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DIRECT APPLICATION OF THE REPUBLIC OF POLAND'S CONSTITUTION IN THE CASE LAW OF ADMINISTRATIVE COURTS

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Abstract. This article analyses the judicial decisions of the Polish administrative courts from the perspective of the principle of direct applicability of the Constitution. This principle, integrally connected with the highest legal force of the Constitution, is of fundamental importance in the process of reconstruction of the legal provisions carried out by courts. It takes various forms, including independent application of the Constitution's provisions, co-application of the Constitution and other legal acts, and ascertainment of conflicts between the provisions of the Constitution and other legal acts. An analysis of decisions by administrative courts shows that these commonly refer to the Constitution. The most popular form of implementation of the Constitution is the co-application of its provisions with statutory ones and other legal acts. The application of constitutional provisions is increasingly becoming the norm in administrative adjudication. This also indicates that among the Constitution's various functions, it is the legal one that plays a major role.

Keywords: direct application of Constitution, legal question, the Constitutional Tribunal, administrative courts, pro-constitutional interpretation, court control of the constitutionality of laws

Introduction

Of the two alternative models for the Constitution's applicability – indirect, which involves transposing constitutional provisions into ordinary legislation, and direct – the Polish constitutional legislator gave primacy to the latter. This principle was expressed in Article 8 Paragraph 2 of the Constitution, according to which: "The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise." The principle of direct applicability of the Constitution of the Republic of Poland is closely related to the role attributed to this legal act. This act is not just a collection of political declarations, but a binding law that occupies the highest position in the hierarchy of sources of universally binding law. The principle of direct applicability of the Constitution thus implies a normative nature for the provisions contained therein. The norm provided by Article 8 Paragraph 2 is a "meta-norm" (Sanetra, 2005, 2017). The direct application of the Constitution is injunction for public authorities. However, it is not a categorical legal imperative, given that there are no sanctions for non-compliance. In the science of law, it is emphasised that it is a semi-imperative norm (Kręcisz, 2004) that points to an acceptable (and desirable) way of applying constitutional norms (Balicki, 2016).

Application of the Constitution is important in both the common and administrative courts. This is because the principle of the Constitution's primacy is fully implemented during the judicial application of law. Furthermore, this is when constitutional provisions are no longer general directives because they are fully elaborated on. The aim of this article is to analyse the application of the Constitution by the administrative courts. Due to the complexity of these matters, I will focus on the essential issues, such as: 1. application of the Constitution alone;

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2. co-application of constitutional and statutory norms; 3. identification of conflicts between constitutional provisions and hierarchically lower norms; and 4. adjudication based on decisions of the Constitutional Tribunal. The text also shows controversy to the role of courts to constitutional review of statutory provisions and the admissible limits of constitutional control of law by courts, being at the same time guarantees of the inviolability of the Constitutional Tribunal.

1. The Constitution as the basis for a court decision

The first of the forms cited occurs when a court uses a provision of the Constitution as the sole basis for a decision. Such an application entails the need for three conditions to be fulfilled: firstly, that the constitutional provision is sufficiently specific and clear; secondly, that there is no statutory regulation in a given area; and thirdly, that the constitutional provision is the sole basis for the court's decision (Haczkowska, 2005; Działocha, 2004).

In practice, constitutional provisions are hardly ever specific and precise enough to act as an independent basis for a decision. Cases adjudicated by administrative courts concern areas that are broadly regulated by statutes and regulations. According to Article 1 § 1 and 2 of the Act of the Law on proceedings before administrative courts of 30 August 2002, such courts exercise control over the performance of public administration in terms of its compliance with law. The court's role is therefore to verify that an administration body has not violated the provisions of structural, substantive and procedural administrative law.

The Supreme Administrative Court (SAC) has repeatedly pointed out that as a rule, the provisions of the Constitution are not specific enough to be applied alone in administrative court proceedings. The Court therefore decided that it is not permissible to use a constitutional provision as a basis for independent cassation or for a decision on the costs of court proceedings. The application of the Constitution alone was ruled out due to the constitutional provisions not being specific enough and the fact that there are statutory provisions that should be applied in those cases.

There are not many cases of the Constitution being applied in this way by administrative courts. One instance that can be viewed as an example is case V SA 613/00, regarding a complaint against the decision of the president of the Central Customs Office in relation to the forfeiture of customs goods issued on the basis of Article 59 Paragraph 2 of the Customs Code of 9 January 1997. In its Judgment of 24 October 2000, the Supreme Administrative Court recognised that this norm was contrary to Article 46 of the Constitution, which stipulates that property may be forfeited only in cases specified by statute and by virtue of a final court judgment. The Court decided that Article 8 of the Constitution allows not to apply the provisions of the Customs Code in concreto due to a conflict between the content of constitutional and statutory norms. In this case, the Court drew upon the concept of obvious unconstitutionality – a situation in which a provision exists in the legal system that contains identical or analogous content to a provision that has already been assessed by the Constitutional Tribunal as incompatible with the Constitution.

Such a situation occurred in case V SA 613/00. In this case, the Supreme Administrative Court adjudicated that there were no grounds to submit a legal question to the Constitutional Tribunal pursuant to Article 193 of the Constitution, because the contradiction between the act and Constitution was obvious. The Court decided that the constitutional norm was sufficiently clear, concrete and unambiguous to rule out the possibility of interpretation. The Supreme Administrative Court referred to the decisions of the Constitutional Tribunal adjudicating that it is not possible to rule on the forfeiture of property by a non-judicial body due to the categorical wording of Article 46 of the Constitution. The Constitutional Tribunal's Judgment of 17 April 2000 (SK 28/99) was of particular importance to the case discussed. The Tribunal affirmed the unconstitutionality of Article 5 Paragraph 2 Subparagraph 2 of the Act of 28 December 1989 on Customs Law, the content of which was identical to the content of Article 59 Paragraph 2 of the Customs Code of 1997. These circumstances

constituted sufficient grounds for refusing to apply the provisions of the Act and basing the decision on the Constitution.

2. Co-application of the Constitution and hierarchically lower legal acts

Another type of direct implementation of the Constitution – and the most frequent form – is the co-application of constitutional and statutory norms. In relation to this, the Constitution's provisions incorporate guidelines for the interpretation of acts and other generally applicable laws, as well as their applicability and binding force.

The co-application of the provisions of the Constitution and hierarchically lower legal acts by administrative courts takes various forms, namely: 1. parallel co-application; 2. interpretative co-application in the form of interpretation in compliance with the Constitution; and 3. ornamental and modificatory co-application.

The first type of co-application cited consists of parallel application of the constitutional and statutory constitutional provisions. An analysis of judicial decisions available in the Central Database of Decisions of Administrative Courts shows that Article 2 of the Constitution, which expresses the principle of the democratic state of law, has been referred to most frequently. It was used 18,329 times in cases regarding areas such as reprivatisation, the imposition of administrative fines, spatial development and taxes. An example of parallel co-application was the Judgment of 4 December 2000 (I SA/Ka 1414/9927), in which the Supreme Administrative Court stated: "In the light of Article 2 of the Constitution, the taxpayer cannot bear negative consequences if they complied with incorrect information provided by the tax office."

The administrative courts have often referred to provisions in Chapter II of the Constitution, titled "Freedoms, rights and obligations of the man and of the citizen" including: Article 31 on human freedom and conditions for its limitation (1470 times); Article 32 Paragraph 1 on equality before the law and the right to equal treatment by public authorities (2412 times); Article 45 on the right of access to court and a fair trial (1500 times); Article 61 on the right of access to public information (890 times); and Article 64 on the right to ownership (1516 times). Increasingly frequent instances of constitutional provisions being applied directly testifies to the growing conviction that the Constitution performs a legal function.

Interestingly, the courts often refer to the principle of social justice – the application of which justifies the resignation from linguistic interpretation in favour of systematic or teleological interpretation, given that linguistic interpretation can lead to the violation or restriction of an individual's rights. The principle of social justice, which protects economically weaker groups in the population, is invoked by courts particularly in cases relating to social benefits in which an individual could be deprived of these if the court did not refer to this aspect.

The second form of co-application of the Constitution and statutory provisions is interpretative co-application. This consists of determining the proper meaning of a statutory provision with the use of a constitutional provision, with priority given to the second of these. This is particularly useful when a statutory constitutional provision can be interpreted in several different ways. In such instances, the development of an unambiguous provision that fully fits the existing legal system is only possible by referring it to constitutional principles (Garlicki, 1999; Tuleja, 2003). In certain concrete cases, this form of application of the Constitution is sometimes very similar to judgments based solely on the Constitution. This kind of interpretation by the court indicates an external systemic interpretation – in other words, that the court bases its judgments on a statutory provision interpreted by means of a relevant provision of the Constitution (Trzciński, 2011).

An analysis of administrative court decisions shows that the constitutional provisions most frequently used to interpret acts were Article 2 (on rule of law), Article 7 (principle of legality), Article 30 (principle of human dignity), Article 22 (economic freedom), Article 31 Paragraph 3 (principle of proportionality), Article 45 (right

to court), Article 61 (right to information), Article 64 (protection of ownership), Article 65 (freedom to choose and practice a profession) and Article 84 (obligation to pay for public services).

The courts use this method when it turns out that the provisions of an act have several meanings, but not all of them correspond to the content of the Constitution. The obligation to employ this technique was aptly expressed by the Supreme Administrative Court in its Resolution of 13 November 2012 (II OPS 2/125). It stated that "if a given provision can be interpreted in several ways, the recommended interpretation is the one that best complies with constitutional provisions, principles and values".

The Court also expressed its opinion on the limits involved in applying this method, which can be used unless the wording of a statutory provision leaves no doubts. The Court stated that "an interpretation cannot change the content of a statutory provision". Otherwise, a legal question would need to be addressed to the Constitutional Tribunal, given that only the Tribunal is competent for carrying out a final adjudication on the constitutionality or unconstitutionality of such a norm.

Ornamental and modificatory co-application are the last two forms of co-application of the Constitution and statutory provisions. Under the former, a decision is based on an act, whereas a constitutional provision is referred to in the text of a judgment. The latter, meanwhile, is designed to help maintain the constitutionality of an act. Even though the content of a provision collides with the Constitution when traditional interpretation methods are employed, it is possible to give it a meaning that makes it compliant with the Constitution.

Administrative courts seldom use these forms of direct application of the Constitution. For example, in 2017 there were no judgments in which constitutional provisions played only an ornamental role, or judgments in which a reference to constitutional provisions was made in order to "rescue" the constitutionality of a provision (in line with the modificatory application).

3. Identification of conflict between constitutional and hierarchically lower provisions

3.1. Refusal to apply a regulatory provision contrary to the Constitution

A form of direct application of the Constitution is a refusal to apply a provision that runs contrary to it. Courts have a duty to carry out a comprehensive interpretation of the law, taking into account not only the linguistic but also the systematic and teleological interpretations. From this perspective, it is necessary to ensure that the understanding of a provision is consistent with provisions that are hierarchically higher, including the Constitution.

Administrative courts have the right to check the compliance of regulations with the Constitution and statutory acts. This is in line with Article 178 Paragraph 1 of the Constitution, which states that within the exercise of their office, judges shall be independent and subject exclusively to the Constitution and statutes. The court's right to refuse to apply unconstitutional provisions arises from Article 8 Paragraph 2 and Article 184. The latter of these stipulates that the Supreme Administrative Court and other administrative courts exercise control over public administration, including the control of the legality and constitutionality of regulations and local law. If any non-compliance is found, the administrative court will refuse to apply the act's executory provision.

For example, in its Judgment of 26 May 2015 (I OSK 2556/13), the Supreme Administrative Court reviewed Paragraph 3 Subparagraph 1 of the Regulation of the Minister of Internal Affairs and Administration of 7 December 2007 on rewards and grants for firemen in the State Fire Service. This provision stipulated that entitlement to a reward would be suspended for the duration of any criminal proceedings. According to the Supreme Administrative Court, this norm conveys an additional and unknown limitation in entitlement to an annual bonus, meaning that it does not implement the relevant Act in the way stipulated in Article 92 Paragraph 1 of the Constitution.

3.2. Controversy on the role of courts in constitutional reviews of statutory provisions

While the right of courts to check the compliance of secondary legislation with the Constitution and statutory acts has never been in doubt, an area of controversy has arisen with regard to the role of courts in reviewing the constitutionality of statutes.

In the initial period after the Constitution was passed in 1997, two views emerged. Under the first of these, the creation of the Constitutional Tribunal did not exclude the possibility of the courts also ruling on the unconstitutionality of law. This view is based on three rules: the rule of direct application of the Constitution, which results from the Constitution itself (Article 8 Paragraph 2); the rule of of a judge relying on the Constitution in a judgment (Article 171 Paragraph 1); and the rule of superiority of the constitutional over the statutory norm.

Administrative courts increasingly signalled the possibility of refusing to apply statutory provisions that, in their opinion, ran contrary to constitutional norms. This provided a basis for transitioning from Kelsen's model of constitutional review used in Poland towards a diffuse model for review that was exercised not only by the Constitutional Tribunal, but also the courts. As early as 2000, the Supreme Administrative Court, in claiming that its jurisdiction as part of the Constitution's direct applicability pursuant to Article 8 Paragraph 2 and Article 178 Paragraph 1 allowed not to apply a statutory provision in concreto, invoked the principle of lex superior derogat legi inferiori (namely, that a law higher in the hierarchy repeals a lower one). The Court pointed out that, according to the hierarchy of sources of law, constitutional provisions should be applied first – meaning that statutory provisions running contrary to constitutional ones should not be applied.

The opposing view was based on the jurisprudence of the Constitutional Tribunal. Direct applicability of the Constitution does not mean that the courts or other organs entitled to apply legal provisions are empowered to review the constitutionality of binding legislation. Under Article 188 of the Constitution, it is the Tribunal rather than the administrative courts that has the competency to adjudicate on the compliance of acts with the Constitution. In the event that there are doubts as to the constitutionality of a statutory provision, the court should submit a legal question to the Constitutional Tribunal. The presumption of a statute's conformity with the Constitution may be rebutted only by a judgment of the Tribunal, and a judge is bound to apply a statute while it remains in force (Judgement of: 31.01.2001, P 4/99; 22.03.2000, P 12/98; 22.11.2001, K 36/01; 28.11.2001, K 36/01; 4.12.2001, SK 18/00; 10.12.2002, P 6/02).

The discussion caused by divergent views led to a compromise by way of a tolerated and accepted court practice of the Constitutional Tribunal and courts. The case law of the Tribunal, Supreme Court and Supreme Administrative Court specifies the admissible limits of constitutional control of law by courts, as well as acting at the same time as a guarantee of the inviolability of the Tribunal's competences and a good example of different forms of direct application of the Constitution (Hauser, Trzciński, 2008).

The decisions of administrative courts show that a constitutional review of statutory provisions is possible in several cases. Firstly, obvious unconstitutionality of a provision constitutes sufficient grounds for refusing to apply a provision of statute. In other words, if there are no doubts as to the unconstitutionality of certain statutory provisions and that inconsistency is obvious, the court has grounds for refusing to apply these provisions in a given case without having to submit a legal question to the Constitutional Tribunal. Secondly, the court may refuse to apply a statutory provision if it is deemed to have so-called secondary unconstitutionality. This occurs when a legislator introduces provisions identical to a norm that has been judged by the Tribunal or amends provisions without removing inconsistencies found by the Constitutional Tribunal, creating a false impression that constitutionality has been restored (Hauser and Trzciński, 2010; Wiącek, 2011). Thirdly, the court may refuse to apply a statutory provision that is inconsistent with a constitutional norm if a legal question concerning an adjudicated case has been submitted to the Constitutional Tribunal and the Tribunal (for various reasons) has not made a decision.

Administrative courts point out that in the cases discussed, a refusal to apply a statutory provision does not prejudice the competence of the Constitutional Tribunal, and the judge should refer the issue to the Tribunal only if the interpretation remains in doubt. But if the judge has no doubts about the unconstitutionality of a statute, she or he has the power to simply decide the case (Garlicki, 2007). They argue that in such cases the court does not act as a "substitute" for the Tribunal, but "refuses to apply" provisions that are incompatible (especially in an obvious way) with the provisions of the Constitution of the Republic of Poland. At the same time, the courts point to the separate subject of adjudication and its consequences. The Tribunal adjudicates about the law and has the authority to repeal statutory provisions, and its decisions are universally binding and final. Meanwhile, a court that decides not to apply an unconstitutional act does not definitively eliminate it from the legal system, but only refuses to use it in concreto. A court's opinion about unconstitutionality is not binding on other courts adjudicating in similar cases, and they should adjudicate similarly only if they agree with a given argument.

The view that administrative courts can adjudicate independently by way of directly applying the Constitution is reflected in certain judicial decisions. In the Judgment of the Voivodeship Administrative Court in Poznań of 8 March 2017 (II SA/Po 1034/16), it was pointed out that Article 12 Paragraph 1 Subparagraph 2 of the Act of 5 January 2011 on drivers is incompatible with Article 2, Article 10 Paragraph 1 (on the division of powers), Article 45 Paragraph 1 (right of access to court) and Article 175 (justice) of the Constitution of Poland. This provision prohibited the issuing of any category of driving licence to people who had been banned from driving motor vehicles in one particular category. In this case, the Court came to the conclusion that this provision violated the principle of ne bis in idem (referring to no repeated punishment for the same event) and thus refused to apply it.

3.3. Addressing of legal questions to the Constitutional Tribunal

A direct form of applying the Constitution is the procedure for legal questions, which represent one way to initiate constitutional court proceedings. A review conducted after a question has been submitted concerns only legal acts that have already been passed (Jackowski, 2016). A court can submit such a question when reaching a decision in a case brought before that court is dependent on obtaining an answer to it. Only a constitutional doubt that is relevant to the further course of proceedings may be the subject of a legal question (Hauser and Kabat, 2001). The effectiveness of submitting legal questions to the Constitutional Tribunal relates to the following types of prerequisite: subjective (legal questions can only be submitted by courts), objective (legal questions must concern compliance with the Constitution of normative acts, ratified international agreements or statutes) and functional (reaching a decision in a case brought before a court depends on an answer to the legal question).

The obligation to address a legal question to the Constitutional Tribunal about the compliance between a normative act and the Constitution exists only if the court has doubts about that compliance. Administrative courts addressed 114 legal questions to the Tribunal between 2004 and 2017, with their number varying by year – from two in 2016 and 2017 to 15 in 2010. Legal questions are considered an extraordinary and subsidiary instrument applied only when a court notes that the resolution of a constitutional issue absolutely requires an intervention by the Tribunal.

The legal questions submitted were on matters including, among others, provisions governing the electoral commissioner's competence to issue a decision on the division of a commune into electoral districts, provisions of the Code of Administrative Procedure on non-exclusion of the admissibility of a decision's annulment due to the passage of time, the admissibility of administrative and criminal liability for the same act, family benefits, the valorisation of compensation for expropriated property, and the valorisation of granted but so far unpaid compensation for expropriated property. The most frequently invoked constitutional standards were: Article 2 (on rule of law), Article 32 Paragraph 1 (principle of equality), Article 21 Paragraph 1 and Article 64 Paragraphs 1 and 3 (protection of ownership), Article 7 (principle of legality), Article 31 Paragraph 3 (principle of

proportionality), Article 45 (right to court), Article 77 (right to compensation for damages), Article 94 (right to enact local laws) and Article 165 Paragraph 2 (judicial protection of the independence of local self-government units).

4. Adjudication based on judgments of the Constitutional Tribunal

Last but not least, another form of direct application of the Constitution is adjudication based on the judgments of the Constitutional Tribunal. By vesting the Tribunal with the power to review the hierarchical conformity of norms, the constitution-maker has determined that the Tribunal's rulings are universally binding and final for both citizens and all public authorities – and particularly authorities that are obliged to ensure that the Constitution is observed. This brings the force of the Tribunal's judgments closer to the sources of universally binding law within the meaning of Article 87 Paragraph 1 of the Constitution, with regard to the circle of addressees who should respect and implement the decisions issued. As has been explained by the Constitutional Tribunal, "without an explicit (positive) constitutional authorisation – and such has not been provided for in the Constitution of 2 April 1997, which is currently binding – it is not permissible to entirely, or within a certain extent, exclude, or autonomously restrict the constitutional principle of finality of judgments of the Constitutional Tribunal, or some of the legal consequences thereof which follow from the wording of Article 190(1) of the Constitution" (decision of 17.07.2003, K 13/02). Above all, the administrative courts apply judgments of the Constitutional Tribunal that produce so-called simple legal effects – that is, positive (affirmative) judgments that state the compliance of the provision examined with the constitution, and negative judgments that state its unconstitutionality (Czeszejko-Sochacki, 2000).

A considerable number of court decisions have been directly determined by judgments of the Constitutional Tribunal. In a Judgment of 27 March 2008 (II OSK 269/07) regarding the deprivation of veterans' entitlements, the Supreme Administrative Court referred to a positive Judgment by the Constitutional Tribunal of 15 September 1999 (K 11/99) and dismissed a cassation complaint against the Judgment of the Voivodeship Administrative Court. In its Judgment of 29 February 2008 (I OSK 1786/07), meanwhile, the Supreme Administrative Court referred to the Judgment of the Constitutional Tribunal of 23 October 2007 (P 28/07) on the unconstitutionality of Article 24 Paragraph 2 of the Act of 28 November 2003 on family benefits and quashed a judgment of the court of first instance.

Administrative courts also apply the Constitutional Tribunal's so-called interpretative judgments, which are decisions in which the Tribunal decides the conformity or non-conformity of a relevant act to the Constitution in its given interpretation. The aim is not to eliminate non-uniformity or divergence in the interpretation of legal regulations, but to eradicate from all potential interpretative variants of a relevant act those that are inconsistent with the Constitution (Woś, 2016). One example is the Judgment of 17 May 2017 (II FSK 1132/15). The subject of this case was an individual tax interpretation concerning an employer's reimbursement of costs paid by the employee performing tasks outside their place of residence and the company's headquarters. The Supreme Administrative Court based its decision on the Judgment of the Constitutional Tribunal of 8 July 2014 (K 7/13), which adjudicated that Article 12 Paragraphs 1 and 3, in conjunction with Article 11 Paragraph 2-2b of the Act of 26 July 1991 on personal income tax, were compliant with Article 2 in conjunction with Article 217 of the Constitution, if understood in the sense that "other gratuitous benefit" stands exclusively for the donation of property of an individually specified value received by the employee. According to the Supreme Administrative Court, the judgment of the Constitutional Tribunal cited above determines the constitutionally compliant interpretation of the statutory provisions enumerated therein, and this interpretation should be applied in the assessment of the questioned individual interpretation.

In the Judgment of 2 March 2017 (I OSK 2407/16), the Supreme Administrative Court stated that even if a judgment of the Constitutional Tribunal has not repealed an examined provision, it is necessary to interpret that provision in such a way that the result is not contrary to the Tribunal's opinion.

The administrative courts also adjudicate on cases in which a question arises on the application of a provision that has been deemed unconstitutional but, at the same time, has seen the loss of its binding force postponed. As shown by decisions of administrative courts, in such cases these courts have a right to refuse to apply such unconstitutional provisions. As the court is obliged to directly apply the Constitution and assess the applicable provisions against constitutional requirements, it is even more obliged to refuse to apply a provision for which the presumption of constitutionality has been repealed by the Constitutional Tribunal, even if the Tribunal's judgment has not yet been published.

In the opinion of the Supreme Administrative Court, a provision deemed unconstitutional by the Constitutional Tribunal, regardless of whether the loss of its binding force has been postponed, loses the presumption of constitutionality at the moment that the Tribunal pronounces a judgment in the courtroom. Such an interpretation can be seen in the decisions of administrative courts and should be fully approved.

Conclusions

The principle of the Constitution's direct applicability, integrally connected with the highest legal force of the Constitution, is of fundamental importance in the process of reconstruction of legal norms carried out by courts. This takes various forms, including independent application of the provisions of the Constitution, co-application of the Constitution and other legal acts, and ascertainment of any conflict between the provisions of the Constitution and those of other normative acts. An analysis of decisions by administrative courts shows that they commonly refer to the Constitution. The most popular form of application of the Constitution is so-called co-application of its provisions with statutory provisions and other legal acts, while the basic forms involve interpretation of provisions in accordance with the Constitution (interpretative use). The application of the Constitution alone is extremely rare.

In recent years, the number of legal questions submitted to the Constitutional Tribunal has been decreasing. This shows that judges independently solve doubts arising in the course of adjudication, using a pro-constitutional interpretation of a provision as the basis for a decision. This has undoubtedly been influenced by decisions of the Constitutional Tribunal, which has repeatedly pointed out that provisions should be applied in accordance with the rules laid down in the Constitution and that when various interpretations are possible, the one that complies with the Constitution should be chosen.

Analysis also shows that the application of constitutional provisions is increasingly becoming the normal practice in administrative adjudication. In addition, it indicates that among the various functions of the Constitution, the legal one plays a major role.

In practice, direct application of the Constitution faces certain difficulties and interpretative problems. One of these is the possibility of a refusal to apply a statutory provision that, in the court's opinion, is inconsistent with the Constitution. Courts' decisions do not reveal a uniform pattern in this respect, while opponents claim that any doubts by a court as to the constitutionality of a normative act can be solved only by way of a legal question submitted to the Constitutional Tribunal. A new problem faced by Polish courts was the constitutional crisis connected with the Tribunal. In light of a refusal to publish the judgments of the Constitutional Tribunal, direct application of the Constitution has become particularly important and acquired a new dimension. Evidence of this is shown, for example, by the Resolution of the Supreme Court of 26.04.2016, which stated that an unpublished judgment of the Constitutional Tribunal affirming the unconstitutionality of a statutory provision repeals the presumption of its constitutionality at the moment the Tribunal's judgment is pronounced in the course of proceedings. Previous views on the meaning of Article 8 Paragraph 2 of the Constitution and interpretations of the principle of direct application of the Constitution (Sanetra, 2017), as well as the binding force of decisions by the Constitutional Tribunal, have therefore been revised.

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