

Conference EFFECTIVE JUSTICE: CHALLENGES AND PRIORITIES FOR (ADMINISTRATIVE) COURTS

in commemoration of the establishment of the Division of Administrative Courts of the Lithuanian Association of Judges, Law Institute of Lithuania and the Law Faculty of Vilnius University

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ROUNDTABLE DISCUSSION

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The conference theme “Effective Justice: Challenges and Priorities for (administrative) courts” shall require firstly to talk about the fact, that results of the judiciary - procedural decisions should be clear and understandable. It is the formal aspect, meaning procedural justice (see L.L. Fuller and his 8 natural laws, the Ruling of 23 of December of the Constitutional Court of the Republic of Lithuania, etc.). Therefore, it must be possible to implement those procedural decisions. Secondly, judgments must be possible to implement substantively. After all, EU law fundamental principle of effectiveness requires that the implementation of legal rules setting out the EU recognized rights should not be too difficult or impossible (other is equivalence (non-discriminatory) principle, according to which the rules establishing the EU recognized rights must be no less favorable than the corresponding national laws governing the protection of rights). Although almost everyone emphasizes that the primary purpose of judiciary is protection and defense of human rights, however it is more accurate to state that the courts protect the rule of law and public interest, which essential aim is to protect private human rights.

For me, as an administrative judge of first instance court, while executing the protection function of the rule of law and the public interest, it is essential that I could rely on accurate, conforming to the Constitution statutes. In addition, if I would have doubts about the constitutionality of statutes, I have a possibility to apply to the Constitutional Court and then get: 1) understandable, clear and 2) possible to implement the Constitutional Court decision (see, aforementioned text). I will turn attention that Vilnius Regional Administrative Court chamber (I was rapporteur of this chamber) applied to the Constitutional Court with petitions to investigate if

some statutory provisions were not in conflict with the Constitution. Those provisions establish regulation that person granted state pension may hold positions in state (public) service and also may get for the same period of service to the Lithuanian state (length of service) not only state pension, but also remuneration (salary) component - the additional pay for the years served for the State of Lithuania (length of service). On the 26 January 2016, the Constitutional Court adopted ruling which stated that the disputed legal regulation is not in conflict with the constitutional provisions. I will turn attention that police officers and military servants can get state pensions when they reach 40 years of age (they must have 20 years length of service). Besides, later they may take positions in so called "other" state services, for example, judges, and get for this later service remuneration (salary) component - the additional pay for the years served for the State of Lithuania, *inter alia* when they were police officers (here is used "united" state service definition). In other words, according to disputed regulation the same person may get for the same period of service to the Lithuanian state (length of service) not only state pension, but also remuneration (salary) component - the additional pay. As I have mentioned, the Constitutional Court ruled that disputed regulation is not contrary to the Constitution. However, it also emphasized that this regulation "is not without faults and it should be corrected". I must emphasize in this context that Constitutional Court judge Prof. E. Šileikis presented a dissenting opinion, which strongly disagree with the said Constitutional Court ruling.

So, if I can effectively fulfill my judge's role to ensure the rule of law? Presumably not. This is for two reasons: first, what is meant by the "legal regulation does not contradict the Constitution, but it is without faults and it should be corrected," when a person is privileged by receiving double financial benefits for the same years of service? Can I, as an administrative court judge, following the Constitutional Court ruling, write the following decisions that the administrative act is legal, but a person could be privileged? This is minor challenge for me, as an administrative court judge, or the bright side of the coin.

The dark side of the coin is that the Constitutional Court unduly followed the Constitutional Court formulation "legal regulation is not without faults, it should be corrected", for the first time used in 14 March 2006 ruling (in which the wording used correctly enough, without prejudice to the principle of the rule of law). Therefore, the Constitutional Court possibly deviated from responsibility to protect the rule of law and strengthened "polizeistaat" (very suitable word in this context; it is R. von Mohl term opposed to "Rechtsstaat"). For, statutory *force officers* may be privileged and get a double financial benefits - state pension and salary for the same time served. Following the Constitutional Court ruling, "polizeistaat", perhaps, will be strengthen and by Lithuanian administrative courts.