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PhD thesis summary

**Administrative discretionary power in proceedings conducted
in cases of entry and residence of foreigners**

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Title: Administrative discretionary power in proceedings conducted in cases of entry and residence of foreigners

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The main purpose of research conducted in the dissertation as was to determine the current shape and scope of the discretionary power exercised by the administration bodies in matters of foreigners, as well as determining whether the manner of exercising this power is in line with current social needs.

Solving the research problem defined in this way, it turned out to be necessary to analyze the changes to which both the scope and the manner of exercising discretionary power were subject, especially in the context of the evolution of administrative law norms important for this institution, including the norms of law on foreigners.

The first chapter defines the basic concepts relevant to the topic of dissertation. Among other things, the notions of foreigner, nation and citizenship are discussed, as well as the most important concepts related to migration.

This chapter also discusses the process of evolution of a foreigner's legal status in the historical perspective. An analysis was also carried out of changes in the most important legal acts concerning foreigners, adopted after the political change that took place in Poland at the beginning of the 1990s.

The second chapter defines the concept of administrative discretionary power and the legal instruments used in the exercise of this power by the relevant public administration bodies.

Much attention has been given in this chapter to the construction of administrative recognition and the place of this recognition in the process of applying the law. It also discusses the general principles of administrative proceedings, especially in the context of public and private interests, and the importance of these principles in administrative proceedings conducted in cases of foreigners.

The third chapter extensively discusses the discretionary powers of public administration bodies conducting administrative proceedings in foreigners' cases.

The structure of this chapter takes into account the visa procedures applied to foreigners staying abroad, then the procedures related to crossing the state border and finally the procedures applied to foreigners staying in Poland.

An important part of this chapter is the discussion of the most important forms of international legal protection granted to foreigners on the territory of Poland, including mainly refugee and asylum status.

This chapter takes into account the competence of the consul, the Border Guard, the voivode, as well as the Head of the Office for Foreigners and the Refugee Board. Specific examples of provisions entitling an administrative authority to issue a discretionary decision are also given, as well as those that do not contain such authority.

The fourth chapter also analyzed the area of discretionary power of judges of administrative courts, where, in addition to the activism of the judge, there is an institution of discretionary power of the court, provided for by strictly defined rules of procedural law.

The issues of judge's discretionary power are discussed both in philosophical and legal terms, as well as in the process of applying the law.

The next part of this chapter of the dissertation contains an extensive analysis of the judicature of the administrative Polish courts. The judgments of these courts concern the most important problems which appeared in the course of administrative proceedings conducted in cases of foreigners. The subject of these cases were, among others, foreigners' complaints about asylum and refugee status, complaints about expulsion decisions, as well as complaints about refusals to grant Polish citizenship and certain residence permits in Poland.

The conducted research made it possible to define the essential elements that make up the final shape of administrative discretionary power and the factors influencing the way it is legally exercised. It was also established that the legal regulations in force in the above matter correspond to the standards set by the relevant norms of international law, including European Union law.

However, an analysis of the jurisprudence of the European Court of Justice, the European Court of Human Rights and the Polish administrative courts, carried out in the course of the work, showed that the fear of violating the subjective rights of foreigners who are parties to administrative proceedings still exists.

Apart from procedural irregularities usually associated in breach of the general rules of administrative procedure, errors concerning misinterpretation of substantive law, including EU law, were also revealed in the in the cases in question.

On the other hand, decisions of administrative bodies significantly exceeding the statutory limits of discretion were revealed much less frequently, and were most often made as a result of errors committed in the course of evidence proceedings in a given case.

Factors that significantly affect the regularity and legality of the decisions taken in the course of the proceedings in question were also factors of a non-systemic nature, mainly those directly linked to the model of the current political authority.

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