

Streszczenie rozprawy doktorskiej Mgr Izabeli Jackowskiej /j.angielski/ pt: „Administrative liability of the capital market participants”

The development of the administrative regulation of the capital market is currently focused on expanding the Financial Supervision Authority's competences to sanction breaches of regulatory obligations committed by capital market's participants, including in particular severe financial sanctions. However, this tendency is not accompanied by introducing a proper legal regime for the imposition of these sanctions so as to guarantee that the principle of proportionality between the severity of a sanction and the nature of a breach, is respected.

This dissertation analyzes the legal concept of the administrative liability of the capital market's participants. It discusses the views expressed in the administrative law theory regarding the administrative liability and sanctions, as well as supervision and its measures. It examines the grounds of the administrative liability under the capital market regulations as they currently are, in compliance with the concept of strict liability arising from the case law.

The dissertation identifies problems connected with the underregulation of administrative liability and interrelations between the supervisory powers of the Financial Supervisory Authority and repressive means, with respect to which the law-maker failed to establish norms governing grounds and principles of imposition.

It also addresses the problem of ambiguity of the capital market's participants' regulatory obligations. The law-maker uses open-ended terms and general clauses. Therefore, making the liability dependent on the mere infringement of obligations imposed by such norms seems to jeopardize the legal safety of capital market's participants.

Those deficiencies in substantive law are accompanied by inadequate safeguards in administrative and court-administrative procedure. The parties to administrative proceedings, that may lead to the imposition of sanctions for an infringement of the capital market law, should be granted sufficient level of procedural fairness. Thus, the regulation of the administrative and court-administrative proceedings should be amended to increase the scope of procedural guarantees. Moreover, the process of the judicial review imposing sanctions should be reformed.

In its conclusion, the dissertation proposes a set of solutions to the identified problems in both substantive and procedural aspects of the administrative liability of the capital market's participants. With respect to the substantive law, the key postulate is the consideration of a due

care of the capital market's participants when assessing the legality of their actions. With respect to the procedural law, the dissertation advocates an increase of specialization of administrative courts with respect to the financial market law. To this end, the law-maker should consider establishment of a separate administrative court with jurisdiction over financial market cases. Such a court should be entitled not only to repeal, but also to alter the Financial Supervisory Authority's decision.

Only once both substantive and procedural principles of imposition of administrative liability are established, the capital market's participants will achieve an adequate level of protection in conducting their market activities.