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SUMMARY OF THE DOCTORAL DISSERTATION

Liability for damage caused by unlawful legally binding decision of the administrative court

The doctoral dissertation is dedicated to the institution of the State's liability for damages for unlawful legally binding decision of the administrative court.

Compensation for a damage caused by unlawful legally binding decision of the administrative court is an important step in the process of protecting the rights of individuals in relation to those actions of public authorities that are imperious in nature. The guarantee of the existence of this right is a confirmation of the role, that it plays in democratic legal orders, building in citizens a sense of trust in the State and in the law it legislates. Examination of the institution of liability for damages of the State for the lawlessness of the administrative court requires a comprehensive assessment, not only because it is, nevertheless, a relatively new institution in Polish law. The currently accepted model of state liability for a damage caused by judiciary lawlessness has not been definitively tested in practice, so that it could be, on this basis, definitely verified for the correctness of solutions adopted by the legislator.

The planned doctoral dissertation will answer the question whether the legislator has created the proper procedural framework for implementing the standard of liability for damage caused by the administrative court decision established in EU law and in the Constitution. The basic issues, that arise in relation to the issue under discussion concern the assessment of whether the adopted model of claiming liability for damage caused by lawlessness of the administrative court takes into account the obligations and standards that result from international agreements regarding the protection of human rights to which the Republic of Poland is a signatory, and therefore the answer to the question whether it is possible to effectively enforce these standards in Polish law. To elaborate, it was indicated whether the statutory model of liability for damages of the State for an unlawful legally binding judgment of the administrative court implements the constitutional standard of that responsibility. The main purpose of the thesis is to indicate how effective and efficient is the system of claiming liability for damage caused by an unlawful administrative court decision in the context of providing the individual with adequate protection of his rights in relation to the administrative courts.

The starting point for the implementation of the main research objective of this dissertation is a comprehensive analysis of the institutions of the State's liability for damages from the perspective of the individual. Since it is generally recognized that the guaranteed by the Constitution of the Republic of Poland right to compensation for damages caused by unlawful action of the administrative court is also a part of the EU legal order and one of the main principles expressed in the judicature of the Court

of Justice of the European Union, the fundamental considerations of the dissertation focus on the substantive law grounds of the State's liability for damages and the accompanying procedural aspects of claiming compensation for damage that are regulated by the provisions on administrative court proceedings. The axis of evaluation of the current model is the answer to two basic issues, that is: when is the issuance of a binding judgment by an administrative court unlawful and when could the legally valid judicature so issued cause damage to the interest of the entitled.

Taking into account the above objective, the following research thesis were adopted in the dissertation:

- 1) article 4171 §2 and §3 of the Polish Civil Code lays down stricter requirements for pursuing liability for unlawful judgments of an administrative court than those indicated in article 77 paragraph 1 of the Constitution of the Republic of Poland and EU law, therefore the model of liability for damages for the lawlessness of the administrative court does not fulfil the guarantee function of the constitutional right of the individual to compensation from the judiciary,
- 2) introduced into the Civil Code, the model of liability of the State Treasury for the lawlessness of the administrative court does not take into account the specificity of administering justice by the administrative courts and the essence of binding judgments issued by these courts, which makes it difficult and in some cases impossible to effectively claim damages for incorrectly issued judgments of these courts; the defectiveness of the applicable legal regulations results, in principle, from the inability to demonstrate that an unlawful legally binding decision of the administrative court remains in a causal nexus with the damage to the interest of the aggravated party,
- 3) the premise of "unlawfulness" of a binding judgment has an autonomous nature on the administrative court's grounds, which limits the possibility of arising of a prejudication for the purposes of compensation proceedings before a common court,
- 4) the institution of the complaint for declaring the unlawfulness of a binding decision is not intended to protect the interests of the State Treasury, because it makes obtaining a prejudication that declares the unlawfulness of a binding decision issued by an administrative court extraordinary, and it aims to create a proper, supra-instance court proceeding to obtain a ruling required by law to effectively initiate compensation proceedings before a common court,
- 5) while shaping regulations on the complaint for declaring as unlawful a binding decision of an administrative court, the legislator did not duly take into account the adequacy of the established procedure to the current model of administrative court proceedings.

The structure of this dissertation and the course of its deliberations are determined by its purpose and the need to analyze research problems that appear in relation to the subject of its particular parts. The work has been divided into six chapters, which include minor editorial units. The first and second chapters are a kind of introduction to the fundamental considerations over the model of the State's liability for unlawful legally binding rulings of an administrative court that were undertaken in the third chapter of this paper. In the first chapter, the issues in the field of comparative

law studies have been characterized, which are the starting point and background to the assessment of the Polish regulation of the State's liability for judicatory lawlessness. This chapter characterizes the philosophical and axiological source of today's regulation on compensatory liability for judicatory lawlessness. The EU model of state's liability for unlawful judicatures and models of this responsibility in selected European countries was characterized in more detail. The analysis covered compensation liability models in those European countries whose legal traditions influenced the final shape of the Polish administrative judiciary and Polish regulation on liability for damage (French, German and Austrian models), as well as in those countries which currently use solutions that are in force in EU law (Portuguese model). The observations made allowed to look at the institution of liability for damage caused by the unlawful administrative court decision from a broader perspective, and also proved that the assumptions of Polish legal regulations in this area are much more far-reaching. Considerations over the constitutional aspects of the discussed institution were also preceded by taking a look at the evolution of the liability for damages for issuing an unlawful binding judgment by the administrative court in Polish law and in Polish lands, with particular emphasis on the history of proceedings on the subject of obtaining a prejudication in Polish administrative court proceedings. The second chapter is dedicated to the constitutional basis of state's responsibility for the unlawful activities of the judiciary. Proper considerations in this respect were preceded by the characterization of the terms "public authority" and "public authority body", which was aimed at confirming that valid judgments of administrative courts are also covered by the scope of the state's liability for damages. Subsequently, the constitutional foundations of the functioning of administrative courts were described, with an indication of their position within the system of the judiciary in the Republic of Poland. The indication of what the adjudication of administrative courts looks like was necessary in order to understand the nature of judgments issued by these courts and also to understand the assessment of when the final judicature of an administrative court may cause damage to the property of the entitled, which was made in subsequent chapters. The considerations made in this respect were also accompanied by an indication of the separateness of the competences of administrative courts in relation to the competence of common courts, which has a fundamental impact on the interpretation of the statutory provisions of the State's Treasury responsibility for damage caused by unlawful judicature of each of these courts. On the basis of the analysis of the current position of the doctrine and the judicial judgments, the content of the principle of the state's liability for damages along with the effects of its constitutionalization was also presented. The considerations in this matter begin with a closer indication of what is the guarantee nature of the right to compensation for damage and how is it related to the validation of this right in the constitutional law. Inclusion of the right to compensation for damages in the civil rights will allow to assess whether the current model of liability for damages for administrative court lawlessness properly guarantees the protection of the individual in his relations with the public authority. Detailed description of the premises for the State's liability for damages for unlawful actions of public authority that are specified in article 77 paragraph 1 of the

Constitution of the Republic of Poland was made with regard to language, system and functional interpretation. Also, possible limitations to the right to compensation for damage, also through the prism of the principle of proportionality were indicated. The assessment of the aspect of the possibility of direct application of article 77 paragraph 1 of the Constitution of the Republic of Poland in the context of the existence of statutory regulation of compensation proceedings before a common court was also not overlooked.

The basic considerations on the subject of State's liability for damages begin with the third chapter of the dissertation. A detailed analysis of the objective and subjective premises of the State's liability for damages was preceded by an introductory reminder that the Polish model of liability for damage caused by an unlawful legally binding decision of the administrative court is included to a group of models, in which claiming this liability is based on the principles of the civil law. The observations made, were a starting point to indicate, what functions should the liability for judiciary lawlessness have within the framework of the set within the Civil Code regime for the liability for a damage caused by a prohibited action, in order to contribute to the protection of the individual's position in this proceeding. Indication of the difference between the regulations generally governing the liability for damage caused by unlawful actions of a public authority body, and those which are the basis of liability for judiciary lawlessness constituted a starting point for considering the essence of an unlawful ruling of an administrative court, the issuance of which may result in liability for damages of the State Treasury on the basis of the Civil Code. In order to convey the sense of what administrative courts deal with and to answer the question when this activity may result in a compensation obligation, it was necessary to make a reference to current theories regarding the concept of an administrative court's proceedings and to the classification of decisions issued by the administrative courts. The indication of the consequences for individuals that result from the validity of judgments that were issued is of key importance to the issue at hand. Because only to such defective judgments the legislator limits the liability of the state. A separate discussion in this part of the work covers issues of the existence and function of prejudication stating the unlawfulness of issuing a binding judgment by an administrative court. The findings also included the issue of the scope of tying by the prejudication in the compensation proceedings before a common court, which is an important legal issue in the light of the scope and content of the principle of judicial independence. In this respect, it was also indicated how the interpretation of the premises of "unlawfulness" is formed on the basis of the judgments of the Constitutional Tribunal and of the Supreme Court and common courts. An attempt was also made to determine the interpretation of this premise in relation to binding decisions of the administrative courts. Definition of an event that gives rise to liability for damages with indication of the scope and form of damage that it may cause in the property of the qualified, was used to assess the effectiveness of the existing system of asserting liability for unlawful binding judgments of the administrative court. The indication of entities authorized and obligated to repair the damage highlighted such problems as

the question of representation of the State Treasury and the legitimation of state's legal entities that are not *statio fisci* State Treasury in compensation proceedings before a common court.

Before the final conclusions were formulated, in the fourth and fifth chapters, a detailed analysis of the complaint institution to determine the unlawfulness of the binding administrative court decision was made. The fourth chapter provides a multidimensional analysis of the procedural aspects of the complaint, which was used to assess its effectiveness as a legal measure. In the fifth chapter, the types of judgments that could be issued in the proceedings initiated by this complaint were classified. Due to the multitude of cases of refusal to issue a ruling in the proceedings for the declaration of unlawfulness of a binding judgment, a separate paragraph lists and classifies the grounds justifying this refusal. The observations made in these chapters gave the basis to state that the introduced legal measure is not compatible with the civil law regulation of liability for the judiciary damage referred to in article 417¹ § 2 of the Civil Code and does not meet the expectations of individuals as to the possibility of effectively obtaining a prejudication for the purposes of compensation proceedings before a common court.

The thesis ends with a summary, which contains an approximation of the results of the analysis carried out within the individual chapters and conclusions aimed at answering the questions asked at the beginning of the dissertation.

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