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LEGAL NATURE OF AN OFFICIAL ACT OF THE PRESIDENT OF THE REPUBLIC OF POLAND PRONOUNCING RETIREMENT OF THE SUPREME COURT JUDGE

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1. RETIREMENT OF THE SUPREME COURT JUDGE AS A CONDITION FOR PRESIDENT'S OFFICIAL ACT

The retirement of a judge is a complex issue due to the reasons for the change in a judge's service relationship and the form of the its pronouncement. In addition, there are juridical complications in this area because the Polish legal system does not lay down uniform rules of confirming a judge's retirement. The solutions adopted in relation to common court judges differ from those applicable to judges of the Supreme Court and the Supreme Administrative Court. In this respect, many doubts are raised and they are reflected in the disputes that arise at present. Arguments raised in them do not always refer to the legal regulations in force and, as a result, they become unjustified statements made as a result of political and not legal debates. The analysis herein aims to present this issue from a normative perspective, i.e. rules adopted in law and these presented in case law. It focuses on one of its aspects, namely that connected with the legal status of the President of the Republic of Poland in the procedure of recognising that a judge has retired or has been retired because, in accordance with the law in force, the President formally pronounces both of the above-mentioned circumstances. Thus, the considerations presented concern the formal aspect of retirement and this means that substantive conditions for retirement are treated as those of minor importance and in a general way, which is necessary for proper illustration of the applicable retirement proce-

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dural institutions. Such an approach seems justified because the substantive context of retirement has been discussed in many theoretical papers recently.[1]

Undoubtedly, the statutory reduction of the retirement age of judges that was introduced in the Act on the Supreme Court[2] provides the foundations for discussion connected with retirement; however, it seems that the form in which this fact is confirmed by relevant bodies is not less important. The adoption of appropriate legal solutions in the area has influence on their assessment from the point of view of conformity with the Constitution of the Republic of Poland and international standards. Complex evaluation of the issue would go beyond the framework delimited by the title of this paper, however, the adopted solutions applicable to judges of the Supreme Court and the Supreme Administrative Court can be universal in nature. Thus, in the case of adequate application of the solutions to the status of every judge makes it possible to refer these formulated also to judges of common courts. Although in their case, the body in charge, i.e. one issuing relevant acts, is the Minister of Justice and the normative approach to his competences is a little different from those of the President of the Republic of Poland based on the Act on the Supreme Court, in order to maintain structural cohesion of the activities of the two bodies and the uniform nature of retirement, it should be assumed that such activities cannot be interpreted diversely.

Judges' retirement is a legal state within their service relationship in which a judge's situation is as a result of circumstances prescribed by the law. Its essence consists in the inability to hold the office.[3] Thus, the state is similar to an employee's retirement but different from it in general because it is connected with the continuation of the judge's service relationship, although without the competence to adjudicate.[4] Thus, the state of retirement only changes the legal nature of a judge's relationship without dissolution of the ties resulting from the act of appointment. The definition of this characteristic feature of the state of judges' retirement is essential because of the need to determine a certain and unambiguous moment when the relationship created by the act of appointment changes. It is all the more important when we consider that the moment a judge retires, he or she does not only lose the power to adjudicate but also, as a person inactive in the service, he or she cannot act in the area related with the current operation of courts. It is also worth mentioning that many activities of this type are procedural and directly involve the issue of judgments. That is why, an act issued by the President of the Republic of Poland pronouncing the change in a judge's service relationship becomes an important element of the properly operating system of justice.

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[1] See M. J. Zieliński, *Obniżenie ustawowej granicy przechodzenia w stan spoczynku przez sędziów sądów powszechnych, administracyjnych i Sądu Najwyższego w świetle przepisów dyrektyw 2000/78/WE oraz 2006/54/WE*, Przegląd Sądowy 10, 2018, pp. 5–25; also: A.M. Świątkowski, *Prawny spór o zgodność z Konstytucją RP regulacji i ich następstw osiągnięcia „wieku emerytalnego" przez sędziów Sądu Najwyższego*, Palestra 10, 2018, pp. 5–12.

[2] Act on the Supreme Court of 8 December 2017 (Dz.U. 2020, item 190).

[3] See B. Stępień-Załucka, *Sędziowski stan spoczynku. Studium konstytucyjnoprawne*, Warszawa 2019, pp. 79–80.

[4] For more, I. Raczkowska, *Stan spoczynku sędziów i prokuratorów*, Warszawa 2003, p. 17 et seq.

In jurisprudence[5] and case law[6], there are no doubts that judges' retirement is inseparably connected with judicial independence. According to the Constitution of the Republic of Poland, it is a type of privilege consisting in judges' discretion and independence.[7] Although it does not give grounds for stating that there is a need to treat this professional group in a special way, it makes it possible to maintain far-reaching independence even after a judge has stopped holding the office. It is connected with the right to statutory remuneration as well as the obligation to take care of the dignity of a judge's post. The reasons for judges' retirement can be of a different nature but should be determined in statute because only this approach guarantees the constitutional value of judicial independence. Some of the reasons are a form of privileges because they are connected with a judge's retirement at his/her request; others are obligatory in nature as they result from the statutory requirements, e.g. reaching a particular age or health condition.

The category of privileges but also rights should include such reasons that enable a judge to retire when he/she reaches a certain age but not the maximum one prescribed as a basis of the right to retire, and those that depend on a judge's will and are laid down in statute. The law in force recognises all reasons that can optionally result in retirement, i.e. those that depend on a judge's request. At present, in the case of judges of the Supreme Court and the Supreme Administrative Court, these include retirement of women when they reach the age of 60 and before the age of 65, in accordance with Article 37 § 5 Act on the Supreme Court, and the submission of a declaration within six months of the date when the Act on the Supreme Court entered into force, in accordance with Article 111 § 2 of the statute. On the other hand, retirement is obligatory when a judge of the Supreme Court and the Supreme Administrative Court reaches the maximum retirement age.

Under such obligatory conditions of retirement, there is no uniform situation, in particular after the judgment of the Court of Justice of the European Union (CJEU),[8] because there are at least two rules functioning in the legal system, i.e. the age of 70 in the case of judges of the Supreme Court and the Supreme Administrative Court who entered into the service relationship before 1 January 2019[9] and the age of 65 in the case of those who started their judicial service after the date. Obviously, the assumption presented above and concerning those two rules is a certain simplification because as a result of the amendment to the Act on the Supreme Court, which reinstated the retirement age laid down in the Act on the Supreme Court of 2002,[10] the situation is complicated due to the retirement rules connected with the

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[5] See B. Stępień-Załucka, *supra* n. 3, p. 28.

[6] Constitutional Tribunal judgment of 12 December 2001, SK 26/01, OTK 8/2001, item 258.

[7] See B. Mik, *Kilka refleksji na temat artykułu B. Wagner o sędziowskim stanie spoczynku*, Prokuratura i Prawo 9, 2014, pp. 30–32.

[8] The CJEU judgment of 24 June 2019, C-619/18, *Commission v. Poland*; also the CJEU judgment of 5 November 2019, C-129/18, *Commission v. Poland*, and of 19 November 2019, C-585/18, C-624/18 and C-625/18 (curia.europa.eu).

[9] In accordance with Article 1 paras 4 and 6 of the Act of 21 November 2018 amending the Act on the Supreme Court (Dz.U. 2018, item 2507); hereinafter amendment to Act on the Supreme Court.

[10] Act on the Supreme Court of 23 November 2002 (Dz.U. 2016, item 1254, as amended).

service lengthened beyond the age of 70 that was in force in the former legal state. However, it seems that from the point of view of the analysis conducted such an assumption is possible and admissible because it is not important for the nature of the act pronouncing retirement, i.e. the formal aspect of the issue discussed.

In addition, it should be indicated that comments made on the issue have a broader scope because Article 39 Act on the Supreme Court stipulates that the date the Supreme Court judge retires or is retired is determined by the President of the Republic of Poland. Thus, the content of the provision unambiguously indicates that the President's act must be interpreted in the same way in both situations. It should be noticed here that obligatory retirement of the Supreme Court judge is not uniform and different from voluntary retirement. It can take place on request of the judge involved or the court and is not less controversial than retirement as a result of reaching the retirement age. One can even formulate a thesis that from the constitutional point of view, the issue is even more sensitive than old-age retirement because it is connected to a greater extent with the activities of various state bodies, which can radically interfere into judicial independence.[11] Therefore, from the point of view of the legal nature of an act issued by the President of Poland, there is no difference between voluntary and obligatory retirement of a judge of the Supreme Court, although the law in general specifies the two institutions differently as far as the substantive conditions of retirement are concerned.

2. PRESIDENT OF THE REPUBLIC OF POLAND AS A PUBLIC ADMINISTRATION BODY

Recognising the President of the Republic of Poland as a public administration body is not obvious in jurisprudence and case law.[12] It mainly results from the emphasis placed on his constitutional role and position in the state political system. Consequently, the thesis that the administrative nature of this body specified in the Act on the Supreme Court stems from the constitutional analysis of his role in the procedure regulating retirement and not the view that dominates theoretical considerations concerning the position of the President of the Republic of Poland in the state system. The approach to the role of the President of the Republic of Poland in relation to the state system consists in detailed determination of the Polish President's position in which the state-related nature of that body and its constitutional role are emphasised.[13] From this point of view, as a rule, the executive context of the body's activity is ignored or the analysis is limited to issues connected with foreign

[11] For more, see M. Masternak-Kubiak, *Przesłanki i tryb przechodzenia sędziego sądu powszechnego w stan spoczynku*, [in:] J. Jaskiernia (ed.), *Transformacja systemów wymiaru sprawiedliwości*, Vol. 2: *Proces transformacyjny i dylematy wymiaru sprawiedliwości*, Toruń 2011, p. 63 et seq.; also, B. Stępień-Załucka, *supra* n. 3, pp. 183–203.

[12] The Czech law stipulates it differently, see J.M. Passer, M.J. Nowakowski, *Prezydent Republiki jako organ administracji publicznej – z orzecznictwa Najwyższego Sądu Administracyjnego Republiki Czeskiej*, Wydawnictwo NSA, Warszawa 2016, pp. 27–30.

[13] See R. Mojak, *Instytucja Prezydenta RP w okresie przekształceń ustrojowych 1989–1995*, Lublin 1995, p. 92; also, J. Ciapała, *Prezydent w systemie ustrojowym Polski (1989–1997)*, Warszawa 1999,

policy or the security of the state.[14] Nevertheless, apart from those standpoints, there are opinions that the content of Article 126 of the Constitution of the Republic of Poland, which stipulates that the President is the supreme representative of the Republic of Poland and the guarantor of the continuity of the State authority ensuring observance of the Constitution and safeguarding the sovereignty and security of the State, has a considerable interpretative potential and provides a normative content for the provisions granting the President particular powers.[15]

Working on such an assumption, it is necessary to confront the content of this regulation with the powers held by the President based on the Act on the Supreme Court. Under those provisions, the President of the Republic of Poland acts in two normatively independent spheres. The first one is connected with the occurrence of a service relationship, i.e. the appointment of a judge. As this is concerned, it is commonly assumed,[16] both in jurisprudence[17] and the judicature[18], that an official act of appointment of a judge, as the President's prerogative stipulated in Article 144 para. 3(17) Constitution of the Republic of Poland, is not subject to judicial control. The opinion remains up-to-date, although serious arguments for a different stance can be also presented. The belief that the President's act of appointment is not subject to judicial control developed based on the present Constitution can also be supported by an assumption that the exclusive nature of this competence is conducive to ensuring judicial independence, which especially at present can be important for involving judicial circles in public discussion about the justice system reform. In the realities developed this way, judicial independence might be infringed not only by the executive power but also by judicial circles' influence exerted on official acts of appointment.

The other sphere of the President's of the Republic of Poland activity with respect to judicial relationships is the development of the content of the existing service relationship, i.e. activities that can be undertaken by this body after a judge's appointment. Within this scope, the role of the President must be perceived in a different way than at the stage of appointment. First of all, it should be taken into account that since judicial independence should consist in being independent of any power in the scope other than laid down in the Constitution of the Republic of Poland and statutes, it

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p. 394 et seq.; in particular P. Tuleja, K. Kozłowski, [in:] M. Safjan, L. Bosek (eds), *Konstytucja. Komentarz*, Vol. II, Warszawa 2016, pp. 563–576, hereinafter *Komentarz II*.

[14] See P. Sarnecki, *Prawo konstytucyjne*, Warszawa 2008, p. 350 et seq.

[15] For more, see P. Tuleja, K. Kozłowski, *Komentarz II*, *supra* n. 13, p. 576.

[16] Based on the dispute concerning the reform of the justice system in the period 2015–2020, the stance that the President of the Republic of Poland has exclusive power to appoint judges and there is no control over this process by other state bodies has been contested by some scientific and judicial circles, which does not seem surprising, unless the authors present opinions that control is inadmissible. In the past, opinions on admissibility of control were divided. Some stated that an act of appointment could be subject to control, e.g. J. Sułkowski, *Uprawnienia Prezydenta RP do powoływania sędziów*, Przegląd Sejmowy 4, 2008, pp. 55–65, others presented different opinions, e.g. R. Piotrowski, *Sędziowie a władza wykonawcza. Wybrane problemy konstytucyjne*, Studia Iuridia 48, 2008, p. 215.

[17] See the Constitutional Tribunal ruling of 19 June 2012, SK 37/08, OTK 6/2012, item 69.

[18] See D. Dudek, *Autorytet Prezydenta a Konstytucja Rzeczypospolitej Polskiej*, Lublin 2013, p. 62 et seq.; similarly K. Kozłowski, *Komentarz II*, *supra* n. 13, p. 700.

should be recognised that no power can perform its activities in relation to the existing relationships without judicial control. Such a conclusion is not only a logical consequence of judicial independence but also results from the legal regulation in force. Thus, judicial independence means impartiality in relation to the object of and parties to proceedings, being independent of non-judicial institutions, being autonomous in relation to other judicial bodies and being free from the influence of social factors.[19]

Judicial independence interpreted this way can only be exercised when each case of legal interference into the existing judicial relationship is given a guarantee of a court's control. Guaranteeing such protection is an inalienable condition of judicial independence because it should be taken into account that such independence cannot be identified with the right or privilege attributed to a judge. It must also be perceived as an obligation addressed at a judge; thus, he/she must be provided with mechanisms of efficient protection of this independence.[20] Therefore, each activity of a state body relating to the existing judicial relationship should be subject to control, which means that such body must be interpreted as a broadly understood public administration referred to in Article 184 Constitution of the Republic of Poland. Ensuring such protection for judicial service relationships is not only aimed at proper exercising of the constitutional standard of judicial independence but is mainly supposed to guarantee the independence of a court as a sentencing body. In addition, this makes it possible to ensure that a judge can exercise the right to a fair trial because it is hard to assume that Article 45 para. 1 Constitution of the Republic of Poland can be non-applicable to judges. The consequences would be such if one assumed that official acts determining the Supreme Court judges' service relationships are beyond control because they have the features of the President's prerogatives and their nature results from an official act of appointment. Apart from that, before the Act on the Supreme Court of 2017 entered into force, the President of the Republic of Poland had not performed a role in a judge's service relationship at all because the First President of the Supreme Court had been entitled to take all legal steps in relation to such a person, which undoubtedly meant the organ was administrative within the constitutional meaning.

Recognition of the President as a public administration entity and imposing judicial control over his official acts issued for the existing judge's service relationship requires that a few facts should be established. First of all, what must be determined are legal grounds for the position of this body in the constitutional order and the determination of the competence of a court examining the issued acts.

Article 1 LPAC[21] stipulates that administrative courts are competent to control public administration and other matters to which LPAC is applicable in accordance with special provisions. On the other hand, Article 1 § 1 LACS[22] stipulates that

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[19] See A. Murzynowski, A. Zieliński, *Ustrój wymiaru sprawiedliwości w przyszłej konstytucji*, Państwo i Prawo 9, 1992, p. 5.

[20] See the Constitutional Tribunal judgment of 24 June 1998, K 3/98, OTK 4/1998, item 52.

[21] Act of 30 August 2002: Law on proceedings before administrative courts (Dz.U. 2019, item 2325); henceforth LPAC.

[22] Act of 25 July 2002: Law on administrative courts system (Dz.U. 2019, item 2167); henceforth LACS.

administrative courts administer justice via the control over public administration. The content of both regulations must be interpreted through the prism of Article 184 Constitution of the Republic of Poland, which lays down the competence of the Supreme Administrative Court and other administrative courts to control public administration activities within the scope determined in statutes. Therefore, the indicated legal regulations must initially be the legal framework of judicial control over official acts of the President of Poland issued in relation to judges.

Their content undoubtedly stipulates that administrative courts have the right and obligation to control public administration in their legal activities. However, the assumption of their efficiency requires that the President of the Republic of Poland be proved to be one of public administration bodies within the meaning of those provisions. The indication of the feature of the President is possible only by reference of the solutions indicated in the two statutes to the content of Article 184 Constitution of the Republic of Poland, because only when this is assumed, it is possible to determine the scope of control over administration exercised by administrative courts. In the legal doctrine there are no doubts about the stance that under Article 45 para. 1 Constitution of the Republic of Poland everyone has the right to a hearing of one's case before a court if it requires that a judgment concerning the rights of a given party should be issued.[23] The resolution of a dispute constitutes the administration of justice. In accordance with Article 175 para. 1 Constitution of the Republic of Poland, the administration of justice is exercised by, inter alia, administrative courts. In a situation when a dispute in which an individual is involved results from public administration activities, the right laid down in Article 45 para. 1 Constitution, i.e. the right to a hearing before a court, takes the form of the right to a hearing before an administrative court.[24]

There is no doubt that neither the Constitution of the Republic of Poland nor statutes define the general concept of public administration. Such definition appears in normative acts and adopts a particular meaning typical of the area of regulation stipulated in them. The provisions of the Constitution of the Republic of Poland lay down duties within the field of public administration (Article 63) and a body of public administration (Article 79 para. 1). In addition, there is a concept of self-government administration provided for in those provisions (Article 16 para. 2). Based on those systemic regulations, it is assumed that the concept of public administration refers to government administration subordinate to the President of the Council of Ministers, self-government administration performed by local government bodies and non-government state administration.[25] Thus, in accordance with Article 184 Constitution of the Republic of Poland, public administration means all entities that should be classified as government, non-government and self-government administration, i.e. broadly understood executive power.[26]

On the other hand, the concept of a public administration body appears in Article 79 para. 1 Constitution of the Republic of Poland, however, without specifying

[23] Constitutional Tribunal judgment of 10 May 2000, K 21/99, OTK 4/2000, item 109.
[24] See M. Wiącek, *Komentarz II*, *supra* n. 13, p. 1092.
[25] Constitutional Tribunal judgment of 15 June 2011, K 2/09, OTK 5/2011, item 42.
[26] See M. Wiącek, *Komentarz II*, *supra* n. 13, p. 1096.

features typical of such an entity. According to the Constitutional Tribunal case law, a public administration body means any entity, regardless of whether it is formally classified within the structure of administration, i.e. executive power, if it has powers to issue decisions that determine an individual's legal situation.[27] Therefore, public administration bodies include non-public entities that have public power given by statutes, i.e. functional organs in the procedural meaning (Article 1 para. 2 CAP[28]). Thus, the Constitutional Tribunal case law adopts an autonomous idea of a public administration body and this meaning is compliant with Article 184 Constitution of the Republic of Poland. If so, public administration is performed by many bodies of the authorities and entities that are not such organs, which means that the systemic position of a body is not significant for determining the scope of judicial control over public administration.[29] For this reason, in some types of cases, from the constitutional point of view, legislative and judiciary bodies, and the President of the Republic of Poland should be recognised as public administration bodies within the scope in which their activities consist in the performance of public administration, as this activity must be specified in a functional way.[30]

Summing up, it should be stated that the activity of public administration includes various forms of actions involving decision-taking by all the above-mentioned entities, including the President of the Republic of Poland, in cases when those actions shape the sphere of rights and obligations of an individual and have not been specified as the President's prerogatives. Thus, the right to pronounce the date of the Supreme Court judge's retirement is such an action. In accordance with Article 39 Act on the Supreme Court, the President pronounces the date of a judge's retirement. In relation to the regulation in force, doubts may arise as to the scope of application of Article 39 Act on the Supreme Court because, while there are no reservations about its application to retirement pursuant to the premises of Article 37 §§ 1 and 5 of the statute, there can be grounds to state that it is not applicable to transitional provisions. However, the practice to date and jurisprudence are in favour of the extended scope of application of Article 39 Act on the Supreme Court.[31]

It seems to be a well-grounded solution because an official act issued by the President unambiguously determines the date of the Supreme Court judge's retirement and this is of enormous legal significance, because a retired judge cannot exercise jurisdictional power. Therefore, in the case of a judge's declaration of retirement on request in accordance with the provisions of the Act on the Supreme Court, the President of the Republic of Poland is obliged to issue an official act pronouncing the fact. It should be noticed that the President's act pronouncing

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[27] See the Constitutional Tribunal judgment of 29 November 2007, SK 43/06, OTK 10/2007, item 130.

[28] Act of 14 June 1960: Code of Administrative Procedure (Dz.U. of 2020, items 256, 695); hereinafter CAP.

[29] See J. Drachal, J. Jagielski, R. Stankiewicz, [in:] R. Hauser, M. Wierzbowski (eds), *Prawo o postępowaniu przed sądami administracyjnymi*, Warszawa 2011, p. 42.

[30] See M. Wiącek, *Komentarz II*, *supra* n. 13, p. 1097.

[31] See K. Szczucki, *Komentarz do art. 39 ustawy o Sądzie Najwyższym*, LEX.

the Supreme court judge's retirement on request is a decision, although a declaratory one, because it confirms the will expressed in the declaration. Its authoritative nature results from the wording in which the legislator gives the body the right to 'pronounce' the date of retirement. The situation differs from that in common courts in which the Minister of Justice just announces the fact. Thus, if the legislator clearly differentiates the concepts used in similar situations and the legislator is rational, the decision is intentional, and this means that the fact must result in various legal consequences, and this circumstance must be taken into account when interpreting relevant provisions. The stance can be found in abundant and uniform opinions of representatives of the legal doctrine and judicature, who believe that the use of the phrase 'shall pronounce' always means an authoritative nature of the body's action.

Due to that, in accordance with the Act on the Supreme Court, the President of the Republic of Poland must be treated as a public administration body in the meaning of Article 184 Constitution of the Republic of Poland, and his activity or inactivity are subject to control by administrative courts for the above-mentioned reasons. The assumption of judicial control over the President's activities does not infringe the constitutional nature of this body as the Head of State. In accordance with Article 126 para. 3 Constitution of the Republic of Poland, the President exercises his duties within the scope of and in accordance with the principles specified in the Constitution and statutes. The role that the President holds in particular normative situations depends on the positive regulation of his rights. Taking on the role of an administrative body, pursuant to Article 39 Act on the Supreme Court, opens the way to judicial control over the President's activities in the case of deciding the legal status of the Supreme Court's judges.

A different interpretation of the provisions in force would lead to the infringement of the principles resulting from Articles 2 and 45 Constitution of the Republic of Poland because the Supreme Court judge would be, in fact, deprived of a possibility of judicial control over activities that have influence on the scope of his/her rights and obligations resulting from the legal relationship between him/her and the state. The systemic argument also supports the presented stance. Regardless of the approach to the President's act, whether it is a decision, which is admissible in jurisprudence[32] or an act within the meaning of Article 3 § 2(4) LPAC, in both cases judicial administrative control over the President's activities is possible in the light of Article 50 § 1 LPAC. In accordance with the content of this provision, when the case concerns control over public administration, everyone who has legal interest in it has the right to file a complaint.

The concept of public administration for the need of determining the legal nature resulting from Article 39 Act on the Supreme Court can be established only by means of interpretation with reference to Article 184 Constitution of the Republic of Poland. This means that the systemic status of a body cannot be an obstacle to exercising control over this body's activities because, from the point of view of Article 184 Constitution of the Republic of Poland, it is irrelevant that the President

[32] See K. Kozłowski, *Komentarz II*, *supra* n. 13, p. 700.

is the Head of State, and thus some of his official acts can be classified as activities of public administration, and there are no reasons why they should not be subject to administrative courts' control.[33]

Article 184 Constitution as well as LPAC and LSAC indicate that control over public administration is admissible only within the scope specified in statutes. Thus, in the light of this condition, there can also be a doubt concerning admissibility of appealing against the President's act issued in accordance with Article 39 Act on the Supreme Court. However, regardless of the fact that the Constitutional Tribunal case law admits the possibility of excluding some public administration bodies' acts from judicial control,[34] it is consistent in its stance that such exclusion is admissible but only under the condition that a court's control is not connected with the exercise of an individual's right to a hearing before a court, i.e. it is the nature of the legal relationship that results in the possibility of arbitrary judgment on an individual's legal situation.[35] Obviously, such a situation cannot take place in relation to a judge because it would be against the constitutional principle of judicial independence. For this reason, the lack of relevant procedure of challenging the President's actions under Article 39 Act on the Supreme Court cannot constitute an argument for inability to submit an administrative act issued based on this provision to a court for control.

3. PRESIDENT'S ACT PRONOUNCING THE DATE OF A JUDGE'S RETIREMENT AND THE MODE OF ITS CONTROL

The legal nature of a judge's service relationship is complex.[36] It has not been unambiguously specified in jurisprudence and case law, however, there is no doubt that the moment the Supreme Court judge is appointed, the relationship between a judge and the State (the Supreme Court) becomes a service-related one that has public and labour law aspects. As far as the public law aspect is concerned, the relationship exists between a judge and the State on behalf of which the President of the Republic of Poland and the First President of the Supreme Court act as a party entering this relationship and altering it. In the case of common court judges, the President, the Minister of Justice and presidents of particular common courts act on behalf of the State. Thus, various bodies act on behalf of the State as parties in those relationships, however, the appointment is always the President's prerogative. The principle adopted in the Act on the Supreme Court stipulating that the President acts by confirming a judge's retirement cannot lead to developing such a legal situ-

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[33] See J. Trzciński, *Kształtowanie się kognicji sadów administracyjnych od 1980 do 2013 roku*, [in:] D. Waniek, K. Janik, (eds), *Droga ku zmianom. Księga jubileuszowa w sześćdziesiątą rocznicę urodzin Prezydenta Aleksandra Kwaśniewskiego*, Vol. I, Warszawa–Kraków 2014, pp. 110–111.

[34] Constitutional Tribunal judgment of 26 April 2005, SK 36/03, OTK 4/2005, item 40.

[35] Constitutional Tribunal judgment of 10 May 2000, K 21/99, OTK 4/2000, item 109.

[36] For more, see B. Stępień-Załucka, *supra* n. 3, pp. 114–146; also K. Gonera, [in:] R. Piotrowski (ed.), S. Dąbrowski, K. Gonera, A. Górski, M. Laskowski, A. Łazarska, Ł. Piebiak, W. Sanetra, M. Strączyński, *Pozycja ustrojowa sędziego*, Warszawa 2015, LEX 2015, electronic version.

ation of the Supreme Court judge in which this party is deprived of the right to appeal against an official act pronouncing his/her retirement.

In the light of the above, if the President of the Republic of Poland acting under Article 39 Act on the Supreme Court is *ex lege* obliged to issue an official act (a decision) pronouncing the date of the Supreme Court judge's retirement, the issue of such a statement is the Head of State's duty. The President's obligation to act in the area results from Article 142 para. 2 Constitution of the Republic of Poland and Article 39 Act on the Supreme Court. Based on those regulations, it should be assumed that the President issues a decision on a judge's retirement. This type of resolution is a form of the State's actual authority. There is no doubt in jurisprudence that the President's decisions are acts of a different nature that is always connected with the type of matter they concern. It is also beyond dispute that they can be issued only by the President within his individual powers. As a result, no other entity can substitute for this body, i.e. no one can be authorised to issue the decisions pursuant to Article 268a CAP, even if they concern individual matters and are similar to administrative decisions.[37] It is due to the fact that the President does not judge in an administrative case within the meaning of Article 1 CAP. And even if we assumed that the decision, in the substantive meaning, is an administrative one, it is not issued by a public administration body within the systemic sense but by another State body, an administrative one in the functional meaning, and the application of the Code of Administrative Procedure to such situations must directly result from the provisions regulating the given area.

The complex nature of a judge's service legal relationship dominated by public law aspects is not conducive to determination of the proper form of its protection. It can be observed with reference to the Act on the Supreme Court of 2017; however, it should be mentioned that former regulations did not provide an unambiguous approach to the issue, either. The model of protection binding then was an effect of practice rather than explicit statutory solutions. Undoubtedly, its characteristic feature was the assumption that the Supreme Court was competent to make statements concerning the rights and duties developed within its scope. From the point of view of the experience gained as a result of the introduction of the Act on the Supreme Court of 2017, a doubt can arise whether the solution was right. Although it was supported in numerous various court judgments, it seems a certain systemic context was not noticed, namely, that Article 184 Constitution clearly indicates that administrative courts are competent to exercise control over public administration. Obviously, such control can be exercised in the scope specified in statutes, which does not exclude the necessity of interpreting the law in force in the way that is in systemic conformity with the type of cases assigned to competent courts, either civil or administrative ones.

The lack of consistency in the area resulted in adoption of, in general, a civil law way of exercising control over acts issued by various bodies in relation to the judges' existing service relationships. It should be mentioned that before the Act on the Supreme Court entered into force, the President had not been such a body

[37] See K. Kozłowski, *Komentarz II*, *supra* n. 13, p. 700.

because he did not use to have any powers concerning the legal relationship resulting from the act of appointment. Such a solution was defective because it did not result directly from the provisions of law, which undoubtedly occurred in relation to the Supreme Court judges but also was systemically coherent. It departed from the established stance that 'service' relationships with a dominating public element developed, e.g. as a result of appointment, are subject to the cognition of administrative courts,[38] unless control over them has been exercised by a civil court in accordance with a clear statutory provision. This is because jurisdiction of this court cannot be derived from Article 1 CCP,[39] which stipulates that civil procedure is applicable to cases other than broadly understood civil and social insurance ones only when a special provision stipulates so.

Thus, the adoption of civil courts', and consequently the Supreme Court's, jurisdiction over acts issued by state bodies in relation to judges', including those of the Supreme Court, service relationship was based on weak normative grounds, and did not create a positive image because it actually led to a situation in which judges made judgments concerning their 'own' rights and duties. It is worth noticing that even the Rules and Regulations of the Supreme Court[40] under § 13(1) stipulate that the Labour and Social Insurance Chamber, within the limits and in the mode specified in relevant provisions, exercises control over judgments issued by courts and other bodies in the field of labour and social insurance relationships, cases concerning inventions, and administrative cases concerning employment and social insurance law, as well as in matters referred to them based on special provisions. The Chamber was also authorised to hear cases referred to the Supreme Court in accordance with the acts: on state-owned enterprises, on the improvement of a state-owned enterprise's management and its bankruptcy, on a state-owned enterprise's staff self-government, on trade unions, on social and professional farmers' organisations, and the Law on the bar and solicitors.

The Regulation of the President of the Republic of Poland of 29 March 1991 on the organisation and rules of the Supreme Court's internal procedures[41] does not change this state in general, because the Administrative, Labour and Social Insurance Chamber was created under the former legal state, i.e. the Act on the Supreme Court of 1984 and, inter alia, cases concerning complaints about administrative decisions came under its jurisdiction. The successive Rules and Regulations issued by the General Assembly of the Supreme Court Judges on 1 December 2003[42] stipulated in § 30 that the Labour, Social Insurance and Public Affairs Chamber was competent to hear cases concerning labour law, social insurance and public affairs, including cases relating to protection of competition, energy regulations, telecommunications and rail transportation, and appeals against the decisions of the Chairman

[38] For instance, the Supreme Administrative Court judgment of 27 October 2011, I OSK 504/11, CBOSA.

[39] Act of 17 November 1964: Code of Civil Procedure (Dz.U. 2019, item 1460); hereinafter CCP.

[40] Resolution of the Council of State concerning the Rules and Regulations of the Supreme Court of 27 September 1984 (Monitor Polski No. 24 of 1984, item 165).

[41] Dz.U. of 1991, No. 34, item 153.

[42] Monitor Polski No. 53, 2003, item 898.

of the National Broadcasting Council, as well as remuneration claims of inventors, authors of utility models, industrial designs and integrated circuit layout designs, and registry matters, except the registry of entrepreneurs and the registry of pledges. The Chamber also had jurisdiction over complaints about lengthiness of proceedings in those cases before an administrative court and complaints about lengthiness of proceedings before an administrative court and the Supreme Court. The analysis of the regulations results in a conclusion that in the listed cases, it is only possible to indirectly assume that the Supreme Court was competent to hear cases concerning judges' retirement in the scope of public law nature of a judge's service relationship.

The Act on the Supreme Court of 2002[43] did not mark a turning point in the approach to the features of the Labour, Social Insurance and Public Affairs Chamber. Article 3 § 2 stipulates that the Rules and Regulations determine the internal organisation and detailed division into chambers. At the same time, the statute does not indicate the general competence of particular chambers at all, which results in a situation where the issue of competence to hear particular types of cases has been transferred to the level of an act that is not a source of law even if these are the Rules and Regulations of the Supreme Court. Such a state should be disapproved of because the Supreme Court, i.e. in fact the judges of that court, was authorised to determine the Supreme Court chambers' competence. That is why, until the Act on the Supreme Court of 2017 entered into force, the determination of the competence to hear a case concerning a judge's retirement was highly questionable, which was not a desirable state in the light of the necessity of protecting judicial independence. This competence could be determined by making a general statement that there is a chamber in the Supreme Court that has jurisdiction, firstly, over cases concerning administrative decisions and, secondly, over public affairs. However, there has never been a direct rule resulting from positive law.

The issues discussed did not become clearer based on the Act on the Supreme Court of 2017. Although the statute stipulates the competence of the Supreme Court chambers, it does not introduce unambiguous regulations concerning judges' retirement. The content of Article 27 § 1(3) Act on the Supreme Court indicates that the Disciplinary Chamber hears cases concerning the Supreme Court judges' retirement but it is not precisely established which department of this Chamber is competent. Although Article 27 § 3 of the statute makes it possible to draw a conclusion that Department I of the Disciplinary Chamber is competent, this statement is not so obvious as the Disciplinary Chamber also deals with cases concerning labour and social insurance of the Supreme Court judges. The legislator's use of the general term 'the Supreme Court judges' to determine the competence of Department I of this Chamber gives grounds for an assumption that cases concerning a judge's retirement should be heard by this department. Another interpretative problem occurs under Article 1 Act on the Supreme Court, which does not indicate that the court is authorised to hear this type of cases, while other cases listed in the closed catalogues are laid down in the provisions determining the competence of other Supreme Court chambers. In the light of the above-mentioned regulations, one can

[43] Dz.U. 2016, item 1254, as amended.

see inconsistence, namely that assigning cases concerning the Supreme Court judges' retirement to the jurisdiction of the disciplinary Chamber does not correspond to the scope of the Supreme Court activities. Such a state raises serious doubts whether the Supreme Court is a court of first instance, i.e. a court that hearing the Supreme Court judge's retirement case adjudicates on its merits, or perhaps a cassation court, which results from the position of the Supreme Court in the court system.

The lack of an unambiguous solution to the problem in the provisions of the statute leads to serious systemic consequences because it differentiates the method of legal protection in case of obligatory retirement. A linguistic interpretation of the provisions results in a conclusion that the method depends on judges' organisational status. If these are the Supreme Court judges, their retirement is under the control of the Supreme Court. It is not completely certain if the rule applies to the Supreme Administrative Court judges because the provisions of the Act on the Supreme Court are applied to them by analogy. It is obvious, however, that the rule is not applicable to other judges of both common courts and administrative courts because the Act on the Supreme Court is not applicable to them. This way a system of controlling obligatory retirement that has no rational justification is created. In addition, it gives grounds for serious constitutional doubts as to the principle of equality and the protection of judicial independence.

However, determination whether this type of control is possible before the Supreme Court is a more important issue than correct specification of the competence of the Supreme Court chamber to assess the activities of bodies in connection with a judge's retirement. The doubt is raised when it comes to the regulations adopted in the Act on the Supreme Court. Certainly, Article27 § 1(3) Act on the Supreme Court indicates the competence of the Disciplinary Chamber in cases concerning the Supreme Court judge's obligatory retirement. Article 180 paras 3 and 5 Constitution determine the rules of a judge's obligatory retirement due to illness or infirmity which prevents him/her discharging the duties of his/her office, and reorganisation of the court system or changes to the boundaries of court districts. At the same time, Article 180 para. 4 Constitution stipulates that a judge goes into retirement when he/she reaches an age limit established by statute. Thus, the constitutional lawmaker differentiates voluntary and obligatory retirement. The Act on the Supreme Court confirms the distinction because Article 37 §§ 1 and 5 and Article 111 § 2 determine the conditions for the Supreme Court judges' voluntary retirement, and Article 38 §§ 1 and 3 indicate grounds for the judges' obligatory retirement. Therefore, from the normative point of view, voluntary and obligatory retirement constitute two different legal situations. Moreover, the Act on the Supreme Court regulates the appellate proceedings only in case of the Supreme Court judge's obligatory retirement. In accordance with Article 38 § 4 of the statute, in cases concerning a judge's obligatory retirement, the National Council of the Judiciary passes a resolution upon a judge's request or on the Supreme Court Board motion, and the resolution can be appealed against at the Supreme Court, which directly results from Article 38 § 5 of the statute. Therefore, the competence of the Disciplinary Chamber to hear the appeal, although not appropriately determined in Article 27 § 1 Act on the Supreme Court, is precisely defined in Article 38 § 5, and

due to that it can be rightly assumed that the Supreme Court is competent to deal with the judge's obligatory retirement. Obviously, the solution does not eliminate formerly raised systemic doubts concerning the competence of the Supreme Court in such cases, however, as a detailed solution it guarantees the principle of legalism is adhered to.

The situations resulting from Article 37 §§ 1 and 5 and Article 111 § 2 of the statute, which refer to a judge's voluntary retirement, should be assessed differently. Due to the fact that from the linguistic point of view, voluntary and obligatory retirement cannot be treated as identical, it is necessary to assume that they constitute separate legal states. Retirement results from meeting statutory premises. If they occur, the President of the Republic of Poland pronounces that in an official act issued in accordance with Article 39 Act on the Supreme Court. It should be noticed that the provision is applicable to voluntary and obligatory retirement because the act issued based on it is to pronounce the date of a judge's retirement, which is clearly indicated in its content.

4. CONCLUSIONS

The above-presented analysis of the legal nature of the President's official act pronouncing the Supreme Court judge's retirement results in a conclusion that this act issued in accordance with Article 39 Act on the Supreme Court is an authoritative and declaratory one. Its content confirms the occurrence of statutory premises that result in a judge's retirement. The basic reason for retirement is reaching the age determined by law and then retirement is obligatory, unless the law stipulates extraordinary situations which allow a judge to remain in office under certain conditions. Apart from this situation, a judge's retirement can take place in accordance with statutory conditions, and if it is not connected with old age, it must always be taken upon a judge's request, i.e. in accordance with Article 111 § 2 Act on the Supreme Court. In each of the situations, the President of the Republic of Poland, acting in accordance with Article 39 Act on the Supreme Court, is obliged to pronounce the date of a judge's retirement. Within the scope of this obligation, the President acts as a public administration body in its functional meaning because it is connected with the change of a judge's service relationship and is not subject to the President's prerogative under Article 144 para. 3(17) Constitution of the Republic of Poland, which applies to a judge's appointment and as such is not subject to control by courts and tribunals. Therefore, as far as the pronouncement of a judge's retirement is concerned, the President's action matches the features of administrative activities in the meaning of Article 184 Constitution, and this means that official acts of this type, as ones being part of public administration activities, are subject to control by administrative courts. The administrative judicial control over those decisions does not infringe the provisions laid down in the Act on the Supreme Court concerning the rules of this court's control over the Supreme Court judges' obligatory retirement. The retirement referred to in the Act on the Supreme Court results in another type of act issued by the President because the substantive law requirements in this case are different.

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LEGAL NATURE OF AN OFFICIAL ACT OF THE PRESIDENT OF THE REPUBLIC OF POLAND PRONOUNCING RETIREMENT OF THE SUPREME COURT JUDGE

Summary

The analysis of the legal nature of an official act of the President of the Republic of Poland pronouncing the Supreme Court judge's retirement results in a conclusion that the act of the President issued in accordance with Article 29 of the Act on the Supreme Court is authoritative and declaratory. Its content stipulates a solution concerning legal premises that result in a judge's retirement. In this scope, the President of the Republic of Poland acts as a public

administration body in the functional meaning because the solution pronounces the change of the judge's service relationship. The President's action in this respect is not a presidential prerogative under Article 144 para. 3(17) of the Constitution of the Republic of Poland. This means that this type of an official act issued as part of public administration activities, stipulated under Article 184 of the Constitution, is subject to control by administrative courts.

Keywords: acts of the President of the Republic of Poland, declaration of retirement, public administration body, jurisdiction of the court

CHARAKTER PRAWNY AKTU PREZYDENTA RZECZYPOSPOLITEJ POLSKIEJ STWIERDZAJĄCEGO PRZEJŚCIE SĘDZIEGO SĄDU NAJWYŻSZEGO W STAN SPOCZYNKU

Streszczenie

Przedstawiona analiza charakteru prawnego aktu Prezydenta Rzeczypospolitej Polskiej stwierdzającego przejście sędziego Sądu Najwyższego w stan spoczynku prowadzi do wniosku, że akt Prezydenta RP wydawany na podstawie art. 39 ustawy o Sądzie Najwyższym jest aktem władczym i deklaratoryjnym. W jego treści znajduje się rozstrzygnięcie o zaistnieniu przewidzianych prawem przesłanek, które skutkują przejściem sędziego w stan spoczynku. W tym zakresie Prezydent RP działa jak organ administracji publicznej w znaczeniu funkcjonalnym, gdyż rozstrzygnięcie stwierdza przekształcenie stosunku służbowego sędziego. Działanie Prezydenta RP w tym zakresie nie jest prerogatywą prezydencką z art. 144 ust. 3 pkt. 17 Konstytucji Rzeczypospolitej Polskiej. Zatem w zakresie stwierdzenia przejścia w stan spoczynku działanie Prezydenta RP wyczerpuje znamiona działania administracji w rozumieniu art. 184 Konstytucji RP, a to oznacza, że akty tego typu jako wydane w zakresie działań administracji publicznej podlegają kontroli sądów administracyjnych.

Słowa kluczowe: akty Prezydenta RP, stwierdzenie stanu spoczynku, organ administracji publicznej, właściwość sądu

CARÁCTER LEGAL DE ACTO DEL PRESIDENTE DE LA REPÚBLICA DE POLONIA QUE CONFIRME LA JUBILACIÓN DEL MAGISTRADO DEL TRIBUNAL SUPREMO

Resumen

El análisis del carácter legal de acto del Presidente de la República de Polonia que confirme la jubilación del magistrado del Tribunal Supremo lleva a la conclusión que el acto del Presidente de la República de Polonia expedido en virtud del art. 39 de la ley del Tribunal Supremo es un acto de carácter declarativo e imperativo. Contiene la decisión sobre existencia de requisitos previstos legalmente que conducen a la jubilación del magistrado. En este ámbito, el Presidente de la República de Polonia actúa como órgano de administración pública en el sentido funcional, ya que la decisión modifica el estatus del servicio del magistrado. El acto del Presidente de la República de Polonia en este sentido no está incluido como prerrogativa del Presidente en el art. 144 ap. 3 punto 17 de la Constitución de la República de Polonia. Por

tanto, el acto del Presidente de la República de Polonia en cuanto a la jubilación cumple con los requisitos de la actuación de la administración conforme con el art. 184 de la Constitución. Entonces, el control de este tipo de actos en cuanto a la actuación de administración pública corresponde a los tribunales de administración.

Palabras claves: Actos del Presidente de la República de Polonia, órgano de administración pública, competencia de tribunales

ПРАВОВАЯ ПРИРОДА УКАЗА ПРЕЗИДЕНТА РЕСПУБЛИКИ ПОЛЬША О ПЕРЕХОДЕ ДЕЙСТВУЮЩЕГО СУДЬИ ВЕРХОВНОГО СУДА В СТАТУС СУДЬИ В ОТСТАВКЕ

Аннотация

Предложенный в статье анализ правовой природы указа президента Республики Польша, объявляющего о переходе судьи Верховного суда в статус судьи в отставке, позволяет сделать вывод о том, что указ президента, изданный на основании ст. 39 Закона «О Верховном суде», является как актом власти, так и декларативным актом. В нем содержится констатация возникновения предусмотренных законом предпосылок для перехода действующего судьи в статус судьи в отставке. В этом случае президент выступает как орган государственной администрации в функциональном значении, поскольку в указе устанавливается факт изменения трудовых отношений судьи. Действия президента в данном случае не относятся к прерогативе президента, предусмотренной в ст. 144 пар. 3 п. 17 Конституции Республики Польша. Таким образом, констатация президентом перехода действующего судьи в статус судьи в отставке имеет все признаки акта государственной администрации в понимании ст. 184 Конституции РП. Акты такого рода, издаваемые Президентом в рамках деятельности в сфере государственной администрации, подлежат контролю со стороны административных судов.

Ключевые слова: указы Президента Республики Польша, констатация перехода действующего судьи в статус судьи в отставке, орган государственной администрации, юрисдикция суда

DIE RECHTSNATUR DES AKTS DES PRÄSIDENTEN DER REPUBLIK POLEN ZUR FESTSTELLUNG DES ÜBERTRITTS VON RICHTERN DES POLNISCHEN OBERSTEN GERICHTS IN DEN RUHESTAND

Zusammenfassung

Die vorgestellte Analyse der Rechtsnatur des amtlichen Akts des polnischen Staatspräsidenten, mit dem die Versetzung von Richtern des polnischen Obersten Gerichts (Sąd Najwyższy), der höchsten Instanz in Zivil- und Strafsachen in der Republik Polen, in den Ruhestand festgestellt wird, führt zu dem Schluss, dass es sich bei dem auf der Grundlage von Artikel 39 des polnischen Gesetzes über das Oberste Gericht erlassenen Rechtsakt des Präsidenten um einen deklaratorischen Hoheitsakt handelt. Er beinhaltet die Entscheidung darüber, ob die rechtlich vorgesehenen Voraussetzungen erfüllt sind, die dazu führen, dass ein Richter in den Ruhestand eintritt. Der polnische Staatspräsident fungiert hier als Behörde im funktionellen Sinne, da mit der Entscheidung die Umwandlung des Dienstverhältnisses

des betreffenden Richters festgestellt wird. Das diesbezügliche Handeln des Präsidenten ist keine präsidiale Prärogative nach Artikel 144 Abschnitt 3 Punkt 17 der polnischen Verfassung und somit erfüllt das Vorgehen des Präsidenten der Republik Polen bei der Feststellung des Übertritts eines Richters in den Ruhestand die Merkmale einer Handlung der öffentlichen Verwaltung im Sinne von Artikel 184 der polnischen Verfassung. Das bedeutet, dass Amtsakte dieser Art als im Bereich der öffentlichen Verwaltung erlassene Akte der Kontrolle durch die Verwaltungsgerichte unterliegen.

Schlüsselwörter: Akte des Präsidenten der Republik Polen, Feststellung des Übertritts in den Ruhestand, öffentliche Verwaltungsbehörde, Zuständigkeit des Gerichts

NATURE JURIDIQUE DE L'ACTE DU PRÉSIDENT DE LA RÉPUBLIQUE DE POLOGNE CONFIRMANT LE DÉPART À LA RETRAITE D'UN JUGE DE LA COUR SUPRÊME

Résumé

L'analyse de la nature juridique de l'acte du Président de la République de Pologne confirmant le départ à la retraite d'un juge de la Cour suprême conduit à la conclusion que l'acte du président de la République de Pologne délivré conformément à l'art. 39 de la loi sur la Cour suprême est un acte impératif et déclaratoire. Son contenu comprend la décision sur l'existence des conditions préalables prévues par la loi, qui entraînent la retraite du juge. À cet égard, le président de la République de Pologne agit en tant qu'organe d'administration publique au sens fonctionnel, car la décision confirme la transformation du rapport de service du juge. L'action du président de la République de Pologne à cet égard n'est pas une prérogative présidentielle en vertu de l'art. 144 alinéa 3 point 17 de la Constitution polonaise. Par conséquent, en ce qui concerne la déclaration de départ à la retraite, l'action du président de la République de Pologne comporte les éléments constitutifs de l'action administrative au sens de l'art. 184 de la Constitution polonaise, ce qui signifie que les actes de ce type, délivrés dans le cadre d'activités d'administration publique, sont soumis au contrôle des tribunaux administratifs.

Mots-clés: actes du président de la République de Pologne, déclaration de la retraite, un organ de l'administration publique, ressort du tribunal

CARATTERE GIURIDICO DELL'ATTO DEL PRESIDENTE DELLA REPUBBLICA DI POLONIA CHE DICHIARA IL COLLOCAMENTO A RIPOSO DI UN GIUDICE DELLA CORTE SUPREMA

Sintesi

L'analisi presentata del carattere giuridico dell'atto del Presidente della Repubblica di Polonia che dichiara il collocamento a riposo di un giudice della Corte Suprema porta alla conclusione che l'atto del Presidente della Repubblica di Polonia emesso sulla base dell'art. 39 della legge sulla Corte Suprema è un atto decisorio e declaratorio. Nel suo contenuto vi è la constatazione dell'esistenza delle condizioni che determinano il collocamento a riposo del giudice. In tale ambito il Presidente della Repubblica di Polonia opera come autorità della pubblica

amministrazione nel senso funzionale, in quanto la constatazione rileva la trasformazione del rapporto lavorativo del giudice. L'azione del Presidente della Repubblica di Polonia in tale ambito non costituisce una prerogativa presidenziale ai sensi dell'art. 144 comma 3 punto 17 della Costituzione della Repubblica di Polonia. Quindi, nell'ambito della dichiarazione di collocamento a riposo, l'azione del Presidente della Repubblica di Polonia costituisce un atto amministrativo ai sensi dell'art. 184 della Costituzione della Repubblica di Polonia e ciò significa che gli atti di questo tipo, in quanto emessi nell'ambito dell'attività della pubblica amministrazione, sono soggetti al controllo dei tribunali amministrativi.

Parole chiave: atti del Presidente della Repubblica di Polonia, dichiarazione di collocamento a riposo, autorità della pubblica amministrazione, competenza del tribunale

Cytuj jako:

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