

Constitutional Tribunal: A decision which blatantly breaches the law cannot be annulled if on the basis of such decision a party acquired a right, and from the day the decision was issued a significant period of time has elapsed

In its judgment of 12 May 2015 (case ref. P 46/13), the Constitutional Tribunal ruled that Art. 156 § 2 of the Code of Administrative Procedure, to the extent to which it does not rule out the admissibility of a declaration of invalidity of a decision issued in blatant breach of the law (Art. 156 § 1, point 2 of the Code of Administrative Procedure) when a significant period of time has elapsed since the decision was issued, and the decision was the basis for acquiring a right or expectation, is contrary to Art. 2 of the Constitution of the Republic of Poland (rule of a democratic legal State). The judgment was published in the Journal of laws and entered into force on 21 May 2015.

This means that the Constitution prohibits the annulment of decisions on that basis, if they are sufficiently old (“significant lapse of time”), and in addition they have become the source of rights for any persons. In spite of their serious defect (i.e. having been issued in breach of the law), such decisions should be kept in force and their defects may at most lead to a declaration that they were issued in breach of the law (Art. 158 § 2 of the Code of Administrative Procedure), which in turn may open the way for compensation.

To date, it was possible to declare as invalid administrative decisions issued in breach of the law regardless of when they were issued. This made it possible to declare, amongst others (in practice - frequently) old nationalization or expropriation decisions as invalid. The judgment of the Constitutional Tribunal is of huge significance for **real estate** rights, and not only.

The judgment of the Constitutional Tribunal is of major significance for **decisions which are defective but existing**, with regard to which proceedings for declaration of invalidity are pending or at least threatened. After the judgment of the Constitutional Tribunal has entered into force, arguably it will no longer be possible to declare invalidity if a significant period of time has elapsed since the defective decision was issued, and the party acquired a right or at least an expectation of a right on the basis of this decision.



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The task of explaining what period of time is ‘significant’ has been left to future judicial decisions. To date, the pre-requisite of an ‘acquisition of a right’ in light of other provisions has been understood in a broad manner in judicial decisions.

This means that if in the legal sphere of a given person, a sufficiently old decision is found with regard to which proceedings for declaration of invalidity are pending or at least threatened, then the judgment of the Constitutional Tribunal may significantly change the legal evaluation of such situation and most likely may require that the existing strategy be reconsidered, depending on the circumstances of each individual case.

The judgment of the Constitutional Tribunal also significantly changes the legal situation of persons who **obtained in the past a declaration of invalidity of ‘old’ decisions or who lost in this way a decision which was advantageous to them.** The proceedings which led to such declaration of invalidity may be renewed (Art. 145a of the Code of Administrative Procedure) on an application of the party filed within a month from the day of entry into force of the judgment of the Constitutional Tribunal, i.e. by 21 June 2015. A renewal of proceedings may lead to an overturning of the decision declaring invalidity if no more than 5 years have elapsed from the day of issue of the decision (Art. 146 § 1 of the Code of Administrative Procedure); in other cases it may lead to a declaration that the annulling decision was issued in breach of the law, which in turn may open the way for compensation claims.

An evaluation of the possibility and practicability of renewal in a specific case depends on a case’s specific circumstances and on the content - just published - of the reasoning of the Constitutional Tribunal’s judgment; in addition, the admissibility of renewal itself in this type of Constitutional Tribunal judgment (legislative omission) is sometimes questioned in case law.

Thus, in all situations where an ‘old’ administrative decision issued in breach of the law (annulled or not) may influence the current status, it is recommended to urgently analyze this situation in particular with regard to: (i) verifying or changing strategy (in the case of pending proceedings for a declaration of invalidity); or (ii) filing an application for a renewal of proceedings (in the case of an earlier annulment of the decision) for the purpose of such decision being restored or of obtaining compensation. **Each such situation requires an individual analysis.** Particularly urgent are situations where a declaration of invalidity has already been made, where **the application for a renewal must be filed by 21 June 2015.** Should such analysis need to be prepared, please urgently contact the Partners of the Real Estate Practice at SK&S law firm.

Should you be interested in the topic presented in this newsletter, please do not hesitate to contact us.

