comprising a railway line to the State Treasury (judgement of the Voivodship Administrative Court in Poznań of 17 November 2010, files No. IV SA/Po 497/10)	154
3. Reopening the proceedings before administrative courts due to the improper representation of a party and the results of an appeal against the decision brought by an unauthorised entity (judgement of the Voivodship Administrative Court in Warsaw of 31 January 2011, files No. IV SA/Wa 1365/10)	162
4. The Audit Supervision Committee is not authorised to appeal against the resolution refusing to enter a person to the register of chartered auditors to an administrative court (judgement of the Voivodship Administrative Court in Warsaw of 5 April 2011, files No. VI SA/Wa 123/11)	166
5. The application to impose a fine on the Supreme Hunting Court under Art. 55.1 of the Law on Proceedings Before Administrative Courts (decision of the Voivodship Administrative Court in Warsaw of 10 June 2011, files No. IV SO/Wa 19/11)	168

VI. Glosses

Wiesław Kisiel, Ph.D. (A.F. Modrzewski Academy in Cracow)

Gloss to the judgement of the SAC of 17 November 2010 (files No. I OSK 954/10) [re. the transferring a part of a voivod's power to a vice-voivod]	174
--	-----

Wojciech Kręcis, Ph.D. (assistant professor at the Maria Curie-Skłodowska University in Lublin)

Wojciech Taras, Ph.D. (senior lecturer at the Maria Curie-Skłodowska University in Lublin)

Gloss to the judgement of the SAC of 20 April 2010 (files No. II OSK 699/09) [re. excluding a judge under Art. 18.1.6a of the Law on Proceedings Before Administrative Courts]	180
---	-----

Rafał Kubik, M.Sc. (assistant to a judge of the VAC in Warsaw)

Gloss to the decision of the SAC of 26 May 2011 (files No. I FZ 129/11) [re. court fees]	191
---	-----

Jacek Drosik, M.Sc. (doctoral student at the Silesian University)

Gloss to the decision of the SAC of 21 January 2011 (files No. II FSK 2017/10) [re. the result of serving the decision to institute the tax proceedings to an attorney while ignoring the party to the proceedings]	195
--	-----

CHRONICLE

The schedule of events in the administrative jurisdiction (September–October 2011) (prepared by <i>Przemysław Florjanowicz-Błachut</i>)	201
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BIBLIOGRAPHY

Publications in the area of the administrative procedure and the proceedings before administrative courts (September–October 2011) (prepared by <i>Marta Jaszcukowa</i>)	215
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Summary

of the article: Decisions of the administrative courts and the legislative process

This article analyses the problem of the effect the administrative courts have on the contents of the provisions of law both at the level of making law – in the form of comments to the drafts of the specific legislative solutions and – through their decisions – on the system of the prevailing laws and regulations.

In this respect of particular importance are the resolutions of the Supreme Administrative Court (adopted by their nature by the expanded bench). These resolutions determine the legal issues giving rise to serious doubts, mainly due to the possible different understanding of the imprecisely formulated regulations.

The signalling rights of the courts referred to in Art. 155.1 of the Law on Proceedings Before Administrative Courts represent a separate form of the effect the administrative courts have on the contents of the provisions of law. The administrative courts, employing the institution of signalling, are capable of drawing the supervisory authorities' attention to the gross violation of law by the authority in charge of the administrative proceedings. In the signalling decisions the courts may point to the lack of the specific legal regulations preventing the enforcement of rights.

The system of law includes many examples of both proper and improper usage of the administrative courts' decisions. A proper legislative decision should be effective, made in due time, expressed communicatively and duly, with the appropriate advance, promulgated. It must be emphasised that all the improper legislative regulations significantly affect the exercising of the right to trial. The interpretative doubts extend the duration of the court proceedings.

The legislator did not grant to the administrative courts any special rights to participate in the legislative process, however it seems proper to elicit the proper reaction to the decisions of the administrative courts pointing to the lack of clarity or coherence in the provisions of law. It must be decided in what form this postulate needs to be implemented i.e. by creating in the individual ministries the teams responsible for analysing the court decisions (including, in particular, the decisions of the Supreme Administrative Court) in respect of their effect on the system of law or by including the Legislative Council at the Prime Minister to the Supreme Administrative Court.

Summary

of the article: The role of the proper application of the provisions of the Administrative Procedure Code in the proceedings concerning scientific degrees (selected issues)

This article presents the separate status of the proceedings concerning the scientific degrees. This serves as the basis for analysing the decisions of the administrative courts in order to obtain the response if the judicial practice does not eliminate these differences. This analysis proves that the administrative courts are aware of the special nature of the object of the administrative proceedings concerning the scientific degrees thanks to which the proper application of the Administrative Procedure Code therein is balanced and does not violate the character of the basic procedural institutions under the Act on Scientific Degrees and Scientific Title and the Degree and Title in Arts dated 14 March 2003. As a result the discussion in the article justifies the claim that the proceedings concerning the scientific degrees are specific administrative proceedings in which the provisions of the Administrative Procedure Code play only an auxiliary role, in principle limited to regulating only the technical-procedural issues.

Summary

of the article: **Public business law in judicial decisions**

The Business Activity Freedom Act dated 2 July 2004 introduced significant changes in the forms of business activity consisting in fact in concealing the form of a permit and designating the new method of undertaking and pursuit of business activity in the form of an entry in the regulated activity register. In spite of introducing the latter legal institution the permits were not abolished which was probably the reason behind the marginalisation of the amendments to their regulation. However, such approach is inconsistent with the purposes

and object of the Business Activity Freedom Act and its role in the public business law as the basic act. Abolishing the common statutory provisions concerning permits in the Business Activity Freedom Act is also unjustified from the perspective of the legislative technique, given that in 27 acts under which a permit must be obtained many procedural elements are similarly regulated. Upon conducting a review to the above extent, including them in the Business Activity Freedom Act would contribute to streamlining the permit issuing regime. Specifying a model of a permit, although the Business Activity Freedom Act does not hold any special place in the hierarchy of the sources of law, is justified because it points to the direction of the pro-future solutions and supplements the regulation of the specific acts. But first of all, only the proper regulations in one act of the basic issues concerning the business activity control and regulation, both in the form of a licence and a permit, would set the limits for the public authorities' imperious invasion of the domain of business freedom, thus creating the business activity freedom standards.

Summary

of the article: The parties to and the bodies involved in the administrative proceedings and the parties to the court proceedings concerning individual interpretations of tax law

This article includes and presents the legal discussion, evaluation and views in the broadly analysed area of the issuing and court control of the individual interpretations of tax law, focusing on the procedural issues in the administrative proceedings in which the individual interpretations of the tax law are issued and the proceedings before administrative courts in which these interpretations, when challenged, may be controlled. First of all, the author considers who may be a party authorised to obtain an individual interpretation in accordance with law and who is entitled to challenge it to an administrative court. The author also makes an insightful presentation of the problems of the correct determination of the authority issuing the interpretations and the counterparty to the court proceedings in the events when an individual interpretation of tax law is issued by a director of the tax chamber authorised to issue the interpretations on behalf of the Minister of Finance, where such problems may give rise to doubts and legal disputes.

Summary

of the article: The competence of the administrative and common courts in cases concerning distribution of the EU funds as exemplified by distribution of funds within the framework of the development policy

The EU funds are distributed on the basis of the Act on the Principles of the Development Policy in two stages. The first stage, so-called imperious (administrative), is effected in order to select the best beneficiaries who meet the project subsidies awarding criteria. The second stage, the civil one, results in the establishment of a civil-law relationship between the beneficiary and the relevant institution under which the previously selected project will be implemented with the support of the EU funds

Depending on the stage of the proceedings, the court competent to settle a dispute, if any, may be either an administrative court or a common court. The apparently clear jurisdiction of these courts that may be reduced to the formula: the administrative courts – at the stage of the imperial decision in the case and the common courts – at the further stage, sustains serious harm taking into account the construction of subsidising adopted by the legislator and the various factual situations created by the relations beneficiary – institution.

In the competitive system of the EU funds distribution the rights to control vested in the administrative courts were outlined in the Act on the Principles of the Development Policy and specified in detail based on the merits in the provisions of the operational programmes and the rules of competitions. Therefore the administrative court ensures that the relevant institutions correctly evaluate the project presented to them, making sure these evaluations do not violate the applicable laws i.e. they are conducted in accordance with the generally applicable norms that may be inferred first of all from the Constitution and the Act.

The civil courts in turn settle the civil disputes that may arise from, generally speaking, the project evaluation. The areas where a dispute concerning the civil procedure may arise, may first of all involve entering into the project co-financing agreement or the disputes arising from the potential request to enter thereto and, secondly, the issues related to the demand to pay the damages, if a beneficiary suffers a loss as a result of the incorrect project evaluation and thirdly, the disputes resulting from the due performance of the project.