

LEGAL ASPECTS OF THE PROCEDURE FOR DETERMINING THE FEE FOR WATER SERVICES UNDER NEW WATER LAW

MARCIN SOBOTA*
BARTOSZ JAWECKI**

DOI: 10.26399/iusnovum.v13.4.2019.46/m.sobota/b.jawecki

1. INTRODUCTION

In the Water Management Act¹ of 20 July 2017 (hereinafter referred to as the new Water Law), lawmakers introduced some innovative regulations pertaining to the procedure for determining fees for water services. In this paper, we present an analysis of the relevant provisions of the law. The discussion mostly focuses on issues related to determining the starting moment of the applicable administrative procedure. In addition, we address interpretative ambiguities that arise with respect to the special form employed to impose an obligation to pay for water services (an “information slip”) onto obliged entities and with respect to the form of appeal in case the amount of fee is challenged (a complaint). Another important research issue is the question to what extent the administrative procedure is applicable to proceedings aimed at determining the amount of water service fee; we also discuss the corresponding uncertainties as to whether the issuance of an administrative decision marks the substantive conclusion of the respective administrative procedure. We confront the statutory solutions adopted in the Water Law with regulations contained in the Constitution of the Republic of Poland of 2 April 1997² (hereinafter, Constitution of Poland) and other statutes.

* PhD, Assistant Professor at the Institute of Landscape Architecture, Faculty of Environmental Engineering and Geodesy of Wrocław University of Environmental and Life Sciences, attorney-at-law; e-mail: marcin.sobota@upwr.edu.pl; ORCID: 0000-0002-5126-7472

** PhD hab. Eng., Professor at the Faculty of Environmental Engineering and Geodesy of Wrocław University of Environmental and Life Sciences; e-mail: bartosz.jawecki@upwr.edu.pl; ORCID: 0000-0002-4277-0412

¹ See Dz.U. 2018, item 2268, as amended.

² Dz.U. 1997, No. 78, item 483, as amended.

The research method we adopted involves the use of primary data (first of all, legislative acts) and secondary data, i.e. rulings of the Constitutional Court and administrative courts, commentaries on the generally applicable legal regulations, and various studies on the broadly defined administrative law, and in particular, water law. Only after the appropriate amount of data has been collected, can it be aggregated, compared, and summarized. As part of the adopted research method, we collected and made a preliminary selection of legal regulations, court judgments, and views expressed in the doctrine (comparative method). Next, we analysed their contents and drew conclusions (analytical method). The views presented herein are based, primarily, on interpretations of the law from a literal and historical perspective and from a perspective based on the legislative intent. We hope that the polemical nature of this paper will stimulate a further discussion on its subject matter.

2. WATER SERVICES IN THE NEW WATER LAW

A legal definition of the term “water services” first appeared in the Polish legislation in an amended version of the Water Management Act of 18 July 2001.³ One of the changes consisted in adding Article 113b para. 7 by way of the Act of 5 January 2011 on amending the Water Management Act and other laws,⁴ which came into force on 18 March 2011. The article defined the term as follows: “water services” means activities that enable households, public institutions, and commercial entities to satisfy their need for water, by way of: 1) maintaining and managing water resources, primarily through the impoundment, abstraction, storage, conditioning, and distribution of water; 2) wastewater collection, treatment, and disposal. The above definition largely reproduces the contents of Article 2 para. 38 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy⁵ (henceforth Water Framework Directive).

The new Water Law lacks a legal definition of “water services”, although in the explanatory memorandum to the bill, the expression “water services” appears 74 times⁶ and, in the adopted text of the Water Law, it occurs 120 times.

First of all, note should be taken of the provisions of Article 35 para. 1 of the new Water Law, according to which “water services consist in providing households, public institutions, and commercial entities with the possibility to use water in a scope that goes beyond the scope of universal use of water, ordinary use of water,

³ Dz.U. 2001, No. 115, item 229, as amended.

⁴ Dz.U. 2011, No. 32, item 59.

⁵ OJ EU, series L, No. 327, p. 1; Article 2 para. 38: “Water services” means all services which provide, for households, public institutions or any economic activity: (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater, (b) wastewater collection and treatment facilities which subsequently discharge into surface water.

⁶ Explanatory Memorandum to the Bill of the New Water Law, Sejm print No. 1529, 25 April 2017.

and special use of water.” In its turn, Article 35 para. 3 of the new Water Law contains a list of water supply services, i.e.:

- 1) abstraction of groundwater or surface water;
- 2) impoundment, storage or retention of groundwater and surface water and the use of such water;
- 3) conditioning and distribution of groundwater and surface water;
- 4) wastewater collection and treatment;
- 5) discharge of wastewater into the water or ground, including the discharge of wastewater into water facilities;
- 6) use of water for the purposes of the energy sector, including hydroelectric power generation;
- 7) discharge into the water or water facilities of rainwater or meltwater from open or closed rainwater sewerage systems that serve for draining atmospheric precipitation or from collective sewerage systems within the administrative boundaries of cities;
- 8) permanent drainage of land, building structures or excavations and mines as well as discharge into the water of water coming from land drainage within the administrative boundaries of cities;
- 9) discharge of abstracted and not used water into the water or ground.

The above regulation should be confronted with the provisions of Article 268 para. 1 of the new Water Law, which specifies to which of the water services enumerated above (Article 35 para. 3) the obligation to pay fees for their rendering is applicable,⁷ whereas in Article 269 para. 1 of the new Water Law, the legislator introduces an additional list of other activities to which the obligation to pay for water services also applies.⁸ This kind of a “surplus” regulation of the scope of fees for water services gives rise to fundamental doubts from the point of view of the principles of proper legislation and coherence of a legislative act. In this case, we

⁷ Article 268 para. 1 of the new Water Law: Charges for water services are paid for:

- 1) abstraction of groundwater or surface water;
- 2) introduction of wastewater into the water or ground;
- 3) discharge into the water:
 - a) of rainwater or meltwater from open or closed rainwater sewerage systems used for draining atmospheric precipitation or from collective sewerage systems within the administrative boundaries of cities,
 - b) water coming from land drainage within the administrative boundaries of cities;
- 4) abstraction of groundwater and surface water for the purposes of fish farming and other kinds of aquatic farming;
- 5) introduction into the water or ground of effluent from fish farming and other kinds of aquatic farming enterprises.

⁸ Article 269 para. 1 of the new Water Law: charges for water services are also paid for:

- 1) reduction of natural water retention as a result of construction works performed on an area exceeding 3,500 m² or the construction of objects permanently located on the ground that are conducive to the reduction of natural water retention due to the exclusion of more than 70% of the real estate area from the biologically active surface in areas not included in open or closed sewage systems;
- 2) extraction from surface waters, including internal sea waters along with the internal waters of the Gulf of Gdańsk and the territorial sea waters, of stone, gravel, sand and other raw materials, and the cutting of plants from the water or the shore.

deal with charges called by the legislator “fees for water services,” although in fact they have no relation to water services (enumerated in Article 35 para. 1 of the new Water Law), whereas activities that create an obligation to pay fees under Article 269 para. 1 of the new Water Law undoubtedly constitute examples of special water use, directly indicated in Article 34 paras 4 and 8 of the new Water Law.⁹

The water service fee for the abstraction of water consists of a fixed annual fee and a variable fee that depends on the amount of water abstracted,¹⁰ with the exception that the fixed fee is not charged for the abstraction of water for the purposes of land and crop irrigation in agriculture and forestry and for the purposes of fish farming and hydroelectric power generation;¹¹ in its turn, the water service fee for the discharge into the water of water coming from land drainage within the administrative boundaries of cities is charged only in the form of a fixed fee.¹²

The amount of the fixed fee for the:

- 1) abstraction of groundwater,
- 2) abstraction of surface water,
- 3) discharge into the water:
 - a) of rainwater or meltwater from open or closed rainwater sewerage systems used for draining atmospheric precipitation or from collective sewerage systems within the administrative boundaries of cities,
 - b) water coming from land drainage within the administrative boundaries of cities,
- 4) introduction of waste water into the water or ground

– is determined by the Polish Water Management Enterprise (Wody Polskie) and is forwarded to entities obliged to pay for water services in the form of an annual information slip that also describes the method of calculating the fee.¹³ An entity required to pay for water services pays the fixed (annual) fee to the bank account of the Polish Water Management Enterprise in four equal quarterly instalments by the end of the month following the end of each quarter.¹⁴ If an entity required to pay for water services fails to fulfil the above obligation, the competent authority of the Polish Water Management Enterprise determines the amount of the fixed fee by way of a decision;¹⁵ furthermore, an appeal launched against this decision does not suspend its execution.¹⁶ If an entity required to pay the fee for water services disagrees with the amount of fee, it has the right to lodge a complaint within 14 days from the receipt of the annual information slip.¹⁷ The complaint is submitted to the very same entity that has composed the annual information slip; it has 14 days to

⁹ M. Białek, D. Chojnacki, T. Grabarczyk, *Oplaty za usługi wodne w nowym prawie wodnym*, C.H. Beck, Warszawa 2018, p. 26.

¹⁰ Article 270 para. 1 of the new Water Law.

¹¹ Article 270 para. 2 of the new Water Law.

¹² *Ibid.*

¹³ Article 271 para. 1 of the new Water Law.

¹⁴ Article 271 para. 6 of the new Water Law.

¹⁵ Article 271 para. 7 of the new Water Law.

¹⁶ Article 271 para. 8 of the new Water Law.

¹⁷ Article 273 para. 1 of the new Water Law.

examine the complaint.¹⁸ In this case, two options are possible, i.e. the complaint is either accepted, which results in the Polish Water Management Enterprise or the head of the respective local executive authority forwarding to the entity required to pay for water services an amended annual information slip that also contains the method of calculating the water service fee¹⁹ or, if the complaint is rejected or accepted in part only, the competent authority of the Polish Water Management Enterprise or the head of the respective local executive authority determines the amount of water service fee by way of issuing a decision²⁰ that can be appealed against directly with an administrative court (in what follows, we shall limit the discussion to decisions issued by the Polish Water Management Enterprise).

The amount of the variable fee depends on the amount of water abstracted, the amount and nature of sewage discharged, and the amount of water discharged into the water, with the proviso that the fee is charged on a quarterly basis. Just like in the case of the fixed fee, the amount of the variable fee is determined by the Polish Water Management Enterprise, which notifies each interested party of the amount to be paid in an information slip that also contains the method of fee calculation.²¹ Considering the fact that, in this case, it is necessary to establish the actual use of water or the amount of sewage, the fee is calculated on the basis of readings of metering devices or data from metering systems. The legislator stipulated that an entity required to pay water service fees must make provisions for the separate measurement of the amount of groundwater and surface water abstracted, while the indications of metering devices are read by an employee of the Polish Water Management Enterprise.²² The subsequent stages of the procedure for the collection of the variable water service fees are identical to the procedure for the collection of the fixed fee²³ described above, both in terms of lodging a complaint and in terms of the appeal procedure.

3. ADMINISTRATIVE PROCEDURE FOR DETERMINING THE FEE FOR WATER SERVICES

The above regulations clearly indicate that, under the new Water Law, an administrative decision is issued *expressis verbis* as part of the procedure for determining the fee for water services in the following cases:

- 1) if an obliged entity fails to pay the amount specified in the information slip within 14 days from its receipt²⁴ – subsequently, the decision can be appealed

¹⁸ Article 273 para. 4 of the new Water Law.

¹⁹ Article 273 para. 5 of the new Water Law.

²⁰ Article 273 para. 6 of the new Water Law.

²¹ Article 272 para. 17 of the new Water Law.

²² Article 272 paras 11–14 of the new Water Law.

²³ Article 272 paras 17–26 of the new Water Law.

²⁴ Article 271 para. 7 and Article 272 para. 19 of the new Water Law.

against with a higher-level authority²⁵ under the Code of Administrative Procedure of 14 June 1960²⁶ (hereinafter: CAP);

- 2) if the complaint lodged by an obliged entity²⁷ has been dismissed in full or in part – subsequently, the said entity has the right to file a complaint with an administrative court²⁸.

The conclusion of an administrative procedure with a decision on the substance of the case in a form provided for by the Code of Administrative Procedure, that is by an administrative decision, undoubtedly means that an administrative procedure has been initiated at an earlier point and that it must follow the rules for administrative procedures laid down in the Code of Administrative Procedure.²⁹ The provisions of the new Water Law do not set forth any different rules in this respect, which means, in particular, that a party to the procedure (an obliged entity) has the right to inspect the case files at every stage of the procedure and to submit motions for adducing evidence, with the exception of the provisions of Article 273a of the new Water Law.³⁰ In addition, an administrative body must undertake all the necessary steps in order to ascertain the facts of the case and to resolve it in the public interest and in the legitimate interest of citizens in accordance with the principle of objective truth, expressed in Article 7 CAP and reflected, in particular, in the provisions of the Code of Administrative Procedure concerning evidence-taking proceedings.³¹ At the same time, one must not lose sight of the provisions of Article 12 CAP, which state that public administration bodies should act on any given case thoroughly and promptly, using the simplest possible means to resolve the case, while matters that do not require the collection of evidence, information or explanations should be resolved immediately. The apparent conflict between thoroughness and speed should be interpreted as the requirement that administrative bodies should act as quickly as possible but without detriment to the thoroughness of the proceedings, i.e. with no detriment to the implementation of the principle of material truth.³² At the same time, as Magdalena Kotulska points out, “this principle requires public administration bodies to conduct proceedings in such a way that they could not be accused of undue delay or tardiness in performing their procedural activities. Promptness of action, however, does not mean haste at any cost; it is not an aim in itself, but a method of searching for objective truth. Proceedings should be conducted quickly but only as long as the promptness of action does not interfere

²⁵ Article 271 para. 8 and Article 272 para. 26 of the new Water Law.

²⁶ Dz.U. 2017, item 1257, as amended.

²⁷ Article 273 para. 6 of the new Water Law.

²⁸ Article 273 para. 8 of the new Water Law.

²⁹ In particular, Articles 6–16 CAP.

³⁰ Article 273a of the new Water Law: If a complaint is lodged, as provided for in Article 273 para. 1, the provisions of Article 10 § 1 and Article 61 § 4 CAP do not apply.

³¹ Among others, Articles 70, 73, 75, 77, 78, 80, 81, 95 § 1 CAP. See F. Elżanowski, [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 27.08.2018).

³² J. Malanowski, [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 27.08.2018).

with thoroughness, which requires the authority to establish all the circumstances of a given case.”³³

If one applies the above considerations to the provisions of the new Water Law, one has to conclude that, in the case of proceedings involving the issuance of an administrative decision, provisions of the Code of Administrative Procedure are applicable, including those determining the rights of a party to administrative proceedings. The validity of the above approach is evidenced, among other things, by the fact that the legislator, in Article 271 para. 8 and Article 272 para. 26 of the new Water Law, directly provides for the possibility of appealing against a decision without establishing a special procedure for this purpose, which can only mean that an appeal against the administrative decision in question is lodged in line with the procedure described in the Code of Administrative Procedure. In our opinion, there is no obvious reason why proceedings conducted in the first and second instance should be governed by some rules of procedure.

At the same time, in view of the particular nature of the proceedings aimed at establishing the amount of fee for water services, the legislator decided that these cases basically would not require the collection of evidence, since the calculation of water service fees is mostly based on data contained in generally binding regulations or documents (fixed fee) as well as on data collected by employees of the Polish Water Management Enterprise or on statements submitted by entities required to pay for water services on a quarterly basis³⁴ (variable fee). This pursuant to Article 12 para. 2 CAP, allows the application of a simplified procedure, ended with the issuance of an annual information slip. In this connection, special note should be taken of the reservations contained in the statement of reasons for the verdict issued by the Voivodeship Administrative Court in Szczecin on 2 July 2018,

³³ M. Kotulska, *Czas a postępowanie administracyjne*, [in:] J. Niczyporuk (Ed.), *Kodyfikacja postępowania administracyjnego na 50- lecie k.p.a.*, Lublin 2010, p. 424.

³⁴ Article 552 para. 2 of the new Water Law: In the period from the date on which the Act enters into force to 31 December 2020, the amount of water service fee is determined on the basis of:

- 1) the purpose and scope of water use specified in the water permit or the integrated permit;
- 2) measurements made by administrative bodies as part of water management inspections or findings from reviews of water permits;
- 3) measurements made by administrative bodies as part of integrated permit inspections.

para. 2a. In the period up to 31 December 2020, the amount of water service fee is determined also on the basis of:

- 1) readings of metering devices taken as part of water management inspections or
- 2) statements submitted by entities required to pay for water services on a quarterly basis.

para. 2b. Statements submitted pursuant to para. 2a(2) by entities required to pay for water services must be composed in accordance with the templates published in the Public Information Bulletin on the relevant website of the Polish Water Management Enterprise. The statements are submitted to:

- 1) the Polish Water Management Enterprise in order to determine the amount of fees stipulated in Article 272 paras 1–7 and 9 and Article 275 para. 8(2) and (4),
- 2) the head of local public administration in order to determine the amount of fee stipulated in Article 272 para. 8

– within 30 days of the final day of each quarter, except that statements for the fourth quarter of the year 2020 must be submitted by entities using water services until 14 January 2021.

in which water service fees (introduced as part of a new system of financing water management) are classified as public levies, similarly to environmental fees before.³⁵

The assumption that we deal with an administrative procedure initiated under Article 104 §§ 1 and 2 CAP means that a decision on the substance of the case must be taken in the form of an administrative decision. However, the legislator decided that, at the initial stage, the obligation to pay for water services would be imposed on the respective entity in the form of an information slip. The legislator chose not to specify that this stage of the proceedings is completed with the issue of an administrative decision. Despite the fact that, in our opinion, the procedure remains the same, both in subjective and objective terms, until the very end of the proceedings, an administrative decision is issued only after a number of statutory conditions have been met. It should be emphasised that, in our opinion, the procedure for the collection of payment for water services constitutes an individual administrative case. Correspondingly, the proper and competent authority for issuing a decision that applies the law and establishing an individual precept of law is a public administration body in the systemic or functional sense of the term.³⁶ We fully agree with Waclaw Dawidowicz, who defines an individual case as “a combination of factual and legal circumstances with respect to which a government body applies a norm of administrative law in order to establish, with regard to a given entity (entities), a legal situation by way of granting (refusal to grant) a requested right or in the form of an *ex officio* imposition of an obligation.”³⁷ Clearly, if the amount of the water service fee is not challenged by the obliged entity, then the annual information slip constitutes the final basis for establishing the amount of the fee, and thus determining an obligation of the respective party.

The question still remains how the form of an annual information slip stipulated by the legislator should be treated in the context of an ongoing administrative procedure. At this point, references should be made to the views expressed in the legal doctrine and in judicial practice, in which an administrative decision is uniformly defined as “a unilateral decision taken by a government administration body on the binding consequences of an existing legal regulation for a specific case

³⁵ Ruling of the Voivodeship Administrative Court in Szczecin of 2 July 2018, II SA/Sz 514/18, Legalis, No. 1807646: “The provisions of the Water Law Act, which shapes a new system of financing water management, allow one to conclude that water service fees should be classified as public levies, just like the environmental fee before. This payment depends not on the will of the subject but on the subjective and objective scope of the tax law. This classification is confirmed by the provisions of Article 300 of the Water Law, in which the legislator stipulates that payments for water services shall be governed as appropriate by the provisions of Section III of Tax Regulations of 29 August 1997 and specifies exceptions from this rule. If so, the imposition of a legal obligation to make payments of this kind constitutes an interference with the right of obliged entities to dispose freely of their monetary assets. Therefore, the rules governing public levies and their application must be consistent with all the constitutional norms and principles that are currently in force.”

³⁶ B. Adamiak, [in] B. Adamiak, J. Borkowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2017, <http://www.legalis.pl> (accessed 28.08.2018).

³⁷ W. Dawidowicz, *Zarys procesu administracyjnego*, PWN, Warszawa 1989, pp. 7–8.

and an individually specified external entity”³⁸ or as “a unilateral and authoritative declaration of intent by a public administration body as defined by the Code of Administrative Procedure; based on the generally binding provisions of the law; issued with respect to a specific external entity; resolving an individual case of the said external entity; taken in accordance with the procedure defined in the Code of Administrative Procedure; having the form and structure established by the procedural law.”³⁹ Also the judicial practice of the Supreme Administrative Court clearly indicates that a letter addressed by an administrative body to an external entity containing an authoritative decision concerning the legal rights and obligations of the entities (natural or legal persons) appearing in a particular case, even if not issued in the form of a decision, nonetheless constitutes an administrative decision, irrespective of whether there is a legal basis for such a decision.⁴⁰

Given the above clarification, one must concede that a letter issued by a public administration body – irrespective of what it is called by the issuer – constitutes an administrative decision, provided that certain conditions are fulfilled; namely, if the case in question is specified with respect to two circumstances: the person (subject) and the situation (the pertinent rights or obligations under administrative law) and further, if the letter is addressed to an external entity and contains an authoritative decision as to the rights or obligations of the entity concerned.⁴¹ In view of the above, we see no rational legislative premises that would justify the introduction by the legislator of the dual nomenclature of decisions issued as part of the proceedings in question. Certainly, the solution that has been adopted has important procedural consequences, since the issuance of an administrative decision results in a substantive resolution of the case and, consequently, in the closing of the proceedings in the first or second instance. Besides, considering that, under Article 110 CAP, an administrative body is bound by its own decisions, it may or must re-examine a given case only under the circumstances provided for in the law. In the light of these regulations, an authority that has issued a decision on a case, in principle, cannot further decide on the issue.⁴² In addition, the guarantee of permanence of administrative decisions following from Article 110 in conjunction with Article 109 CAP means that an administrative body is bound by its own

³⁸ See ruling of the Supreme Administrative Court of 22 September 1983, SA/Wr 367/83, ONSA 1983 No. 2, item 75; P. Majczak, *Podstawa prawna decyzji administracyjnej*, Ius Novum No. 4, 2016, pp. 375–382.

³⁹ R. Kędziora, *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2017, <http://www.legalis.pl> (accessed 30.08.2018).

⁴⁰ See ruling of the Supreme Administrative Court of 21 February 1983, I SAB, published in *Glosa No. 2*, 1996, item 25, with an approving gloss by B. Adamiak, J. Borkowski, published in *OSP* 1995, No. 11, item 222; ruling of the Supreme Administrative Court of 24 July 2014, I OSK 898/13, *Legalis*, No. 1068530.

⁴¹ See ruling of the Supreme Administrative Court of 9 January 1995, I SA 2257/93, ONSA 1997, No. 2, item 15; ruling of the Supreme Administrative Court of 11 July 1994, IV SA 974/93, *Wokanda* No. 11, 1994, p. 4; M. Dyl, [in] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 30.08.2018).

⁴² B. Adamiak, *supra* n. 36.

decision until the said decision ceases to be effective, i.e. until it expires, is repealed or amended.⁴³

Under the procedure provided for in the new Water Law, the issuance and delivery of a decision in the form of an information slip finalises the procedure for determining the amount of water service fee or constitutes the basis for lodging a complaint. In the latter case, the same body re-examines the case as a result of the objections raised by the obliged entity, and only then does it issue an administrative decision, which, in our view, is at odds with the existing judicial practice referred to above and with the views expressed in the legal doctrine.

It should be pointed out, however, that the legislator, in Article 271 para. 1 and Article 272 para. 11 of the new Water Law, emphasises that it is the Polish Water Management Enterprise (and not any of its governing bodies) that determines the fee for water services and then makes it known to the obliged entity in an annual information slip. This might suggest that, at this stage of the procedure, we do not deal with either administrative proceedings or an administrative decision, since no administrative body is involved, whereas an administrative decision, by definition, can only be issued by an administrative body. At this juncture, however, one should consider the existing practice of the Polish Water Management Enterprise,⁴⁴ where the information slip specifying the amount of fee for water services is actually issued by a governing body of the enterprise, namely, by directors of the Drainage Area Boards of the Polish Water Management Enterprise; crucially, under Article 14 para. 2 of the new Water Law, proceedings before the governing bodies mentioned in para. 1(3)–(6), including the director of a Drainage Area Board of the Polish Water Management Enterprise, are subject to the provisions of the Code of Administrative Procedure.⁴⁵

In view of the above reservations, some further doubts of a legal nature should be considered in relation to the complaint procedure, i.e. a situation where the obliged entity does not agree with the amount of the fee and decides to challenge the amount specified in the information slip. The new Water Law requires a complaint to be lodged with the Polish Water Management Enterprise, the same entity that has issued the original information slip;⁴⁶ if the complaint is accepted, the new information slip is again issued by the Polish Water Management Enterprise. The legislator stipulates that only if the complaint is rejected, an administrative decision determining the amount of water service fee is issued by a governing body of the Polish Water Management

⁴³ Ruling of the Voivodeship Administrative Court in Warsaw of 14 October 2009, II SA/Wa 818/09, *Legalis*, No. 271181.

⁴⁴ Ruling of the Voivodeship Administrative Court in Szczecin of 2 July 2018, II SA/Sz 514/18, *Legalis*, No. 1807646; ruling of the Voivodeship Administrative Court in Gdańsk of 28 June 2018, II SA/Gd 288/18, *Legalis*, No. 1806120.

⁴⁵ Here, it should also be mentioned that, under Article 14 para. 6(2) of the new Water Law, in matters falling within the scope of operation of the Polish Water Management Enterprise, the competent authority – as defined in the Code of Administrative Procedure of 14 June 1960 – is, among others, the director of a Drainage Area Board of the Polish Water Management Enterprise, although only with respect to decisions stipulated in Article 271 para. 7, Article 272 para. 19, Article 273 para. 6, Article 275 paras 15 and 19, and Article 281 para. 7, that is, in situations where the legislator makes direct references to the issuance of administrative decisions rather than information slips by the Polish Water Management Enterprise.

⁴⁶ Article 273 para. 1 of the new Water Law.

Enterprise, so also at this stage doubts can be raised as to the nature of the ongoing proceedings and the rights that the obliged entity may have in this connection.⁴⁷

The regulation under which a complaint can be lodged only once in a given reporting period, both for the fixed and for the variable fee, also give rise to numerous doubts of a legal nature. The regulation effectively means that a complaint can be lodged once a year for the fixed fee (payable in four quarterly instalments) or once a quarter for the variable fee. Thus, an obliged entity wishing to challenge, e.g. the amount of the fourth instalment of the fixed fee, must do so only after the receipt of the information slip specifying the amount of the entire annual fee (i.e. before the end of the first quarter). Moreover, the legislator does not explicitly address the issue of the partial acceptance of a complaint. Under an interpretation based on legislative intent, only if a complaint is accepted in full, will a new information slip specifying the amount of the fee as calculated by the obliged entity be issued. Given the provisions of the Water Law, this should be the final (non-appealable) decision, considering the fact that an obliged entity can only lodge one complaint within a given reporting period. In the absence of an administrative decision, the legislator did not make a direct provision for an appeal procedure under the Code of Administrative Procedure in a case like this, on the assumption that the acceptance of a complaint implies that the obliged entity agrees to pay the fee in the amount determined as a result of the complaint having been accepted.⁴⁸ However, one cannot rule out that a complaint will be accepted only in part or that it will be accepted in full but for reasons other than those indicated in the complaint. Let us consider, for example, a situation where the legal or factual grounds for the complaint (objections) have proved to be justified, but the amount of the fee itself has been calculated by the administrative body quite correctly; or, by contrast, a situation where, although the objections have turned out to be unjustified, the body examining the complaint decides to change the previously calculated amount of fee because it has discovered an error of its own – a decision with which the obliged entity may or may not agree. In a situation like that, one must not lose sight of Article 7a CAP, which introduces the principle of a favourable interpretation of precepts of law (*in dubio pro libertate*);⁴⁹ in our opinion, however, this principle does not invalidate our proposition that, in a situation described above, an administrative decision must be issued so that the interested party could lodge an appeal (this time, under the Code of Administrative Procedure). Irrespective of what administrative decision is adopted, it is the will of the party (an obliged entity) that should ultimately decide whether the decision made is to its benefit and whether it fully reckons with its interests. Especially given that the calculated amount of the fee

⁴⁷ Article 273a of the new Water Law merely states that, in the case of a complaint lodged under Article 273 para. 1, the applicability of the provisions of the Code of Administrative Procedure shall not be limited to Article 10 § 1 and Article 61 § 4 CAP, which can only be interpreted to mean that the remaining provisions of the Code of Administrative Procedure are also applicable.

⁴⁸ See K. Filipek, M. Kucharski, P. Michalski, *Nowe prawo wodne najważniejsze zmiany dla gmin i przedsiębiorstw wodno-kanalizacyjnych*, C.H. Beck, Warszawa 2018, pp. 92–94.

⁴⁹ The admissibility of the application of this provision of the Code of Administrative Procedure during the procedure for determining the amount of water service fee is confirmed by the Voivodeship Administrative Court in Szczecin in the statement of reasons for its judgment of 2 July 2018, No. II SA/Sz 514/18, published in Legalis.

for water use may vary considerably depending on the underlying assumptions used for the calculation, as we demonstrate in another paper.⁵⁰

The above considerations and assumptions must provide an answer to another key question, namely, at what point the administrative proceedings under discussion are initiated. In order to be able to answer this question, one should first determine the moment when administrative proceedings can be initiated. According to Article 61 § 1 CAP, administrative proceedings are initiated either at the request of an interested party or *ex officio*. The form in which administrative proceedings are initiated is determined primarily by the provisions of substantive law.⁵¹ On the other hand, whenever regulations of administrative law do not expressly determine how administrative proceedings are to be initiated, the generally accepted judicial practice is to assume that, if the subject-matter of proceedings is conferral of a right, the proceedings are based on the grievance procedure, whereas if the subject-matter is the imposition of an obligation, the proceedings are initiated *ex officio*.⁵² As it has been repeatedly emphasised in judicial practice, the date of an *ex officio* initiation of proceedings should be considered the date of the first official action towards a party or of an action undertaken on a case *ex officio* by a public administration body;⁵³ furthermore, the fact that the action has been undertaken must be communicated to the interested party.⁵⁴

In the case of the fixed fee for water services, the first moment when the obliged entity learns that an obligation has been imposed on it to pay for water services is the moment when it receives the annual information slip specifying the amount of fee for water services, which would correspond to the date on which possible administrative proceedings on this particular case are initiated. Of course, in order to be able to determine the amount of the fixed fee, an administrative body must be in possession of all the necessary data, and in particular:

- 1) the unit rate of the fixed fee,
- 2) the maximum amount of water that can be abstracted (in m³/s) as per the water permit or integrated permit,

⁵⁰ B. Jawecki, M. Sobota, E. Burszta-Adamiak *The Influence of New Legal Regulations on the Method of Determining the Amount of Fees for Discharging Rain Water and Snow Water to Water*, *Ekonomia i Środowisko* No. 1(68), 2019, pp. 37–56.

⁵¹ Z. Janowicz, *Kodeks postępowania administracyjnego. Komentarz*, PWN, Warszawa 1995, p. 166.

⁵² See ruling of the Supreme Administrative Court of 24 May 2001, IV SA 599/99, unpublished; ruling of the Supreme Administrative Court of 25 October 2006, II OSK 1257/05, *Legalis*, No. 232954; ruling of the Supreme Administrative Court of 27 February 2007, II OSK 314/06, *Legalis*, No. 116402; ruling of the Supreme Administrative Court of 3 March 2006, I OSK 991/05, *Legalis* No. 271465; ruling of the Supreme Administrative Court of 22 March 2006, II GSK 28/06, *Legalis*, No. 241315; ruling of the Voivodeship Administrative Court in Białystok of 2 October 2007, II SA/Bk 471/07, *Legalis*, No. 101593; R. Stankiewicz, [in] R. Hauser, M. Wierzbowski (eds) *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 30.08.2018).

⁵³ See ruling of the Supreme Administrative Court of 13 October 1999, IV SA 1364/97, unpublished; ruling of the Supreme Administrative Court of 20 January 2010, II GSK 321/09, *Legalis*, No. 224515.

⁵⁴ See resolution of the Supreme Administrative Court of 4 March 1981, SA 654/81, ONSA 1981, No. 1, item 15; ruling of the Supreme Administrative Court of 26 October 1999, III SA 7955/98, *Legalis*, No. 62631.

- 3) the amount of groundwater resources available or SNQ for surface water,
- 4) the reporting period expressed in days.

However, due to the fact that the obliged entity does not take part in these actions, undertaken by the administrative body, nor indeed is notified of them, it can execute no rights at this stage. Moreover, the legislator does not specify the deadline for the completion of these activities by the administrative body. Correspondingly, at this point, administrative proceedings cannot be considered to have been initiated.

The situation looks different in the case of the variable fee for water services, which as a rule is calculated as a product of the fixed fee and the amount of water abstracted, and thus the administrative body must undertake additional steps in order to determine the quantity of water abstracted. Pursuant to Article 272 para. 11 of the new Water Law, the amount of water consumption can be established using the readings of metering devices or on the basis of data from metering systems; the readings of metering devices are taken by an employee of the Polish Water Management Enterprise.⁵⁵ Correspondingly, it may happen that the obliged entity will learn about the action taken towards it in connection with the calculation of the variable fee from an employee of the Polish Water Management Enterprise. In our view, however, it is not clear whether such actions of the employee of the Polish Water Management Enterprise can be considered actions in a specific individual case, since it cannot be ruled out that the meter readings will also be used for the purposes of other administrative proceedings, e.g. inspections. Given the above, one has to adopt the same solution as in the case of the fixed fee, namely, that proceedings are initiated with the first action in the case, which is the delivery of an information slip to the obliged entity.

A similar analysis is applicable to the factual situation referred to in Article 552 para. 2a of the new Water Law,⁵⁶ where the amount of water service fee (in the period until 31 December 2020) is determined on the basis of statements submitted by entities required to pay for water services. It is our view that, also in this case, proceedings are not initiated with the submittal of the statement, since administrative proceedings can only be considered initiated with the first official action undertaken with respect to a party or with an action undertaken by an administrative body, neither of which is the case here.

The peculiar status of the initiation of an administrative procedure under the Water Law may give rise to fundamental doubts of a legal – and even constitutional – nature, considering that one of the parties is deprived of any influence on the ongoing proceedings and, in fact, does not learn about their initiation and completion before the receipt of the information slip specifying the amount of the water service fee.

⁵⁵ Article 272 para. 14 of the new Water Law.

⁵⁶ Article 552 para. 2a, added by the Act of 20 July 2018 (Dz.U. 2018, item 1722), which entered into force on 20 August 2018.

4. CONCLUSIONS: DOUBTS OF A CONSTITUTIONAL NATURE

Already in the course of legislative works on the new Water Law, some people, including representatives of industries, voiced concern that the rules for determining the amount of fees for water services proposed in the bill contradicted the principles established in the Code of Administrative Procedure, especially in view of the provisions of Article 14 para. 2 of the new Water Law.⁵⁷ Furthermore, it was pointed out that a complaint is handled by the beneficiary of the fee, i.e. the Polish Water Management Enterprise.⁵⁸ The Bureau of Research of the Chancellery of the Sejm also voiced doubts in this respect, pointing out that the procedure for determining the amount of water service fee described in the Water Law bill introduces a number of exceptions from the general administrative procedure regulated by the Code of Administrative Procedure. A more explicit and unambiguous confirmation is required of the acceptability of departure from the two-tier principle (the constitutional right to appeal) when determining the amount of fee in a decision issued following the rejection of a complaint. One should be aware, however, that this solution may give rise to doubts as to its conformity with the Constitution, although arguments have been voiced in favour of its acceptability.⁵⁹ We fully share the above doubts as to whether the regulations in question are in conformity with the legal precepts stipulated in the Code of Administrative Procedure and in the Constitution of Poland.

Admittedly, although Article 78 of the Constitution of Poland establishes the two-tier principle (effectively, the right to appeal), it also stipulates that exceptions to this rule can be introduced by statute. The possible form and extent of such exceptions is determined by the judicature of the Constitutional Court⁶⁰ and the views expressed in the doctrine. Crucially, the exceptions mentioned in the second sentence of Article 78 of the Constitution of Poland are generally confronted with the provisions of Article 31 para. 3 of the Constitution.⁶¹ As the article states, "Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection

⁵⁷ Video recording of the meeting of the Extraordinary Subcommittee for the Examination of the Governmental Bill of a New Water Management Law (print No. 1529) held on 9 June 2017, at approx. 10:00.

⁵⁸ Video recording of the meeting of the Extraordinary Subcommittee for the Examination of the Governmental Bill of a New Water Management Law (print No. 1529) held on 27 June 2017, at approx. 12:59.

⁵⁹ M. Bajor-Stachańczyk, *Opinia prawna w sprawie zgodności przepisów rządowego projektu ustawy – Prawo wodne (druk sejmowy nr 1529) wprowadzających procedury postępowania administracyjnego (w tym w zakresie opłat przewidzianych w projekcie) z zasadami postępowania administracyjnego*, Biuro Analiz Sejmowych Kancelarii Sejmu, Warszawa 2017.

⁶⁰ See the judgments of the Constitutional Court of: 17 February 2004, SK 39/02, OTK-A 2004, No. 2, item 7; of 18 October 2004, P 8/04, OTK-A 2004, No. 9, item 92; of 14 October 2010, K 17/07, OTK-A 2010, No. 8, item 75; of 3 July 2012, K 22/09, OTK-A 2012, No. 7, item 74; of 6 December 2011, SK 3/11, OTK-A 2011, No. 10, item 113; of 8 October 2013, K 30/11, OTK-A 2013, No. 7, item 98; of 22 October 2013, SK 14/13, OTK-A 2013, No. 7, item 100; of 26 November 2013, SK 33/12, OTK-A 2013, No. 8, item 124; resolution of the Constitutional Court of 3 October 2005, TS 81/05, OTK-B 2006, No. 1, item 40.

⁶¹ See P. Grzegorzczak, K. Weitz, [in] M. Safian, L. Bosek (eds), *Konstytucja RP*, Vol. I, *Komentarz art. 1–86*, C.H. Beck, Warszawa 2016, <http://www.legalis.pl> (accessed 31.08.2018).

of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights. These limitations cannot affect the substance of freedoms and rights.” In view of the above, a departure from the principle of two tiers can only be established by statute as an exception; in addition, it must be clearly and unambiguously expressed. In the case at hand, the most frequently cited argument in support of such a departure is considerations of public order,⁶² and in particular, the efficiency and speed of proceedings. However, the principle of expediency hardly justifies a total surrender of subjective rights and, in any case, one should carefully consider whether the efficiency and speed of proceedings cannot be achieved by other statutory mechanisms, without the need to limit decisions affecting rights and freedoms to the first instance only. In view of the above objections, it should be said that the apparent conflict between the protraction of proceedings resulting from the lodging of an appeal against administrative decisions, on the one hand, and the desire to ensure efficient and correct operation of administrative bodies, on the other, should always or nearly always be resolved in favour of protecting the right of appeal at the expense of the efficiency, speed, and effectiveness of proceedings.⁶³

First of all, one should note the lack of consistency on the part of the legislator, since the new Water Law provides for two distinct procedures, each implying different rights of an entity required to pay for water services. Under the first procedure, an obligation to pay for water services is initially imposed by the issuance of an information slip; if the obliged entity challenges the amount to be paid, it lodges a complaint, and only if the complaint has been rejected, an administrative decision proper is issued regarding the amount of the fee. This decision can only be challenged by way of a complaint with an administrative court. Under the second procedure, the lack of payment by the statutory deadline of the amount specified in the information slip issued by the Polish Water Management Enterprise results in the issuance of an administrative decision that can be appealed against under the Code of Administrative Procedure.

As follows from what representatives of the Ministry of the Environment communicated to the public during the meeting of the Extraordinary Subcommittee for the Examination of the Governmental Bill of a New Water Management Law held on 22 June 2017,⁶⁴ one of the legislative intents of the initiators of the new Water Law was to limit the possibility of challenging decisions on the amount of water service fees. In the current legal situation, the Polish Water Management Enterprise exercises exclusive control over the course of these proceedings, both in

⁶² See ruling of the Constitutional Court of 26 November 2013, SK 33/12, Legalis, No. 740185.

⁶³ See P. Grzegorzcyk, K. Weitz, *supra* n. 61.

⁶⁴ Video recording of the meeting of the Extraordinary Subcommittee for the Examination of the Governmental Bill of a New Water Management Law (print No. 1529) held on 22 June 2017, at approx. 17:24: “People have raised objections saying it must be a[n administrative] decision. I know why: because then you would be able to immediately lodge an appeal and take us to courts, involving us, well, the Polish Water Management Enterprise, into never-ending litigations, but the information slip has been decisively approved by the Government Centre for Legislation. In fact, it has been recommended, and we stand by this regulation.”

the case of a complaint and in the case when the decision is challenged by the lack of payment by the statutory deadline.⁶⁵ Here it should be reiterated that a complaint will be examined by the very same entity that has issued the original decision, the next stage being a complaint with an administrative court. In practice this means that the proceedings, at their administrative stage, are single-tiered (involve one instance only), which gives rise to numerous doubts, first and foremost, with regard to constitutionality. If the water service fee specified in the information slip has not been paid, a complaint lodged under the Code of Administrative Procedure is also examined by a unit of the Polish Water Management Enterprise.

In addition to the doubts as to constitutionality discussed above, there are objections concerning the form employed to impose payment obligations on the entity concerned. Since the decision is issued in the form of an information slip and, according to the legislator, does not therefore constitute an administrative decision, it cannot be appealed against under the Code of Administrative Procedure; in fact, at this stage of the procedure, no administrative proceedings are conducted.

As demonstrated above, in the light of the judgments of administrative courts in cases governed by the new Water Law, this position cannot be upheld. Information slips are *de facto* issued by governing bodies of the Polish Water Management Enterprise; moreover, administrative courts have pointed out that fees for water services constitute a public levy,⁶⁶ and that their application must stay in conformity with the entire body of currently binding regulations and constitutional principles. In our opinion, this is yet another argument in favour of the view that an information slip specifying the amount of water service fee may, in fact, constitute an administrative decision issued as part of an administrative procedure. However, the adoption of such an analysis, given the current legal situation, definitely requires statutory changes, since the legislator has provided for a different path of challenging the legitimacy of the decision contained in the information slip, namely, a complaint that cannot be treated as an appeal under the Code of Administrative Procedure due to, among other things, its non-devolutive nature. Furthermore, in this case, one can reasonably suggest that legislative changes should be introduced under which the obliged entity would be notified of the initiation of administrative proceedings to which it is a party.

We suggest that, under the existing legal situation, at least until a uniform case law has been developed in this respect (or until the legislation has been changed), an obliged entity wishing to challenge the amount of fee for water services should take the path that offers the right for an appeal under the Code of Administrative Procedure, followed by a complaint with an administrative court. Namely, on receipt of an information slip specifying the amount of the fee, the obliged entity should abstain from payment; after receiving an administrative decision determining the amount of the fee, the obliged entity can appeal against the decision with a second-instance body and, should the need arise, lodge a complaint with an administrative

⁶⁵ Article 14 paras 1–6 of the new Water Law.

⁶⁶ Which is confirmed by Article 300 of the new Water Law, containing references to the provisions of the Tax Regulation of 29 August 1997, published in Dz.U. 2018, item 800, as amended.

court. What we see as important here is that the adoption of this mode of action ensures that the administrative proceedings are two-tiered (involve two instances), as required by the first sentence of Article 78 of the Constitution of Poland.

BIBLIOGRAPHY

- Adamiak B., [in:] B. Adamiak, J. Borkowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2017, <http://www.legalis.pl> (accessed 28.08.2018).
- Bajor-Stachańczyk M. (2017), *Opinia prawna w sprawie zgodności przepisów rządowego projektu ustawy – Prawo wodne (druk sejmowy nr 1529) wprowadzających procedury postępowania administracyjnego (w tym w zakresie opłat przewidzianych w projekcie) z zasadami postępowania administracyjnego*, Biuro Analiz Sejmowych Kancelarii Sejmu, Warszawa 2017.
- Białek M., Chojnacki D., Grabarczyk T., *Opłaty za usługi wodne w nowym prawie wodnym*, C.H. Beck, Warszawa 2018.
- Dawidowicz W., *Zarys procesu administracyjnego*, PWN, Warszawa 1989.
- Dyl M., [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 30.08.2018).
- Elżanowski F., [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 27.08.2018).
- Filipek K., Kucharski M., Michalski P., *Nowe prawo wodne najważniejsze zmiany dla gmin i przedsiębiorstw wodno-kanalizacyjnych*, C.H. Beck, Warszawa 2018.
- Grzegorzczak P., Weitz K., [in:] M. Safian, L. Bosek (eds), *Konstytucja RP, Vol. I, Komentarz art. 1–86*, C.H. Beck, Warszawa 2016, <http://www.legalis.pl> (accessed 31.08.2018).
- Janowicz Z., *Kodeks postępowania administracyjnego. Komentarz*, PWN, Warszawa 1995.
- Jaweck B., Sobota M., Burszta-Adamiak E., *The Influence of New Legal Regulations on the Method of Determining the Amount of Fees for Discharging Rain Water and Snow Water to Water*, *Ekonomia i Środowisko* No. 1(68), 2019.
- Kędziora R., *Kodeks postępowania administracyjnego*, C.H. Beck, Warszawa 2017, <http://www.legalis.pl> (accessed 30.08.2018).
- Kotulska M., *Czas a postępowanie administracyjne*, [in:] J. Niczyporuk (ed.), *Kodyfikacja postępowania administracyjnego na 50-lecie k.p.a.*, Lublin 2010.
- Majczak P., *Podstawa prawna decyzji administracyjnej*, *Ius Novum* No. 4, 2016.
- Malanowski J., [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 27.08.2018).
- Stankiewicz R., [in:] R. Hauser, M. Wierzbowski (eds), *Kodeks postępowania administracyjnego. Komentarz*, C.H. Beck, Warszawa 2018, <http://www.legalis.pl> (accessed 30.08.2018).

LEGAL ASPECTS OF THE PROCEDURE FOR DETERMINING THE FEE FOR WATER SERVICES UNDER NEW WATER LAW

Summary

The authors of this article analyse legal aspects of the procedure connected with determining charges for water services regulated in the new Water Law Act. First of all, the authors indicate interpretational doubts related to a specific form of decision-making procedure and also related to appeal procedure. The authors interpret legal regulations connected with the specific form used by the legislator within this procedure, i.e. "information" through which the Polish Water Management Enterprise (Wody Polskie) notifies the obliged entities of the amount of charge for water services. What is more, the authors try to attribute formal and legal status to such form of decision-making. An issue related to applying provisions of the Administrative Procedure Code within aforementioned procedure is also considered in relation to passing on the administrative decision and also to the appeal procedure. Under the applied research method, the authors refer to the interpretation of legal provisions, views of representatives of the doctrine, and the Constitutional Tribunal and administrative courts' case law.

Keywords: water law, water services, charges for water services, annual information, administrative procedure, administrative decision

PRAWNE ASPEKTY PROCEDURY OKREŚLENIA OPŁATY ZA USŁUGI WODNE W NOWYM PRAWIE WODNYM

Streszczenie

W pracy przedstawiono prawne aspekty związane z procedurą określania wysokości opłat za usługi wodne na gruncie przepisów nowego prawa wodnego. Autorzy przede wszystkim zwracają uwagę na wątpliwości interpretacyjne związane ze szczególną formą rozstrzygnięcia wydawaną w toku postępowania, jak i trybem odwoławczym w ramach tej procedury. Dokonują wykładni przepisów prawa związanych ze szczególną formą wykorzystaną przez ustawodawcę w ramach przedmiotowego postępowania, tj. „informacja”, za pośrednictwem której Wody Polskie przekazują podmiotom obowiązującym do ponoszenia opłat za usługi wodne wysokość tej opłaty. Nadto autorzy podejmują próbę przypisania tej formie rozstrzygnięcia formalnego statusu prawnego w ramach obowiązującego porządku prawnego. Rozważają także, w jakim zakresie, w ramach badanej procedury, znajdują zastosowanie przepisy kodeksu postępowania administracyjnego w związku z wydaniem decyzji administracyjnej, jak również na gruncie postępowania odwoławczego. W przyjętej metodzie badawczej autorzy przede wszystkim opierają się na wykładni przepisów prawa, poglądach doktryny i bazują na orzecznictwie Trybunału Konstytucyjnego oraz sądów administracyjnych.

Słowa kluczowe: prawo wodne, usługi wodne, opłaty za usługi wodne, informacja roczna, postępowanie administracyjne, decyzja administracyjna

ASPECTOS LEGALES DEL PROCESO DE DETERMINACIÓN DE PAGO POR LOS SERVICIOS DE AGUA EN LA NUEVA LEY DE AGUAS

Resumen

El artículo presenta los aspectos legales relacionados con el proceso de determinación de la cuota a pagar por los servicios de agua en virtud de la nueva ley de aguas. Los autores sobre todo llaman la atención a las dudas interpretativas de la forma especial de la decisión emitida durante el proceso, así como la vía de impugnación en el marco de dicho proceso. Los autores interpretan los preceptos relativos a la forma especial utilizada por el legislador en el marco del proceso en cuestión, o sea, “información” mediante la cual Las Aguas Polacas transmiten el importe a los sujetos obligados a pagar por los servicios de agua. Además, los autores intentan asignar a esta forma de decisión formal de estatus legal en el ordenamiento jurídico vigente. Los autores contemplan también en qué ámbito, en el proceso examinado, se aplicarán los preceptos del código de procedimiento administrativo en relación con la emisión de acto administrativo, también en la segunda instancia. En los métodos de investigación utilizados, los Autores sobre todo se basan en la interpretación de los preceptos, posturas en la doctrina y en la jurisprudencia del Tribunal de Constitución y de tribunales administrativos.

Palabras claves: derecho de aguas, pago por servicio de aguas, información anual, procedimiento administrativo, acto administrativo

ПРАВОВЫЕ АСПЕКТЫ ПОРЯДКА ОПРЕДЕЛЕНИЯ ОПЛАТЫ ЗА ВОДОСНАБЖЕНИЕ В НОВОМ ЗАКОНОДАТЕЛЬСТВЕ О ВОДОПОЛЬЗОВАНИИ

Резюме

В статье рассмотрены правовые аспекты, связанные с порядком определения размера оплаты за водоснабжение на основании положений нового законодательства о водопользовании. Авторы, в первую очередь, указывают на интерпретационные неясности, связанные с особой формой решения, принимаемого в ходе разбирательства, а также с порядком обжалования в рамках данной процедуры. Авторы приводят толкование положений права, относящихся к особой форме решения, предусмотренной законодателем для соответствующего разбирательства, а именно, к «справке», с помощью которой государственный орган управления водным хозяйством «Польские воды» сообщает субъектам, обязанным оплачивать услуги водоснабжения, сумму этой платы. Кроме этого, делается попытка определить формально-правовой статус данной особой формы решения в рамках существующей правовой системы. Авторы также рассматривают вопрос о том, в какой степени в рамках данной процедуры применимы положения административно-процессуального кодекса относительно вынесения административного решения и порядка обжалования. Принятый авторами метод исследования основан, прежде всего, на толковании положений законодательства, существующей правовой доктрине, а также на решениях Конституционного суда и административных судов.

Ключевые слова: законодательстве о водопользовании, услуги водоснабжения, оплата услуг водоснабжения, годовая справка, административное производство, административное решение

RECHTLICHE ASPEKTE DES VERFAHRENS ZUR FESTSETZUNG DER GEBÜHR FÜR WASSERDIENSTLEISTUNGEN IM NEUEN WASSERRECHT

Zusammenfassung

In dem Papier werden die rechtlichen Aspekte im Zusammenhang mit dem Verfahren zur Bestimmung der Gebühren für Wasserdienstleistungen auf Grundlage der Bestimmungen des neuen Wasserrechts dargelegt. Die Autoren weisen vor allem auf Zweifel und Bedenken hinsichtlich der Auslegung im Zusammenhang mit der besonderen Form der im Laufe des Verfahrens erlassenen Entscheidung und der Rechtsbehelfsentscheidung im Rahmen dieses Verfahrens hin. Die Autoren interpretieren die gesetzlichen Bestimmungen in Bezug auf die vom Gesetzgeber im Rahmen des fraglichen Verfahrens verwendete Sonderform, d.h. der „Auskunft“, mittels der die staatliche Wasserwirtschaft Wody Polskie den zur Entrichtung der Abgaben für Wasserdienstleistungen verpflichteten Unternehmen, die Höhe dieser Gebühr mitteilen. Darüber hinaus versuchen die Autoren, dieser Form des Bescheids einen förmlichen rechtlichen Status innerhalb der geltenden Rechtsordnung zuzuordnen. Die Autoren erwägen außerdem, inwieweit im Rahmen des geprüften Verfahrens im Zusammenhang mit dem Ergehen einer Verwaltungsentscheidung sowie auf Grundlage eines Rechtsmittelverfahrens die Bestimmungen der polnischen Verwaltungsverfahrensordnung Anwendung finden. Bei der angewandten Untersuchungsmethode stützen sich die Autoren in erster Linie auf die Auslegung von Rechtsvorschriften, die Ansichten der Rechtslehre und lehnen sich in ihrer Argumentation an die Rechtsprechung des polnischen Verfassungsgerichtshofes und der polnischen Verwaltungsgerichte an.

Schlüsselwörter: Wasserrecht, Wasserdienstleistungen, Abgaben bzw. Gebühren für Wasserdienstleistungen, Jährliche Auskunft, Verwaltungsverfahren, Verwaltungsentscheidung

ASPECTS JURIDIQUES DE LA PROCÉDURE DE DÉTERMINATION DE LA REDEVANCE POUR LES SERVICES D'EAU DANS LA NOUVELLE LOI SUR L'EAU

Résumé

Le document présente les aspects juridiques liés à la procédure de détermination du montant des redevances pour les services de l'eau en vertu des dispositions de la nouvelle loi sur l'eau. En premier lieu, les auteurs attirent l'attention sur les doutes d'interprétation liés à la forme particulière de la décision rendue au cours de la procédure, ainsi qu'à la procédure de recours dans le cadre de cette procédure. Les auteurs interprètent les dispositions de la loi relatives à la forme spéciale utilisée par le législateur dans le cadre de la procédure en question, c'est-à-dire «l'information», par laquelle les «Eaux Polonaises» communiquent le montant de redevance pour les services de l'eau aux entités tenues de la payer. En outre, les auteurs tentent d'attribuer un statut juridique formel à cette forme de règlement en vertu de la loi applicable. Les auteurs examinent également dans quelle mesure, dans le cadre de la procédure en cours d'examen, les dispositions du Code de procédure administrative s'appliquent lorsqu'une décision administrative est rendue ainsi que dans une procédure de recours. Dans la méthode de recherche adoptée, les auteurs s'appuient principalement sur l'interprétation de dispositions légales, d'opinions doctrinales, ainsi que sur la jurisprudence du Tribunal constitutionnel et des tribunaux administratifs.

Mots clés: loi sur l'eau, services de l'eau, redevances pour les services de l'eau, information annuelle, procédure administrative, décision administrative

ASPETTI GIURIDICI DELLA PROCEDURA DI DETERMINAZIONE DELLE TARIFFE DEI SERVIZI IDRICI NEL NUOVO DIRITTO DELLE ACQUE

Sintesi

Nel lavoro sono stati presentati gli aspetti giuridici legati alla procedura di determinazione delle tariffe dei servizi idrici alla luce delle norme del nuovo diritto delle acque. Gli autori soprattutto fanno notare i dubbi interpretativi legati alla particolare forma di decisione emessa attraverso il procedimento, così come alla modalità di impugnazione nell'ambito di tale procedura. Gli autori eseguono l'interpretazione delle norme del diritto legate alla forma particolare utilizzata dal legislatore nell'ambito del provvedimento in oggetto, ossia la cosiddetta "informazione" attraverso la quale l'azienda statale Wody Polskie trasmette ai soggetti obbligati al pagamento per i servizi idrici l'importo di tale tariffa. Inoltre gli autori tentano di attribuire a tale forma di decisione uno status giuridico formale, nell'ambito dell'ordinamento giuridico vigente. Gli autori riflettono anche su quale ambito, nell'ambito della procedura esaminata, trovino applicazione le norme del codice di procedura amministrativa legate al rilascio di una decisione amministrativa, così come sulla base della procedura di impugnazione. Nel metodo di studio assunto gli autori si basano soprattutto sull'interpretazione delle norme del diritto, sulle opinioni della dottrina, così come sulla giurisprudenza del Tribunale costituzionale e dei tribunali amministrativi.

Parole chiave: diritto delle acque, servizi idrici, tariffe dei servizi idrici, informazione annuale, procedimento amministrativo, decisione amministrativa

Cytuj jako:

Sobota M., Jaweck B., Legal aspects of the procedure for determining the fee for water services under new Water Law [*Prawne aspekty procedury określenia opłaty za usługi wodne w nowym prawie wodnym*], „Ius Novum” 2019 (Vol. 13) nr 4, s. 114–134. DOI: 10.26399/iusnovum.v13.4.2019.46/m.sobota/b.jaweck

Cite as:

Sobota, M., Jaweck, B. (2019) 'Legal aspects of the procedure for determining the fee for water services under new Water Law'. *Ius Novum* (Vol. 13) 4, 114–134. DOI: 10.26399/iusnovum.v13.4.2019.46/m.sobota/b.jaweck