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Polish model of judicial review of decisions taken by the President of the Office of Competition and Consumer Protection

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Abstract:

Aim: The research effort in the aspect of a model of a court control of a decision issued by the President of the Office for Competition and Consumer Protection is predominantly supported by significance and importance of applicable legal solutions in practice. The research was aimed at evaluating the model of court control of decisions of the OCCP President.

Design / Research methods: Due to the scope of the research covered by the author, the core research methods is the dogmatic method. Because of the theoretical and legal nature of the considerations, the main method used in the research was the method of analytical and dogmatic legal research method.

Conclusions / findings: The research shows that it is a complex process to assess the effectiveness of the model for court control of the OCCP President's decisions which is used, in particular in terms of ensuring full and effective guarantee and protection of entrepreneurs' rights. One should agree that the arguments raised by both proponents and antagonists of transformation of the applicable legal solutions seem justified. Observations from two systems: the model of a control exerted by common court and administrative courts in the context discussed in the paper leads representatives of case law to formulating justified demands for changing the existing model.

Originality / value of the article: The unique nature of competition and consumer law cases is expressed in the hybrid nature of the proceedings run before the OCCP President and, later on, before common courts. The legislator determined the particular procedure for verifying the governance forms of the impact of the President, which is particularly justified by the nature of competition and consumer protection cases and classifying them formally to civil law cases. Proceedings before the competition and consumer protection court is the first instance proceedings with the purpose of recognising the technical aspects of the case in the light of the civil law provisions. The deliberations presented in the paper clearly lead to the conclusion that submission of the decisions made in competition protection cases to the control of common court is decisive for its scope and applied criteria and, except for legality, criteria such as usefulness, applicability or efficient management are also applied by court.

Implications of the research: The deliberations presented in the paper may contribute to initiate works on the transformation of the model for controlling decisions of Polish competition bodies by court.

Keywords: the hybridprocedure, the formal control, civil cases in the formal sense, the adversarial principle, legality,
of purposefulness and thrift.
JEL: K 11, K 12

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1. Introduction

Cases concerning competition and consumer protection, despite their undoubted public law nature, have been subjected by the legislator to the review by common courts. When discussing the issue of court review of decisions issued by the President of the Office of Competition and Consumer Protection (President of UOKIK), it is worthwhile to assess the adopted model in the context of ensuring adequate exercising and protection of rights of entrepreneurs. Attempting to evaluate the model of judicial review of the decision of the President of UOKiK, it is necessary to limit the selected aspects. Hence, detailed issues concerning, *inter alia*, the legal status of the President of UOKIK, off the proceedings conducted by this administrative body or court proceedings serving to review certain executive powers exercised in competition and consumer protection matters, fall outside the scope of the present discussion. The aim of the considerations is to present the model of the court review of administrative decisions issued by the President of the Office of Competition and Consumer Protection and attempt to evaluate it. The specific model of control raises the question about solutions enacted by the legislator. Considerations in this particular research area are important because of reported irregularities in the current model.

First, issues of competition and consumer protection should be taken under consideration. The second part of the analysis requires presentation of proceedings concerning the control of the decision of the President of UOKiK. The analysis of the model is intended to evaluate it, especially in the context of creating a guarantee of effective protection of entrepreneurs' rights.

The specific nature of competition and consumer cases and the nature of the control exercised by the administrative courts lead to the conclusion that the accepted pattern of judicial review of the decision of the President of UOKiK guarantees the effective protection of entrepreneurs' rights.

2. Nature of a competition and consumer protection case

Pursuant to the provisions of the Competition and Consumer Protection Act of 16 February 16, 2007 (consolidated text: Dz.U. [Journal of Laws] of 2017, item 229; hereinafter: CCPA), governing the organisational issues, the President of UOKIK is the main government

administration body competent in competition and consumer protection matters, subordinate to the Prime Minister. As regards the activities of the President of UOKIK, the key role is played by executive power to issue individual administrative acts, vested in the function, *inter alia*, decisions in matters concerning practices hampering competition, concentration of businesses and practices infringing group interests of consumers. It should be noted that proceedings before the President of UOKiK may be conducted as investigative or anti-monopoly proceedings (with respect to practices hampering competition or business concentration) or proceedings concerning practices infringing group interests of consumers.

Pursuant to Article 81 clause 1 of the CCPA and 479[28] paragraph 2 of the Code of Civil Procedure Act of November 17, 1964 (consolidated text: Dz.U. [Journal of Laws] of 2016 item 1822; hereinafter: CCP), a decision issued by the President of UOKIK can be appealed against to the Regional Court in Warsaw – the Competition and Consumer Protection Court (SOKiK) via the President of UOKiK, within one month of serving. Appeals against decisions of SOKiK can be lodged with the Court of Appeal in Warsaw. Competence of SOKiK, prescribed in art. 479[28] paragraph 1 of CCP, covers a finite list of competition protection matters. It is stated in the doctrine that: "Competition protection matters are civil law cases only formally, and fall within common courts' jurisdiction by virtue of relevant specific provisions. Hence, jurisdiction of SOKiK must not be expanded through interpretation of the relevant regulation. In particular, SOKiK is not competent to examine cases concerning unfair competition, laid down in the Act on Combating Unfair Competition [...] of April 16, 1993. It is accurately pointed out in given literature on the subject that differentiation between anti-monopoly and unfair competition matters should be based on the object of protection, which – in the former case are practices impeding free competition, while in the latter – harmful to the fairness of competition. In the case of an unfair competition act, an entrepreneur whose interest has been threatened or harmed may initiate civil proceedings in a common court (other than SOKiK), lodging claims envisaged in the act […] It is a civil law case (as regards the substance) initiated with a view to protect the personal interest of an entrepreneur, unlike an anti-monopoly case initiated by administration body out of concern for public interest" (Stefańska 2013: 849–850).

However, these norms are a kind of legal instrument regulating the market, resulting in restrictions being imposed on freedom of economic activity, hence it is concurrently a form of state's interference in private law area. Generally speaking, it should be stated that competition and

consumer protection cases include disputes between entrepreneurs and public administration body as to legibility and lawfulness of the above-mentioned restrictions. In view of the above, it is presumed in the doctrine that: "Cases falling under jurisdiction of common courts pursuant to the CCPA, by their nature, have a public law character; however, out of the legislator's will, have been included in the category of civil cases *sensu largo*. Therefore, formally speaking, they are civil law cases" (Stefańska 2013: 848). Similar view is presented by representatives of the doctrine of administrative procedural law. Some valuable conclusions – from the point of view of the analysed aspect – can be found in the discussion on the notion of administration court case. "An administration court case, due to referral for examination under civil law procedure, does not change its substantive nature and remains a case concerning review of one form of operation of public administration. As a result, common (civil) court – empowered to interfere in the contents of the relevant act or action undertaken by the administration body concerned – directly affects the rights or obligations of the citizens (natural persons and organisational units) within the area of statutory powers of administration bodies. This is clearly visible, for instance, in art. 479^{31a} clause 3 of the CCP, empowering SOKiK to amend in whole or in part the decision of the President of UOKiK appealed against and to issue in this respect a judgement on the merits of the case, although an anti-monopoly case is an administration court case and falls within the competence of the President of UOKiK" (Drachal et al. 2013: 36–38). With respect to liaisons between common courts and supervisions over actions of administration bodies, the authors of the quoted comments specified three types of circumstances, assigning the competition and consumer protection cases, to the second category. According to the presented view, "[…] there are cases concerning supervision over actions of public administration within the meaning of Article 1 ACPL [Administrative Court Procedure Law] and Article 184 of the Constitution of the Republic of Poland, i.e. the cases which – in terms of their substance (resulting from administrative law relations) and form (examined under procedures and in forms characteristic for operation of administration) – have administrative nature and, consequently, administrative court nature, which – due to clear legal basis defined in an administration law normative act – are examined by common courts under civil law procedure. This is the only instance where, by virtue of Articles 177 and 184 of the Constitution of the Republic of Poland, common courts are empowered to execute supervision over activities of the public administration within the meaning of Article 184 of the Constitution. […] given the assumed division, the following provisions should be mentioned here:

[…] Article 81 of the competition and Consumer Protection Act and Articles 479^{28}–479^{35} of the CCP" (Drachal et al. 2013: 39). According to the above-quoted view, competition and consumer protection cases can be considered as falling within the scope of substantive administrative law. So, they are civil law cases only formally: resolved under civil law procedure by virtue of specific provisions. Therefore, it is the formal civil character of the cases that caused their exclusion from the jurisdiction of administrative courts.

Moreover, attention should be paid to another aspect causing some dissenting views, both in judicature and the doctrine. There are doubts concerning admissibility of administrative court proceedings in matters concerning complaints on inactivity of regulators or lengthiness or the proceedings conducted by regulators (Drachal et al. 2013: 39). The Supreme Administrative Court (NSA) accurately acknowledged the competence of an administrative court to examine complaints on inactivity or lengthiness of proceedings in competition protection matters (judgement of the Supreme Administrative Court, dated May 22, 2012, case no. II GSK 620/12, LEGALIS 794294).

Specific nature of competition and consumer protection proceedings manifests itself also in the solution depriving the parties the possibility to resolve to extraordinary procedures provided for in the Code of Administrative Procedure Act of June 14, 1960 (consolidated text: Dz. U. of 2017, item 1257 hereinafter: CAP). Based on the view rooted in the doctrine, it is assumed that: "*Ratio legis* of the provision is reflected in the exclusion of the possibility to initiate by a party to the same proceedings before the President of UOKiK two different procedures to review the legibility of the decision of the President of UOKiK – ordinary […] and extraordinary one […] In this way, the legislator eliminated the concurrent […] as well as sequential application of legal remedies aimed at challenging decisions of the President of UOKiK. Therefore, a party is not only unable to deliberately choose one of these procedures, but is also unable to use both at the same time. Hence, it is impossible that the same anti-monopoly case is resolved differently by two different bodies […] which would be detrimental to the legal security" (Skoczny 2014: 1361). The legal scholar specialising in administrative procedure, presenting her opinion on the issue, pointed out: "As a result of such legal solution, […] the legal nature of review of decisions and rulings issued in extraordinary competition and consumer protection proceedings has changed from the system composed of various institutions into a homogeneous one. Measures of appeal have been in whole transferred to the review of decisions and rulings via court proceedings (…)" (Adamiak, Borkowski 2014: 1156).

3. Review of Decisions Issued by the President of the Office of Competition and Consumer Protection

When characterising the model of judicial review of resolutions in competition and consumer protection matters, it is worthwhile to refer to the views presented in the judicature and legal literature on the subject. It is beyond argument: “Proceedings before the President of UOKiK are more complex than ordinary administrative procedure. The proceedings are sometimes called ‘hybrid’, as they combine elements of administrative, civil (evidence hearing) and criminal (police search) procedure. Furthermore, review of decisions (and rulings) of the President of UOKiK, apart from so called ‘self-control’ exercised at initial phase as administrative procedure, is conducted pursuant to the provisions of civil law procedure” (Róziewicz-Ładoń 2011: 42). A hybrid nature of judicial review of rulings of the President of UOKiK was also mentioned by Z. Kmieciak who pointed out that: “Matters concerning consumer protection proceeding first before the President of UOKiK and, subsequently, before common court, are subject to so called hybrid (complex) procedure” (Kmieciak 2002: 33). The specificity of competition protection proceedings manifests itself in its hybrid nature – both before the President of UOKiK and in the course of review of its decisions and rulings. As it is highlighted in the doctrine: “The hybrid nature of competition and consumer protection proceedings manifests itself also on subsequent level, namely before the court. Here, by virtue of statutory provisions, the review – not only as to legality but also merits of the case – is performed by common court. Hence, this is the stage where an obvious departure from the principle under which administrative rulings are reviewed by administrative courts takes place – the proceedings are conducted before common court and the provisions of CCP concerning business matters apply. A prerequisite for initiation of the proceedings is the exhaustion of the administrative procedure before the President of UOKiK. This is the so called temporary inadmissibility of court proceedings. Proceedings before SOKiK can be initiated only after exhaustion of the procedure before administrative body – in this case before the President of UOKiK” (Jasińska 2013: 164). In the discussion on competition protection matters, scholars dealing with civil procedural law also highlight this issue. “Administrative proceedings before the President of UOKiK preceding the court proceedings reflects – on the one hand – the complex (related both to civil and public law) character of the examined cases and – on the other hand – it leads to the conclusion that court proceedings should not be inquisitional and that the material

burden of establishing the facts and whether or not the practices concerned hinder competition is imposed on the proceedings conducted before the President of UOKiK, which precede court proceedings. Court proceedings should be adversary in nature, taking into account the evidence gathered in the course of administrative proceedings. Only such interpretation of the relations between the two different forms of legal protection may justify the selection by the legislator – for the purpose of examining a matter concerning practices impeding competition – concurrently, administrative proceedings instruments and civil law court proceedings instruments" (Flaga-Gieruszyńska 2014: 910).

Referring to the court proceedings principles mentioned by legal scholars, one cannot ignore a major problem concerning the nature of court proceedings initiated as a result of appeal or complaint lodged against resolutions made in competition protection cases. Competition proceedings before SOKiK are considered proceedings of first instance. Such a view is confirmed in the judicature of the Supreme Court (cf. judgement of Supreme Court – Civil Chamber, dated May 29, 1991, case no. III CRN 120/91, LEGALIS 27351; judgement of the Constitutional Tribunal, dated June 12, 2002, case no. P 13/01, LEGALIS 54429) and widespread in the scholar literature. Treating proceedings before SOKiK as first instance proceedings determines the principles of conduct applied in it. Concurrently, the status of first instance proceedings granted to the proceedings before SOKiK (resulting from appeal against a decision of the President of UOKiK) has certain consequences as regards the scope of judicial supervision over compliance by the President of UOKiK with the provisions of substantive and procedural law. There is no unanimity of opinions on that issue among the scholars dealing with civil and administrative procedural law. The view of I. Kunicki can serve as an example: "Competition protection proceedings are one of separate proceedings under civil law. […] The analysed proceedings are considered first instance proceedings because these are the first court proceedings in the matter concerned. […] Their purpose is to review correctness of the decision of the President of UOKiK. By appealing against the decision a party may seek either to repeal or change the decision, and the court – SOKiK – if the appeal is admitted, decides on the future of the decision […] Hence, the action of SOKiK should be focused on resolving the claims made in the appeal and, consequently, on assessing the correctness of the decision appealed against and not on examining the case as such from the very beginning" (Kunicki 2014: 354–355). Other, already quoted, author noted: "the proceedings before SOKiK in administrative matter are conducted in compliance with the civil

proceedings principles. Hence, the court in this case is entitled not only to examine the legality of the decision, but also it must verify its appropriateness and purposefulness. […] Defects and infringements in the course of proceedings pending before the President of UOKiK are not the subject-matter of court proceedings because […] the court makes the decision on the basis of comprehensive and thorough analysis of evidence presented by the parties. Hence, it should be noted that the principle of free assessment of evidence is applicable here without any restrictions. SOKiK is obliged to examine thoroughly all circumstances of the case. Therefore, when examining the matter from the beginning, it cannot base its decisions exclusively on the findings of an administrative body. Common court should make its own findings as to the facts, based on evidence it has admitted as reliable, and justify the dismissal of contrary evidence" (Jasińska 2013: 165–166). A similar view is presented by A. Turliński: "[…] proceedings before this court are first instance proceedings. Therefore, they must comply with the rules typical for first instance civil law proceedings, including separate proceedings in business matters. This means that SOKiK must examine the case from the beginning. […] Hence, the direct purpose of court proceedings is not to review the administrative proceedings but to decide on the merits of the case presented in the appeal. However, the court in the proceedings is bound both by the scope of the decisions and the scope of the appeal" (Turliński 2005: 64). A different view found in the literature on the subject is also supported in the judicature, highlighting the jurisdictional function of SOKiK. A good example is the justification of the Supreme Court, claiming that: "Dominating in the judicature of the Supreme Court is a legal view that the proceedings before SOKiK have always been and are first instance proceedings [...] SOKiK should not limit its jurisdictional function to mere assessment of legality of administrative proceedings before the President of UOKiK, because it examines the case as a first instance court […] Jurisdictional function of the SOKiK cannot be reduced to the assessment of the legality of the decisions. The court should attempt to establish whether there are disputable facts between the parties and, after identifying such facts, to assess the legal legitimacy of the lodged appeal […] Only such interpretation of the relationship between administrative proceedings (held before the anti-monopoly authority) and court proceedings (before anti-monopoly court) may justify the (supposedly reasonable) choice between civil law and administrative law path in order to establish whether the practices impeding the competition actually has taken place" (judgement of the Supreme Court – Chamber of Labour, Social Insurance and Public Affairs of September 20, 2005, case no. III SZP 2/05, LEGALIS 77733). The essence

of the proceedings before SOKiK is also mentioned in a common court judgement, acknowledging that: "The subject-matter of the proceedings before SOKiK in matters concerning appeal against decisions of the President of UOKiK is not the assessment of legality of the decisions issued but resolution of a dispute between the entrepreneur filing the appeal and the President of UOKiK as regards the classification of certain behaviours of the appealing party. […] any infringement made in the course of the proceedings before the President of UOKIK is not the subject-matter of the court proceedings, since SOKiK is obliged to examine the case from the very beginning, taking into account the rules on distribution of the burden of proof and obligations of the parties in the course of evidence hearing" (judgement of the Court of Appeal in Warsaw, VI Civil Department, dated September 26, 2014, case no. VI ACa 1945/13, LEGALIS 1091924).

Taking into account the presented views fund in the doctrine and judicature, we should now assess the current model of judicial review of decisions of the President of UOKiK. It is worthwhile to begin with some general comments concerning the existence of two systems – the model of supervision exercised by common court and by administrative courts – and the postulated modifications of the existing system. As A. Turliński points out: "The reason why the legislator referred the appeal (complaint) cases in the said […] types of administrative matters to civil procedure path was to submit their substance to subject-matter review performed by SOKiK as common court and not to exclude the review of legality characteristic for administrative courts. Subject-matter review of administrative decisions and rulings allows SOKiK, as well as the Court of Appeal in Warsaw as the court of second instance, and the Supreme Court, to issue judgements altering the contested ones. […] Furthermore, the power to alter contested decisions in the case of minor infringements and, consequently, the prudent use of the right to repeal the same considerably improve the efficiency of the proceedings and should enable the parties to obtain final and binding adjudication in public law matters in reasonable time. Undoubtedly, this solution is also intended to increase the reliability of legal relations in the environment of fast changing consumer protection, energy and telecommunication provisions" (Turliński 2005: 62–63). The consequences of introducing the administrative-judicial model of examining competition protection cases were also analysed by E. Stefańska who rightly claimed that: "The reasons for adopting this model most often mentioned in the literature on the subject are the partly civil law nature of such cases and the need to ensure a broader scope of review of the decisions issued in these cases (taking also into account the criterion of purposefulness), which is not possible in administrative courts often

reviewing the challenged acts only in terms of their legality. […] the differentiation in the scope of jurisdiction of courts examining appeals against the decisions of the President of UOKiK […] stems from the need to ensure the higher level of judicial protections of entrepreneurs' rights […]" (Stefańska 2011: 606–607). When describing the model of two-stage procedure – combining administrative and civil procedure in anti-monopoly cases, the proposed changes were criticised. As accurately noticed: "Despite material differences it does not seem justified – already as *de lege ferenda* proposal – the transfer of power to refer anti-monopoly cases to administrative courts, even if such postulates are formulated by civil procedural law specialists. The controlling power exercised by administrative court is equivalent to that of common court. Each of the courts plays a different role, has different tasks, and – most importantly – the outcomes of review are not fully equivalent. There is a clear difference concerning the last area mentioned above, resulting from the character of the competence of administrative court, aimed at the annulment of a decision or ruling […] the court decides on the legality of the contested act. If the contested act is deemed illegal, the court can either repeal it or declare its invalidity or illegality. […] Furthermore, administrative court is authorised only to examine the legal aspect on the basis of factual and legal situation stated by the administrative authority. Hence, it is authorised to determine in its adjudication the legality or illegality of the action concerned. With respect to its powers, the court has no grounds to examine the purposefulness of the resolution of the case by administrative body. However, in the case of common courts executing supervision over public administration, the very supervision is the key objective, because the aim is to make a decision concerning the claim of the party and – ultimately – resolution of the case […] Hence, it is hard to accept the opinion that anti-monopoly cases should be transferred to administrative courts, especially since the decisions of the President of UOKiK, in course of further procedures, could not only be repealed, but also modified. Furthermore, the subject-matter of an anti-monopoly case is to decide on the rights and obligations of an entrepreneur not so much *vis-à-vis* the state, but other market participants (other entrepreneurs or consumers)" (Błaszczak 2014: 1347–1348). A different view is presented by K. Jasińska who writes: "[…] competition protection proceedings conducted before an administrative body and, subsequently, before a common court, is not meant to ensure individual protection with respect to specific obligation relations but is in fact aimed at protecting the public interest. Therefore, it seems worthwhile to think whether civil law solutions applied to public law cases of that kind are appropriate means ensuring their realisation and protection" (Jasińska 2013: 167–168).

Several arguments are used in discussions between the supporters and opponents of submitting competition protection cases to supervision of administrative courts. Particular attention is paid to the power of annulment vested in administrative courts. Opponents of the idea to transfer upon administrative courts the supervision over competition protection cases first of all highlight the weakness of the model. Repealing a decision of the President of UOKiK by court could significantly lengthen the whole procedure of resolving competition protection matters. It seems reasonable to agree with the view that: "In particular, the fact that administrative courts would be vested, in fact, almost exclusively with repealing and annulling powers, would significantly lengthen the period needed to reach the final and binding decision, due to the necessity to repeal the decision whenever an infringement of substantive law and frequently also of procedural law is discovered. In the case of common courts, authorised to amend the decision appealed against, this problem is considerably smaller" (Stefańska 2011: 615). Yet, the major argument against referral of competition protections cases to administrative courts is that administrative courts in Poland are the courts of law and not of facts. This manifests itself mainly in the fact that the control over the activity of public administration – or, in other words, the assessment concerning the compliance of the action of the controlled administrative body with the law in force – excludes other aspects, such as purposefulness or economic reasonableness. While the purpose of judicial control exercised by common courts is to implement and apply in practice the substantive law regulations and not a mere legality control of certain administrative acts. The fact that administrative courts do not decide on rights and obligations of parties to the proceedings may raise justified doubts as to whether these courts actually satisfy the criterion of full judicial jurisdiction. As a remedy, both legal scholars and the judicature propose solutions concerning the extension of the scope of administrative courts' adjudicative powers, first of all by vesting them with the power to amend contested decisions or rulings and to apply additional injunctive measures. It is highlighted that vesting such powers with courts is a reaction to weaknesses of judicial jurisdiction based exclusively on repealing and annulling powers, observed in many legal systems. Such proposals are also related to the need to ensure necessary, effective judicial control over administration. It should be also noted that the limitation of the control exercised by SOKiK to subject-matter resolution of the case, excluding the control of legality of the proceedings before the President of UOKiK, is strongly criticised. Supporters of changings in the adopted model of judicial review of decisions of the President of UOKiK also present numerous important arguments. The objections

raised by opponents of the current model seem justified. According to them: "[…] since, in the current model, SOKiK – as a first instance court – must examine the case from the very beginning and give decisions as to the merits, a question may be asked: what is the use of earlier (often lasting several years) administrative proceedings before the President of UOKiK, particularly in view of the fact that SOKiK refuses to review the proceedings? So, does the current model – rather than the model of administrative judiciary based on the repealing and annulling powers […] – cause wasting time and money?" (Róziewicz-Ładoń 2011: 280). We must add also that that exercising of anti-monopoly policy by judicial power and not – as intended by the legislator – by professional and specialised executive power body is also criticised in the professional literature.

4. Concluding remarks

Undoubtedly, the model of control exercised by administrative courts and by common courts considerably differ from each other – the main difference stems from their organisation and division into instances. The assessment of the adopted model of judicial review of decisions of the President of UOKiK seems very complex, especially since both supporters and opponents of the discussed model present reasonable view-points. Yet, it seems beyond argument that "[…] adoption of both models of control over administration is justified by the need to ensure thorough and exhaustive protection of rights. Therefore, by vesting the power to control the actions of administration in common courts the legislator decided that due to solutions characteristic for civil procedure, in this way it would ensure optimum protection of certain subjective rights" (Jasińska 2013: 169). Undoubtedly, referring the examination of competition protection cases to administrative courts would create new problems, for instances connected with the scope of control. The practice has shown so far that review proceedings before common courts may be an effective mechanism for controlling administrative decisions, taking into account other criteria than a mere legality.

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legal acts

The Act of 14 June 1960 Code of Administrative Procedure, Official Journal 2017, item 1257, as amended
The Act of 17 November 1964 Code of Civil Procedure, Official Journal 2016, item 1822, as amended
The Act of 2 July 2004 Act on freedom of economic activity, Official Journal 2016, item 1829, as amended
The Act of 16 February 2007 The Law on competition and consumer protection, Official Journal 2017, item 229, as amended

Beata Agnieszka MADEJ

Model sądowej kontroli decyzji Prezesa Urzędu Ochrony Konkurencji i Konsumentów

Streszczenie:

Cel: Za podjęciem wysiłku badawczego w aspekcie modelu sądowej kontroli decyzji Prezesa Urzędu Ochrony Konkurencji i Konsumentów przemawia przede wszystkim doniosłość i praktyczne znaczenie obowiązujących rozwiązań prawnych. Celem prowadzonych badań było dokonanie oceny modelu sądowej kontroli decyzji Prezesa UOKiK.

Metoda badawcza: Przyjęty zakres badawczy powoduje, że podstawową metodą badawczą była metoda dogmatyczna. Z uwagi na teoretyczno-prawny charakter rozważań, została zastosowana przede wszystkim metoda analityczno-dogmatyczna badań prawnych.

Wnioski: Specyfika spraw z zakresu ochrony konkurencji i konsumentów wyraża się hybrydowym charakterem postępowania – prowadzonego przed Prezesem Urzędu a następnie przed sądem powszechnym. Ustawodawca przesądził o szczególnym trybie weryfikacji władczych form działania Prezesa Urzędu, co uzasadnia się zwłaszcza charakterem spraw z zakresu ochrony konkurencji i uznaniem ich za sprawy cywilne w znaczeniu formalnym. Postępowanie przed Sądem ochrony konkurencji i konsumentów jest postępowaniem pierwszoinstancyjnym – celem jest merytoryczne rozpoznanie sprawy w trybie przepisów Kodeksu postępowania cywilnego. Dokonane rozważania potwierdzają, że poddanie rozstrzygnięć podjętych w sprawach z zakresu ochrony konkurencji, kontroli sprawowanej przez sąd powszechny przesądza o jej zakresie i stosowanych kryteriach – poza legalnością sąd stosuje również kryterium celowości czy gospodarności.

Oryginalność: Przeprowadzone badania prowadzą do wniosku, że ocena skuteczności przyjętego modelu sądowej kontroli decyzji Prezesa UOKiK, zwłaszcza pod względem zapewnienia pełnej i skutecznej gwarancji i ochrony praw przedsiębiorców, jest złożona. Zgodzić się należy, że argumenty zgłaszane przez zwolenników jak i przeciwników zmian w zakresie obowiązujących rozwiązań prawnych wydają się uzasadnione.

Implikacje badań: Konstatacja dwóch systemów – modelu kontroli sprawowanej przez sąd powszechny i sądy administracyjne w omawianym kontekście prowadzi przedstawicieli doktryny prawa procesowego do formułowania zasadnych postulatów w kierunku zmian obowiązującego modelu.

Słowa kluczowe: postępowanie hybrydowe, kasacyjny model sądownictwa administracyjnego, kontrola merytoryczna, kontrola formalna, sprawa cywilna w znaczeniu formalnym, postępowanie pierwszo-instancyjne, zasada kontradyktoryjności, legalność, kryterium celowości i gospodarności

JEL: K 11, K 12