



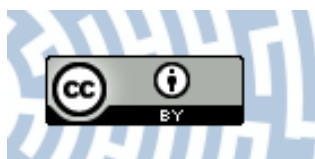
**You have downloaded a document from  
RE-BUŚ  
repository of the University of Silesia in Katowice**

**Title:** The rights of the entrepreneur under audit to use protection measures before and administrative court

**Author:** Ewa Śladkowska

**Citation style:** Śladkowska Ewa. (2020). The rights of the entrepreneur under audit to use protection measures before and administrative court. "Roczniki Administracji i Prawa" (2020), nr 1, s. 227-243.

DOI: 10.5604/01.3001.0014.1438



Uznanie autorstwa - Licencja ta pozwala na kopiowanie, zmienianie, rozprowadzanie, przedstawianie i wykonywanie utworu jedynie pod warunkiem oznaczenia autorstwa.



UNIwersYTET ŚLĄSKI  
W KATOWICACH



Biblioteka  
Uniwersytetu Śląskiego



Ministerstwo Nauki  
i Szkolnictwa Wyższego

Ewa Śladkowska\*

ORCID ID: 0000-0001-9619-7028

## THE RIGHTS OF THE ENTREPRENEUR UNDER AUDIT TO USE PROTECTION MEASURES BEFORE AN ADMINISTRATIVE COURT

### ŚRODKI OCHRONY PRZEDSIĘBIORCY W ZWIĄZKU Z KONTROLĄ PRZYSŁUGUJĄCE PRZED SĄDEM ADMINISTRACYJNYM

**Summary:** The article presents the institution of appeal which is a special means of legal protection vested in the entrepreneur during the control of economic activity conducted against him. This measure was introduced into the Polish legal order on 7 March 2009. It enables the entrepreneur to appeal to a higher authority specifically indicated in the legal provisions of individual actions taken and performed by the inspection authority during the inspection. This extremely important legal regulation guaranteeing the protection of entrepreneurs' rights is extremely complicated and gives rise to serious legal discussions in the literature and jurisprudence of administrative courts, it has also been analyzed by the Constitutional Tribunal. The article presents the main elements of the institution, focusing on legal remedies that an entrepreneur can use before an administrative court. These include a complaint about the decision upholding the decision of the first instance authority on continuing the inspection activities and a complaint about the protracted conduct of the inspection.

**Keywords:** entrepreneur, objection, inspection, complaint to the administrative court

**Streszczenie:** Artykuł przedstawia instytucję sprzeciwu będącą szczególnym środkiem ochrony prawnej przysługującym przedsiębiorcy w trakcie prowadzonej wobec niego kontroli działalności gospodarczej. Środek ten wprowadzony został do polskiego porządku prawnego z dniem 7 marca 2009 r. Umożliwia on przedsiębiorcy zaskarżanie do organu wyższego stopnia konkretnie wskazanych w przepisach prawa poszczególnych czynności

---

\* PhD, Institute of Legal Studies, The faculty of Law and Administration at the University of Silesia in Katowice. Source of funding: the author's own funds; e-mail: [esladkowska@interia.pl](mailto:esladkowska@interia.pl)

podjętych i wykonywanych przez organ kontroli w toku kontroli. Ta niezwykle ważna regulacja prawna gwarantująca ochronę praw przedsiębiorców jest niezwykle skomplikowana i rodzi poważne dyskusje prawne w piśmiennictwie i orzecznictwie sądów administracyjnych, była także analizowana przez Trybunał Konstytucyjny. W artykule przedstawiono główne elementy instytucji, skupiając się na środkach prawnych związanych ze sprzeciwem, z których może skorzystać przedsiębiorca przed sądem administracyjnym. Należą do nich skarga na postanowienie utrzymujące w mocy postanowienie organu I instancji o kontynuowaniu czynności kontrolnych oraz skarga na przewlekle prowadzenie kontroli.

**Słowa kluczowe:** przedsiębiorca, sprzeciw, kontrola, skarga do sądu administracyjnego

1. On 7 March 2009 the provision of art. 84c was introduced to the Act on *freedom of economic activity*<sup>1</sup>, pursuant to art. 1 (20) of the Act of 19 December 2008 *amending the Act on freedom of economic activity and amending certain other acts* [Journal of Laws of 2009, No. 18, (97)], which regulated the institution of objection, which is a special means of protecting the entrepreneur against the activities of audit authorities that are inconsistent with the law taken during the audit of the entrepreneur's business<sup>2</sup>. It is an independent legal protection measure<sup>3</sup>, a special legal measure, which gives the entrepreneur the opportunity to oppose authorities that do not comply with the principles of conducting audit<sup>4</sup>. The opposition was dictated by the fact that until now entrepreneurs did not have any legal means to protect their interests<sup>5</sup>. The objection of opposition is to guarantee the protection of the rights of entrepreneurs in the event of a breach of certain provisions by the audit authority<sup>6</sup>. According to the verdict of the Supreme Administrative Court of 6 June 2012 the objection to audit activities is a means of legal protection, an instrument that allows an entrepreneur to react in the event of undertaking and carrying out control activities in violation of the provisions governing the principles and procedure for controlling business activities<sup>7</sup>. This instrument serves to complain about individual activities carried out by the authorities in the course of the audit, and not to specific decisions of these authorities and only the controlled entity may use it<sup>8</sup>. In the current legal status this measure is regulated by art. 59 of the Act of 6 March 2018 *Entrepreneur Law*<sup>9</sup> „refreshing and clarifying” the proposed legal solution<sup>10</sup>.

<sup>1</sup> Act of 2 July 2004 on freedom of economic activity (Journal of Laws of 2004, No. 173, item 1807) hereinafter called “u.s.d.g.”

<sup>2</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu. Komentarz*, Warszawa 2019, p. 232.

<sup>3</sup> A. Hołda-Wyrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy*, Warszawa 2013, p. 139.

<sup>4</sup> *Ibidem*.

<sup>5</sup> Point 20 the justification of the draft law of 19 December 2008 on *the amendment to the act on freedom of economic activity and on the amendment of some other acts* (Journal of Laws of 2009, No. 18, item 97).

<sup>6</sup> K. Krzał, [in:] A. Pietrzak (ed.) *Prawo przedsiębiorców. Komentarz*, Warszawa 2019, p. 424.

<sup>7</sup> I GSK 698/11, LEX No. 1215510.

<sup>8</sup> Judgment of Supreme Administrative Court of 28 June 2016, II OSK 2633/14, LEX No. 2106706.

<sup>9</sup> Journal of Law of 2018, item 646 hereinafter called the entrepreneur law (p.p.).

<sup>10</sup> K. Krzał, [in:] *op. cit.*, p. 423.

2. An objection may be raised by the entrepreneur against being taken and performing by the audit authority activities in violation of clearly indicated legal provisions<sup>11</sup>. Pursuant to the current legal regulation, art. 59 (1) entrepreneur law (p.p.) the entrepreneur may object to the audit authority taking up and carrying out activities in breach of the provisions of art. 48, art. 49, art. 50 (1) and 5, art. 51 (1), art. 54 (1), art. 55 (1 and 2) and art. 58. The above means that it can be filed only in case of violation of the provisions that have been enumerated, constituting a closed catalog<sup>12</sup>. These deficiencies include: 1) conducting audit without notification, including on the basis of a faulty notification and failure to meet deadlines in this respect (article 48 the entrepreneur law); 2) conducting audit without authorization or on the basis of a faulty authorization or in violation of the content of the authorization necessary for the proper performance of the audit, or failure to comply with the provisions regulating the presentation of an official ID by an employee (article 49 of the entrepreneur law); 3) conducting audit during the absence of the entrepreneur or other person authorized by him or incorrect qualification of the active person at the premises of the enterprise or public official (article 50 (1) and (5) of the entrepreneur law); 4) conducting audit outside the entrepreneur's seat or place of business activity outside the entrepreneur's working time (article 51 (1) of the entrepreneur law); 5) violation of the prohibition on taking up and conducting more than one inspection at the same time (article 54 (1) of the entrepreneur law); 6) exceeding the audit duration limits (article 55 (1) and (2) the entrepreneur law); 7) violation of the authority's prohibition on conducting audit on the subject of the control it had previously completed (article 58)<sup>13</sup>.

In the literature, it is noted that the catalog indicated despite its significant extension compared to the one in force in the previous legal state under art. 84c (1) the entrepreneur law (u.s.d.g.), does not fully cover the needs of entrepreneurs. It is not possible to object to the performance of audit activities in a way that distorts the functioning of the entrepreneur<sup>14</sup>.

In accordance with art. 59 (2) the entrepreneur law raising an objection is not admissible if the authority carries out an audit relying on the provisions of art. 48 (11) (2), art. 50 (2) (2), art. 54 (1) (2), art. 55 (2) (2) and art. the entrepreneur law. The above-mentioned provision introduces, therefore material exclusions in which opposition is inadmissible. The first one will contain exclusions due to the circumstances of the audit. This group includes circumstances in which the audit is necessary to prevent the commission of a crime, offense, prevention of the commission of a tax offense or tax offense or to secure evidence of its commission and does not

<sup>11</sup> T. Długosz [in:] G. Kozieł (ed.), *Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji biznesu*, Warszawa 2019, p. 309.

<sup>12</sup> K. Krzał, [in:] op. cit., p. 424.

<sup>13</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 233.

<sup>14</sup> More in: A. Hołda-Wydrzyńska[in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*,p. 140-142.

require notification (article 48 (11) (2) the entrepreneur law) or can be conducted without the presence of the entrepreneur or his representative during the performance of audit activities (article 50 (2)(2) the entrepreneur law), which are not affected by the prohibition to conduct more than one control (article 54 (1) (2)), to which the time limits for the control do not apply (article 55 (2)(2)). The second group of exemptions are subject exceptions regarding entrepreneurs performing a specific type of business activity or within a specific area thereof and activities undertaken within it regulated in separate specific acts<sup>15</sup>.

3. An objection shall be lodged by the entrepreneur in writing to the audit authority which the objection concerns. The entrepreneur notifies about the objection in writing to the inspector (art. 59(3) the entrepreneur law). An objection shall be lodged within 3 business days from the date of initiation of the inspection by the audit authority or the occurrence of a condition to raise an objection (Article 59 (4)). There are discrepancies in doctrine and case-law regarding the possibility of reinstating the time limit for raising objections. Pursuant to the first position raised on the basis of the previous legal regulation of the Act on freedom of economic activity, the deadline for filing an objection is of a procedural nature and is subject to reinstatement<sup>16</sup>. The Supreme Administrative Court adopted a different position in the judgment of 24 February 2017, stating that the provision of art. 58 of the Code of Administrative Procedure<sup>17</sup> does not apply in the case of proceedings regarding the reinstatement of the time limit for raising objections<sup>18</sup>. Currently in the literature it is proposed that in view of the above position of the Supreme Administrative Court and the specific nature of the legal remedy, which is a complaint, to assume that the time limit for raising an objection cannot be restored<sup>19</sup>.

An objection by an entrepreneur initiates proceedings, which are referred to as the so-called „Objection proceedings”<sup>20</sup>. Performing this activity by the entrepreneur from the beginning of the existence of the discussed legal institution had two legal effects firstly, suspension of the audit activities of the audit authority concerned and secondly, suspension of the audit<sup>21</sup>. By introducing this legal measure proceedings on its consideration were regulated in art. 59 (7) and (8) the entrepreneur law. The audit authority was obliged to verify within 3 working days of receipt of the objection the allegations raised in it and to issue a ruling on its justification by issuing a ruling about withdrawing from control activities or a decision on continuing control activities<sup>22</sup>.

<sup>15</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 233 and 234.

<sup>16</sup> A. Hołda-Wydrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*, p. 150-152 and the literature cited there; judgment of Provincial Administrative Court in Łódź of 11 January 2011, I SA/Łd 1261/10, Legalis.

<sup>17</sup> Journal of Laws of 2018, item 2096 as amended, hereinafter called “k.p.a.”

<sup>18</sup> Judgment of Supreme Administrative Court of 24 February 2017, II OSK 1574/15, LEX No. 2283258.

<sup>19</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 235.

<sup>20</sup> A. Hołda-Wydrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*, p. 139.

<sup>21</sup> *Ibidem*, p. 139.

<sup>22</sup> Currently art. 59 (7) entrepreneur law, formerly art. 84c (9) Act on freedom of economic activity (u.s.d.g.).

The legislator to mobilize the audit authority to maintain the abovementioned deadline each time specified that failure to consider the objection within the three-day period indicated in the Act will be tantamount to the effects of the decision issued by the competent authority on waiving audit activities<sup>23</sup>. Therefore, the legislator introduced an instrument mobilizing the audit authority in the event of an objection, which at the same time protects the entrepreneur against the authority's inactivity. If the audit authority does not consider the objection within 3 business days of its receipt, then the presumption of a decision to withdraw from the audit activities is applied<sup>24</sup>, i.e. the fiction of the decision to withdraw from the audit activities<sup>25</sup>. An objection does not change the substantive situation of the controlled entrepreneur, but is of a typically formal nature, as it refers only to the very method of conducting the audit, which usually precedes the initiation of proceedings aimed at authoritative determination of the rights and obligations of the entrepreneur or is one of the stages of this proceeding<sup>26</sup>.

Accepting an objection and withdrawing from audit activities does not preclude imposing certain obligations on the entrepreneur in the event of grounds for doing so or initiating another audit<sup>27</sup>. At the same time art. 59 (6) the entrepreneur law provides that for the proceedings referred to in sections 6, 7 and 9 to the extent not regulated, the provisions of the Code of Administrative Procedure shall apply. The above reference to the application of the provisions of the Code of Administrative Procedure in the procedure of examining an objection by the audit authority, becomes more important in the event of an objection based on an alleged violation of a provision not listed in art. 59 (1) the entrepreneur law, raising an objection in the event that the authority carries out an inspection relying on the provisions referred to in art. 59 (2), or in the event of an objection being exceeded within three days and before or after the end of the audit. In such situations, the case initiated by the objection should be terminated in a different way than by issuing a decision to withdraw from the audit activities or a decision to continue the activities. No in art. 59 the entrepreneur law explicit regulation of such a situation necessitates the search for solutions in the Code of Administrative Procedure. The scope of the provisions of the Code of Administrative Procedure seems to apply depends on the nature of the objection, namely whether the opposition should be treated as an application initiating proceedings at first instance or as an appeal. As the objection is treated, as indicated above, as a special legal remedy, although it does not relate to decisions but to individual actions carried out by the authorities during the inspection, its nature brings it closer to an appeal. Adopting this concept, on the other hand, seems to limit the scope of the provisions of the Code of Administrative Procedure to the provisions regulating the complaint procedure (the

<sup>23</sup> Currently art. 59 (8) entrepreneur law, formerly art. 84c (12) Act on freedom of economic activity (u.s.d.g.).

<sup>24</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 236 and 237.

<sup>25</sup> T. Długosz [in:] G. Kozieł (ed.), *Prawo przedsiębiorców...*, p. 310.

<sup>26</sup> W. Piątek, A. Skoczyła, *Głosa do uchwały NSA z 13 stycznia 2014 r., II GPS 3/13, ZNSA 2014, n. 5, p. 170.*

<sup>27</sup> See *ibidem*, p. 170.

provisions of articles 141-144 of the Code of Administrative Procedure and pursuant to article 144 – provisions of articles 127 to 140 of the Code of Administrative Procedure). The above will result, for example, in the event of an objection based on an alleged violation of a provision not mentioned in art. 59 (1) the entrepreneur law the inspection body should issue a decision on the inadmissibility of the opposition pursuant to art. 134 of the Code of Administrative Procedure, and not a decision to refuse to initiate proceedings on the consideration of an objection pursuant to art. 61a § 1 of the Code of Administrative Procedure. On the other hand, raising an objection after the deadline could result in the issuance of a non-observance of time limits. However, in a situation where it is accepted that the objection should be treated only as an application initiating the proceedings at first instance, it should be considered whether the authority should not, in turn, issue a decision refusing to initiate the procedure regarding the examination of the objection due to failure to comply with the time limit for lodging it.

Judicial decisions state that in a situation where an objection is not admissible at all, the case should be terminated by a decision declaring the objection inadmissible<sup>28</sup>. In this situation, it seems that the case should also be terminated also in the event of an objection based on an alleged violation of a provision not mentioned in art. 59 (1) the entrepreneur law, because not only the provision of art. 59 (2) the entrepreneur law but also paragraph 1 of this provision defines the admissible material scope of the objection. Although there is a distinction in the literature between „inadmissible objection” and „ineffective objection” (quasi-objection), assuming that an objection is inadmissible when the authority refers to the circumstances referred to in art. 59 (2) the entrepreneur law. In other cases, however, it is admissible, although it may be ineffective<sup>29</sup>. Pursuant to the position presented in the judicial-administrative case-law, an objection may be raised only during the duration of the audit, because only then can it be decided to withdraw from the audit or to continue it<sup>30</sup>. It is therefore not permissible to raise objections both before and after the audit, this is only possible during ongoing audit<sup>31</sup>.

Both in the previous legal status and currently, the entrepreneur – on a decision not in line with the intention of the opposing party, i.e. on the order issued by the audit authority regarding the continuation of inspection activities – a complaint may be lodged within 3 days of receipt of the decision<sup>32</sup>. Decision of the first instance authority in the light of current legal regulations, it is not subject to appeal. Consideration of the complaint by the competent authority (higher authority against the authority

<sup>28</sup> Judgment of Supreme Administrative Court of 27 April 2016, II FSK 56/14, Legalis; A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 236.

<sup>29</sup> A. Hołda-Wyrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*, p. 143; on the different practices for dealing with inadmissible objections see K. Krzał, [in:] A. Pietrzak (ed.) *Prawo przedsiębiorców...*, p. 426-427.

<sup>30</sup> Judgment of Supreme Administrative Court of 16 January 2018, II OSK 771/16, Legalis.

<sup>31</sup> T. Długosz, [in:] G. Kozieł (ed.), *Prawo przedsiębiorców...*, p. 310; Judgment of Supreme Administrative Court of 16 January 2018, II OSK 771/16.

<sup>32</sup> Currently art. 59 (9) entrepreneur law, formerly art. 84c (10) Act on freedom of economic activity.

conducting the inspection) takes place by means of a decision. Pursuant to the currently applicable provision of art. 59 (9) the entrepreneur law the competent authority shall examine the complaint within 7 days of its submission and shall issue a decision on: 1) upholding the contested decision or 2) repealing the contested decision and withdrawing from the audit activities. If the authority does not examine the complaint about the decision to continue the audit activities within 7 days from the date of its submission, then this is equivalent to the annulment of the contested decision and withdrawal from conducting the audit<sup>33</sup>. Pursuant to the content of art. 59 (16) the entrepreneur law, the provisions of the Code of Administrative Procedure shall apply to proceedings regarding the consideration of a complaint in an unregulated scope<sup>34</sup>. On the basis of the Act on the freedom of economic activity, it was assumed that the provisions of chapter 11 of section II of the Code of Administrative Procedure apply and in connection with art. 144 of the Code of Administrative Procedure also chapter 10 of section II of the Code of Administrative Procedure is applied<sup>35</sup>.

4. Against the background of the described legal status in the jurisprudence of administrative courts, there was a disagreement as to the jurisdiction of administrative courts to control and apply measures against decisions issued in control proceedings. The jurisdiction of administrative courts, in particular to hear complaints about the decisions of public administration bodies on the objection is not subject to the regulation contained in art. 59 the entrepreneur law. The decisions issued in the course of the inspection proceedings in connection with the examination of the objection both denied the entrepreneur's ability to appeal to the administrative court and granted such a right.

In the decision of 17 December 17 2010<sup>36</sup> the Supreme Administrative Court stated that „1. On the decisions on the continuation of audit activities issued pursuant to art. 84c(9) (2) of the Act of 2 July 2 2004 on freedom of economic activity (Journal of Laws of 2007 No. 155, item 1095 as amended), no complaint to the administrative court may be lodged. 2. The subject of the control under the control procedure is solely to determine the facts. (...). Audit proceedings are separate from administrative proceedings. The decisions taken in the audit proceedings are not issued in the administrative proceedings, they do not shape the rights or obligations of the entity, and only as a result the rights or obligations may be shaped”. The justification of the decision of 17 December 2010 shows that the reference to use in

<sup>33</sup> A. Żywicka, [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 237.

<sup>34</sup> Currently art. 59 (16) entrepreneur law, pursuant to which “*To the proceedings referred to in sec. 6, 7 and 9, to the extent not regulated, the provisions of the Code of Administrative Procedure shall apply*”. Formerly art. 84c (16) Act on freedom of economic activity stating that *to unregulated matters the provisions of the Administrative Procedure Code shall apply in the proceedings referred to in sec. 9 and 10*.

<sup>35</sup> See judgment of Provincial Administrative Court in Warsaw of 5 March 2010, III SA/Wa 1494/09, Legalis.

<sup>36</sup> I OSK 1030/10.



the scope not regulated in the audit proceedings of the provisions of the Code of Administrative Procedure does not provide grounds for giving these proceedings a legal administrative nature. The provisions issued in the inspection proceedings, including the decision to continue the audit activities are not subject to control by administrative courts pursuant to art. 3 § 2 (2) of the Act – Law on proceedings before administrative courts<sup>37</sup> because the admissibility of a way of proceedings before an administrative court cannot be inferred only from the granting of the right to appeal against a decision, the decision to continue the audit activities also does not end the administrative proceedings and does not decide the substance of the case.

The decision to continue the audit activities, which is limited to establishing the actual state of compliance with labor law provisions, is also not an act or activities in the field of public administration, as it does not directly shape substantive rights or obligations arising from legal provisions. This means that it cannot be appealed against on the basis of art. 3 § 2 (4) of the p.p.s.a. The Law of the Administrative Court Procedure. There is also no specific regulation providing for the possibility of extending these acts to the cognition of administrative courts on the basis of special provisions pursuant to art. 3 § 3 p.p.s.a.<sup>38</sup> The Supreme Administrative Court adopted a different position in the decision of 12 January 2012<sup>39</sup> considering that the decision on the continuation of audit activities may be appealed to the administrative court pursuant to art. 3 § 2 (4) of the p.p.s.a. Justifying the above position, the Supreme Administrative Court argued that in accordance with art. 3 § 2 (4) of the p.p.s.a. the control of public administration activities by administrative courts includes adjudicating on complaints other than administrative decisions and provisions, acts or activities in the field of public administration regarding the rights or obligations arising from legal provisions. The Supreme Administrative Court assumed that the audit proceedings, in which a decision was made to continue the control activities, is a separate procedure from the administrative procedure, and therefore the contested decision is not a decision taken in administrative, as well as enforcement or security proceedings, being at the same time an act in the field of public administration and fulfilling the premise of a legal obligation or entitlement<sup>40</sup>.

A. Hołda-Wydrzyńska also expressed a similar view on the basis of the previous legal regulation of the objection, arguing regarding the provisions issued in connection

---

<sup>37</sup> Act of 30 August 2002– *The Law of the Administrative Court Procedure* (Journal of Laws of 2019, item 2325) hereinafter called “p.p.s.a.”

<sup>38</sup> The presented view was shared in the decisions of the Supreme Administrative Court: of 24 April 2012, file II GSK 120/12, 12 September 2012, file II GSK 695/12, 14 September 2012, file II GSK 1431/12, 14 September 2012, file II GSK 1417/12, 9 October 2012, file I OSK 2259/12 and 12 December 2012, file II OSK 2911/12.

<sup>39</sup> II GSK 1073/11.

<sup>40</sup> The same position was presented in the decisions of the Supreme Administrative Court of 14 November 2012, file II GSK 1808/12, 12 February 2013, file II FSK 2215/12 and of 9 January 2013, file II FSK 2335/12; also judgment of Provincial Administrative Court in Wrocław of 17 January 2013, I SA/Wr 1352/12, LEX No. 1274174.

with the objections under consideration, that these provisions give rise to the most obligations and rights on the part of the entrepreneur, and also settle the matter in the aspect raised by the party in application of regulations of Act on freedom of economic activity<sup>41</sup>. Continuing the inspection activities means re-entering the audit procedure with which all obligations imposed on the entrepreneur by legal provisions „suspended”, such as the obligation to provide access to documents, audit books, explanations, testimonies, the obligation to be present during audit activities, etc. A. Hołda-Wydrzyńska argues that the adoption of a different view would lead to the conclusion that after issuing a decision on continuation of audit activities, the entrepreneur is not obliged to provide the controller with the documents necessary to complete the audit at the place and time designated by him, or to perform other activities that are required are from him in audit proceedings<sup>42</sup>. Justifications for placing the analyzed provisions under judicial review A. Hołda-Wydrzyńska finally sees in essence of these provisions, indicating that the decision on the resolution of the objection does not resolve the „incidental case” as is the case in administrative proceedings. Due to the subject of the objection proceedings, the effects of the objection resolution, the interpretative directive ordering consideration when assessing whether the order is a decision ending the proceedings or deciding the case as to the substance of the provisions governing a given type of case and an analysis of the subject of the resolution itself<sup>43</sup>, it should be considered that the decision actually ends the proceedings, what is more, it is a decision deciding the matter as to the substance, because it decides the individual case of the entrepreneur and directly determines his rights and obligations, but it does so in a special administrative procedure, not in jurisdictional proceedings<sup>44</sup>. The author, making a broad analysis of the admissibility of appealing against the analyzed provisions in the context of the principle of the right to court, states that in order to dispel any doubts, the best solution would be to postulate a change in art. 84c Act on freedom of economic activity and introducing an unambiguous provision providing for lodging a complaint to an administrative court, at the same time specifying the consequences of bringing this legal measure<sup>45</sup>.

In the resolution of 13 January 2014<sup>46</sup> the Supreme Administrative Court deciding the legal issue presented to the composition of seven judges of the Supreme Administrative Court: „On refusal to consider an objection lodged pursuant to art. 84c (1) of the Act of 2 July 2004 on freedom of economic activity (consolidated text: Journal of Laws of 2013, item 672, as amended), may one appeal to an administrative court?”, took a negative position, indicating that a complaint to an administrative court is not entitled to a refusal to examine an objection. It is worth pointing out here that two

<sup>41</sup> A. Hołda-Wydrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*, p. 167 and 168.

<sup>42</sup> Ibidem, p. 168.

<sup>43</sup> Decision of Supreme Administrative Court of 12 September 2007, II OSK 1009/07, OSP 2008/10/107.

<sup>44</sup> A. Hołda-Wydrzyńska [in:] R. Blicharz (ed.), *Kontrola przedsiębiorcy...*, p. 168.

<sup>45</sup> Ibidem, p. 171-173.

<sup>46</sup> II GPS 3/13, ONSAiWSA z 2014, No. 4, item 55.

dissenting opinions were submitted to the resolution cited. In the justification of the resolution of 13 January 2014 it was indicated, among others, that the procedure referred to in art. 84c Act on freedom of economic activity is not an administrative proceeding. Administrative proceedings are proceedings whose object is primarily the resolution of an individual case by way of an administrative decision. Its subject is therefore imperious action, by authoritative concretization of the administrative law norm by granting (refusing to grant) a right, or imposing an obligation on an individual. The proceedings of the authority competent to control the entrepreneur's business activity are not administrative proceedings within the meaning of Art. 1 (1 – 4) of the Code of Administrative Procedure. Regulations of Act on freedom of economic activity in Chapter 5 regulate the organized sequence of activities that audit authorities undertake, the subject of which is only the assessment of the regularity of economic activity, not the settlement of the matter referred to in art. 1 (1 – 4) of the Code of Administrative Procedure. From the introduction to the determination of the form of consideration of the objection the concept of a provision, and from the granting of the right to appeal to this provision, there is no basis for including this proceeding in the administrative procedure. Act on freedom of economic activity stating in art. 84c (16) that “The provisions of the Code of Administrative Procedure shall apply to proceedings referred to in sec. 9 and 10 to an unregulated extent”, refer in a narrow scope to the application of the Code of Administrative Procedure – because it refers only to the examination of the objection and complaint against the order. Despite the use of terms known in the Code of Administrative Procedure (proceedings, complaints) proceedings referred to in sec. 9 and 10 art. 84c Act on freedom of economic activity cannot be included in the administrative procedure. The competence of administrative courts to adjudicate in cases of complaints against provisions (article 3 § 2 (2) of the Law of the Administrative Court Procedure) is determined by the notion of administrative proceedings within the meaning of the Code of Administrative Procedure. Order refusing to consider an objection lodged pursuant to art. 84c Act on freedom of economic activity is not a decision taken in administrative proceedings.

W. Piątek and A. Skoczylas, approving the final decision of the Supreme Administrative Court, pointed out that in the actual state of the case, no proper opposition had been filed at all and that the first instance authority refused to accept the opposition, stating that its lodging was inadmissible, in turn the Supreme Administrative Court presenting the legal issue to the extended composition, formulated a question regarding a court proceeding from a decision refusing to examine an objection lodged pursuant to art. 84c (1) Act on freedom of economic activity<sup>47</sup>. W. Piątek and A. Skoczylas pointed out that the term „proceeding is understood in the doctrine more broadly than in the resolution of the Supreme Administrative Court, whereas

<sup>47</sup> W. Piątek, A. Skoczylas, *Glosa do uchwały NSA z 13 stycznia 2014 r.*..., p. 172.

there no legal action in the case from a complaint refusing to consider an objection lodged pursuant to art. 84c paragraph 1 of Act on freedom of economic activity is not caused by the fact that the decision in this respect is not made on the basis of the Code of Administrative Procedure or other regulation of administrative procedure within the meaning of art. 1 of the Code of Administrative Procedure, but there is no real impact of this decision on the sphere of legal protection of the individual<sup>48</sup>.

Ultimately, the problem of access to court for decisions taken in opposition proceedings was resolved in a unanimous judgment of the Constitutional Tribunal of 20 December 2017<sup>49</sup>, which entered into force on 28 December 2017. The Constitutional Tribunal stated that „Art. 3 § 2 (2) of the Act of 30 August 2002 - the Law of the Administrative Court Procedure (Journal of Laws of 2017, items 1369 and 1370), understood as excluding the possibility of lodging a complaint to the administrative court against the decision on the complaint on the decision issued as a result of an objection referred to in art. 84c (1) of the Act of 2 July 2004 on the freedom of economic activity (Journal of Laws of 2017, item 2168), is inconsistent with Art. 45 (1) and art. 77 (2) of the Polish Constitution.” In point 5 of the grounds for the judgment, the Constitutional Tribunal explained that the effect of this judgment is not the loss of binding force of Art. 3 § 2(2) of the Law of the Administrative Court Procedure, only eliminating the meaning of this provision, which was indicated in the operative part of the Tribunal’s decision as unconstitutional.

This means that from the provisions issued pursuant to art. 84c (10) the Act of 2 July 2004 on the freedom of economic activity (as ultimately terminating the administrative course of instance) interested parties may file a complaint to the administrative court. In the opinion of the Constitutional Tribunal, initiation of an inspection procedure under the provisions of Chapter 5 of the Act on the freedom of economic activity, it is a manifestation of the imperious action (interference) of public authorities against the individual, and this procedure certainly affects the determination of the legal situation of the controlled entity, it can lead to the initiation of appropriate administrative proceedings and the issuance of the administrative decision specified therein. The decision on the objection, as well as the decision on the complaint about the decision to continue the inspection activities, are undoubtedly of the imperial nature – they have direct legal effects in the scope of the rights of the controlled entity. The fact that – first of all – the control procedure itself is conducted on the basis of the provisions of the Act on the freedom of economic activity and special acts (see art.77 (2) of the Act), and not pursuant to the provisions of the Code of Administrative Procedure, secondly – to proceedings in cases referred to in art. 84c (9 and 10) the Act on the freedom of economic activity, the provisions of the Code of Administrative Procedure shall apply only to an unregulated extent (Article 84c (16) of the Act on the freedom of economic activity), shall not withdraw

<sup>48</sup> Ibidem, p. 173.

<sup>49</sup> SK 37/15. OTK-A 2017/90, Journal of Laws of 2017, item 2451, [www.trybunal.gov.pl](http://www.trybunal.gov.pl).

from the decisions issued as a result of the objection referred to in art. 84c (1) of the Act on the freedom of economic activity the nature of the decision of public administration bodies within the meaning of art. 184 first sentence of the Constitution. The content of decisions issued based on art. 84c (9 and 10) the Act on the freedom of economic activity is not addressed only to the control authority, on the contrary - they are also addressed to the controlled entrepreneur who has used the legal means prescribed to challenge the audit activities undertaken (conducted) against him. The decisions issued following an objection by the entrepreneur (regardless of their content) do not have the nature of acts issued in the sphere of internal administration, which is due to the possibility of appealing in the form of an appeal under article 84c (10) the Act on the freedom of economic activity. The mere granting by the legislator of the right to lodge a complaint against the decision indicates that the legislator has assumed that such an act may violate the legal sphere of the entity which is entitled to appeal. Provisions issued based on art. 84c (9 and 10) the Act on the freedom of economic activity are acts that prejudice the issue of the lawfulness of initiating or controlling the entrepreneur's activities, therefore, they are not purely factual; on the contrary - they relate to the sphere of the entrepreneur's rights, which have a constitutional basis, and specified in the provisions of the Act on the freedom of economic activity<sup>50</sup>.

Undoubtedly, the above judgment results in a change in the legal status to the extent relevant for binding the position expressed in the resolution of the Supreme Administrative Court of 13 January 2014. When there is a change in the provisions of generally applicable law in such a way that their normative content cannot be regarded as the one which gave rise to the interpretation made by the extended composition of the Supreme Administrative Court, in this scope the resolution loses its binding force<sup>51</sup>. The result is a change in the legal status, in this case as a result of the unconstitutionality of a specific understanding of Art. 3 § 2 (2) of the of the Law of the Administrative Court Procedure, it is therefore first the loss of general binding force of the resolution of the Supreme Administrative Court of 13 January 2014, and secondly, the need to accept that an objection pursuant to art. 84c (1) the Act on Freedom of Economic Activity results in the initiation of proceedings aimed at protecting the rights of the entrepreneur, which should be completed by issuing an act of imperious and unilateral character, subject to verification in the administrative course of the instance, and then administrative and judicial review<sup>52</sup>.

At present, there is no doubt in the doctrine and in administrative court judgments that the complaint against the decision of the second instance authority regarding the maintenance of the challenged decision referred to in art. 59 (9) the

<sup>50</sup> Judgment of the Constitutional Tribunal of 20 December 2017, SK 37/15.

<sup>51</sup> Judgement of Supreme Administrative Court of 20 September 2018, II OSK 841/18, CBOSA.

<sup>52</sup> Judgment of Supreme Administrative Court in Warsaw of 16 January 2018, II OSK 771/16, CBOSA.

entrepreneur law<sup>53</sup> i.e. the decision of the authority of the first instance to continue the audit activities. A complaint to the court is not entitled in the case caused by the decision on inadmissibility of opposition. This provision is in the light of the provisions of art. 59 (9) of the entrepreneur law indisputable, therefore lodging a complaint against them and then a complaint to the administrative court may not start administrative and judicial review, because it is not at the disposal of Art. 3 § 2 (2) of the Law of the Civil Court Procedure<sup>54</sup>. However, as already indicated, it would be expedient to clearly regulate the procedure for examining inadmissible oppositions.

5. The provisions of *the Entrepreneur Law Act* explicitly entitle the entrepreneur to lodge a complaint to the administrative court about the protracted conduct of audits. By the Act of 16 December 2016, *on the amendment of certain acts to improve the legal environment of entrepreneurs*<sup>55</sup>, the Act on freedom of economic activity introduced on 1 January 2017 in art. 84c (15a and 15b), the following provisions: „15a. In the event of excessive length of audit activities, after issuing the decision on the complaint referred to in sec. 10, the entrepreneur may lodge a complaint with the administrative court about the protracted audit. Filing a complaint does not suspend audit activities. 15b. To the complaint referred to in paragraph 15a, the provisions of the Act of 30 August 2002 - Law on Proceedings before Administrative Courts (Journal of Laws of 2016, item 718, 846, 996, 1579, 1948 and 2103) regarding a complaint about lengthy proceedings shall apply accordingly.” According to the justification of the draft, this change was to supplement the provisions of chapter 5 of the Act on administrative law relating to the entrepreneur’s objection to the audit authority’s actions for regulation enabling filing a complaint to the administrative court about the protracted conduct of the audit<sup>56</sup>. The justification of the draft indicated that the Act on freedom of economic activity does not contain a separate regulation determining the jurisdiction of administrative courts to review a decision issued in an audit procedure pursuant to Art. 3 § 3 of the Law on Proceedings before Administrative Courts, and therefore pursuant to Art. 58 § 1 (1) of the Law on Proceedings before Administrative Courts, complaints from entrepreneurs are rejected. Therefore, when the control activities are conducted in a protracted manner, in particular in violation of the provisions of art. 83 of the Act of 2 July 2004 on the freedom of economic activity, entrepreneurs do not have effective means of pursuing their arguments before a court after all instances of the proceedings

<sup>53</sup> T. Długosz [in:] G. Kozieł (ed.), *Prawo przedsiębiorców...*, p. 309 and 312, K. Krzał, [in:] A. Pietrzak (ed.) *Prawo przedsiębiorców...*, op. cit., p. 437; judgment of Supreme Administrative Court of 16 January 2018, II OSK 771/16, Legalis.

<sup>54</sup> Decision of Supreme Administrative Court of 1 August 2018, I FSK 1483/16; decision of Provincial Administrative Court in Gliwice of 14 November 2014, file III SA/GI 1047/14, of 3 January 2017, file I SA/GI 1557/16, of 26 June 2019, I SA/GI 502/19.

<sup>55</sup> Journal of Law of 2016, item 2255.

<sup>56</sup> Point 2.15.48. the justification of the draft law of 16 December 2016, amending some acts to improve the legal environment of entrepreneurs (Journal of Laws of 2016, item 2255).

provided for in art. 84c of the Act on the freedom of economic activity<sup>57</sup>. The same legal regulation has been found in the currently applicable art. 59 (14<sup>58</sup> and 15<sup>59</sup>) of the entrepreneur law. It seems that the provision of art. 59 (14) the entrepreneur law as a provision of a special act, could constitute an independent basis for judicial review pursuant to art. 3 § 3 of the Law on Proceedings before Administrative Courts, although in T. Długosz's opinion the basis for lodging a complaint in this case is art. 3 § 2 (8) in connection from art. 3 § 2 (4) of the Law on Proceedings before Administrative Courts<sup>60</sup>. However, an important issue for the successful lodging of a complaint to the administrative court about the protracted audit is the issue of the applicant's exhaustion of his appeal. For complaints about protracted audit, the provisions of the Act of 30 August 2020 are applied on the basis of art. 59 (15) the entrepreneur's law respectively – Law on proceedings before administrative courts regarding a complaint about lengthy proceedings. Meanwhile, in accordance with the regulation of art. 53 § 2b of the Law on Proceedings before Administrative Courts a complaint of inaction or protracted proceedings may be lodged at any time after a reminder has been filed with the competent authority. At the same time, a reminder is considered as a condition for successful complaint in respect of all states in which the complaint pursuant to the provisions of art. 3 (2, 8 and 9) of the Law on Proceedings before Administrative Courts is acceptable<sup>61</sup>. It should also be noted that art. 59 (14) the entrepreneur law indicates that a complaint about the protracted audit may only be lodged after the body has issued a higher decision to the audit authority to maintain in force the challenged decision to continue the audit activities under Art. 59 (9) (1) the entrepreneur law. The above means that the lodging of a complaint about protracted audit activities must be preceded by an objection, then a complaint against the decision to continue the audit activities and finally the issuing by a higher authority of the order from art. 59 (9) (1) the entrepreneur law. Only after releasing the abovementioned provisions, it is permissible to lodge a complaint about the excessive length of audit activities. In view of the content of art. 59 (14) the entrepreneur law the position raised in the literature should be approved that this complaint need not be preceded in this case by a reminder in accordance with the general principle expressed in art. 53 § 2b of the Law on Proceedings before Administrative Courts, because art. 59 (14) the entrepreneur law is an exception, the use of a reminder would be contrary to *the ratio legis* of the commented article,

<sup>57</sup> Ibidem.

<sup>58</sup> „In the event of excessive length of control activities, after the decision referred to in sec. 9 (1), the entrepreneur may lodge a complaint with the administrative court about the protracted conduct of controls. Lodging a complaint does not suspend control activities”.

<sup>59</sup> „The provisions of the Act of 30 August 2002 – Law on Proceedings before Civil Courts (...) regarding a complaint about the protracted conduct of proceedings shall be applied accordingly to the complaint referred to in sec. 14.

<sup>60</sup> T. Długosz [in:] G. Kozieł (ed.), *Prawo przedsiębiorców...*, p. 312.

<sup>61</sup> T. Woś [in:] T. Woś (ed.), *Postępowanie sądownoadministracyjne*, Warszawa 2017, p. 161.

further extending the verification procedure<sup>62</sup>. It should be remembered that the introduced complaint was intended to enable the entrepreneur to lodge a complaint with the administrative court about protracted audit in a situation where, after the instances of the proceedings provided for in art. 84c the Act on freedom of economic activity he could no longer assert his case. There is also consideration in the literature of the legal basis for opposing a complaint before a court. G. Lubeńczuk points out that the need to exhaust the mode of filing an opposition requires consideration of the grounds for opposition in this situation<sup>63</sup>. In the event of excessive length of activities, the grounds for such an objection could, according to the author of Article 59 (1) in relation from art. 55 (1) the entrepreneur law, the material basis of the objection is in this case exceeding the maximum duration of the audit specified in art. 55 (1) the entrepreneur law<sup>64</sup>. G. Lubeńczuk states that for this reason that art. 59 (1) of the entrepreneur law does not mention as a possible ground for objection art. 52 of the entrepreneur law the objection cannot be based on an alleged lack of efficiency in performing audit activities, which would cause them to be delayed in time, but would not result in exceeding the deadlines specified in art. 55 item (1) the entrepreneur law<sup>65</sup>. Considering the wording of art. 59 (14) sentences first the entrepreneur law, it seems that this is primarily about counteracting the protracted states of audit, which could also have appeared after the decision referred to in art. 59 (9)(1) the entrepreneur law, which is why narrowing the legal basis of an earlier objection to art. 55 (1) the entrepreneur law does not seem justified, especially in view of the appealing against decisions in connection with the judgment of the Constitutional Tribunal of 20 December 2017. As T. Długosz<sup>66</sup> recalls in court proceedings regarding a complaint about the lengthy conduct of proceedings, the court examines whether the actions taken by the authority aim at the proper and prompt settlement of the case, at what intervals they are taken, and whether the actions taken by the authority are not apparent, prolonging the proceedings and not in fact leading to an appropriate decision<sup>67</sup>. An entrepreneur's complaint about a protracted audit does not suspend the audit activities. When considering a complaint, the provisions of the Law on proceedings before administrative courts regarding a complaint about protracted conduct of proceedings shall apply accordingly. If the complaint is accepted, the administrative court will oblige the audit authority to carry out the activities within a specified period and finds that the audit author-

<sup>62</sup> A. Żywicka [in:] M. Wierzbowski (ed.), *Konstytucja biznesu...*, p. 238. T. Długosz also seems to be presenting this view, op. cit., p. 312, 313.

<sup>63</sup> G. Lubeńczuk [in:] M. Zdyb, G. Lubeńczuk, A. Wołoszyn-Cichocka, *Prawo przedsiębiorców. Komentarz*, Warszawa 2019, p. 647.

<sup>64</sup> Ibidem.

<sup>65</sup> Ibidem.

<sup>66</sup> T. Długosz [in:] G. Koziół (ed.), *Prawo przedsiębiorców...*, p. 313.

<sup>67</sup> Judgment of Supreme Administrative Court in Warsaw of 5 May 2015, I FSK 97/14, Legalis.



ity has been involved in protracted audit. At the same time, the court will indicate whether this was in gross violation of the law<sup>68</sup>.

## References

### Literature:

Blicharz R. (ed.), *Kontrola przedsiębiorcy*, Warszawa 2013.

Justification of the draft act of 16 December 2016 *amending some acts to improve the legal environment of entrepreneurs*, [www.sejm.gov.pl](http://www.sejm.gov.pl).

Justification of the draft act of 19 December 2008 *amending the act on freedom of economic activity and amending some other acts*, [www.sejm.gov.pl](http://www.sejm.gov.pl).

Kozieł G. (ed.), *Prawo przedsiębiorców. Przepisy wprowadzające do Konstytucji biznesu*, Warszawa 2019.

Piątek W., Skoczylas A. *Glosa do uchwały NSA z 13 stycznia 2014 r., II GPS 3/13, ZNSA 2014, z. 5.*

Pietrzak A. (ed.), *Prawo przedsiębiorców. Komentarz*, Warszawa 2019.

Wierzbowski M. (ed.), *Konstytucja biznesu. Komentarz*, Warszawa 2019.

Woś T. (ed.), *Postępowanie sądowoadministracyjne*, Warszawa 2017.

Zdyb M., Lubeńczuk G., Wołoszyn-Cichocka A., *Prawo przedsiębiorców. Komentarz*, Warszawa 2019.

### Legal acts and case law:

The Act of 2 July 2004 *on the freedom of economic activity* (Journal of Laws of 2004, No. 173, item 1807).

Act of 6 March 2018. *Entrepreneurs' law* (Journal of Laws of 2018, item 646).

The Act of 14 June 1960. *Code of Administrative Procedure* (Journal of Laws of 2018, item 2096, as amended).

4. Act of 30 August 2002 *Law on proceedings before administrative courts* (Journal of Laws of 2019, item 2325).

Act of 16 December 2016 *amending some acts to improve the legal environment of entrepreneurs* (Journal of Laws of 2016, item 2255).

Decision of Supreme Administrative Court (NSA) of 17 December 2010, I OSK 1030/10  
Decision of Supreme Administrative Court of 24 April 2012, II GSK 120/12.

Decision of Supreme Administrative Court of 12 September 2012, II GSK 695/12.

Decision of Supreme Administrative Court of 14 September 2012, II GSK 1431/12.

Decision of Supreme Administrative Court of 14 September 2012, II GSK 1417/12.

---

<sup>68</sup> K. Krzal, [in:] A. Pietrzak (ed.) *Prawo przedsiębiorców...*, p. 438 and 439.

- Decision of Supreme Administrative Court of 9 October 2012, I OSK 2259/12.
- Decision of Supreme Administrative Court of 12 December 2012, II OSK 2911/12.
- Decision of Supreme Administrative Court of 12 January 2012, II GSK 1073/11.
- Decision of Supreme Administrative Court of 14 November 2012, II GSK 1808/12.
- Decision of Supreme Administrative Court of 12 February 2013, II FSK 2215/12.
- Decision of Supreme Administrative Court 9 January 2013, II FSK 2335/12.
- Decision of Supreme Administrative Court of 12 September 2007, II OSK 1009/07, OSP 2008/10/107.
- Decision of Supreme Administrative Court of 1 August 2018, I FSK 1483/16.
- Resolution of Supreme Administrative Court of 13 January 2014, II GPS 3/13, ONSAiWSA 2014, No. 4, item 55.
- Judgment of Supreme Administrative Court of 6 June 2012, I GSK 698/11, LEX No. 1215510.
- Judgment of Supreme Administrative Court of 28 June 2016, II OSK 2633/14, LEX No 2106706.
- Judgment of Supreme Administrative Court of 24 February 2017r., II OSK 1574/15, LEX No. 2283258.
- Judgment of Supreme Administrative Court of 27 April 2016, II FSK 56/14, Legalis.
- Judgment of Supreme Administrative Court of 16 January 2018, II OSK 771/16, Legalis.
- Judgment of Supreme Administrative Court of 20 September 2018, II OSK 841/18, CBOSA.
- Judgment of Supreme Administrative Court of 16 January 2018, II OSK 771/16, CBOSA.
- Judgment of Supreme Administrative Court of 5 May 2015, I FSK 97/14, Legalis.
- Judgment of the Constitutional Tribunal of 20 December 2017, SK 37/15, OTK-A 2017/90.
- Decision of Provincial Administrative Court (WSA) in Gliwice of 14 November 2014, III SA/GI 1047/14.
- Decision of Provincial Administrative Court in Gliwice of 3 January 2017, I SA/GI 1557/16.
- Decision of Provincial Administrative Court in Gliwice of 26 June 2019, I SA/GI 502/19.
- Judgment of Provincial Administrative Court in Łódź of 11 January 2011, I SA/Łd 1261/10, Legalis.
- Judgment of Provincial Administrative Court in Warsaw of 5 March 2010, III SA/Wa 1494/09, Legalis.
- Judgment of Provincial Administrative Court in Wrocław of 17 January 2013, I SA/Wr 1352/12, LEX No. 1274174.