

ANNA TRELA

Premises for granting a concession contained in the Act on Energy law and the freedom of forecasting in the concession decision-making process

Summary

It is increasingly frequent nowadays that tasks undertaken by public administration in the economic sphere are not, or cannot be, precisely defined. It may also be noted that the regulations of the decision-making process contain specific legal solutions which impose on the administrative body a duty to establish and assess the actual state of affairs and to refer to the intended one. In German science of public law, such manner of setting standards or regulating tasks of public administration is termed 'freedom of forecasting'.

This subject is analysed in the practical as well as theoretical sphere. Thus, it was first necessary to focus on the legal forms of the functioning of public administration, different 'gaps', or freedoms in deciding by administrative bodies, and the judicial (court) manner of their supervision.

Provisions of the Energy law of 10 April 1997 are certainly a reflection of the regulation of this 'freedom of forecasting'. The authoress places this freedom within the framework of discretionary powers requiring an assessment of a situation in the context of the intended (future) condition. The following have been analysed: availability of financial resources guaranteeing that the applicant will be capable of proper conduct of economic activity, and documenting the possibility of procuring the necessary funds, availability of technical resources ensuring proper execution of business, human resources and availability of appropriately qualified personnel. Another premise is a warranty of performance of the activity under concession, including observance of energy safety and energy policy provisions.

Finally, reader's attention is drawn to the differences in judicial supervision of acts-at-law taken in the process of administrative approval and freedom of forecasting.

Keywords: concession – forecasting – underspecified concepts – discretion – energy law