

Abstract: Half a year with Villa Benita: Analysis of the Effect of the Administrative Law Chamber of the Supreme Court 29 November 2012 judgement no. 3-3-1-29-12

Objective

The objective of the present court practice analysis was to identify, for the purpose of ensuring the unification of court practice, how lower instance courts have understood the judgement no. 3-3-1-29-12 of 29 November 2012 of the Administrative Law Chamber of the Supreme Court. An additional objective was to lend some insight into court practice that is usually impossible within the framework of adjudication of a specific case. The present article analysing court practice is an example of questions that could be asked for the unification of court practice and what sources to examine in an analysis.

On 29 May 2013, half a year passed from the coming into force of the judgement no. 3-3-1-29-12 of 29 November 2012 of the Administrative Law Chamber of the Supreme Court (hereinafter the *Villa Benita* judgement). The judgement constituted a shift from the Chamber's earlier positions. While the court had previously repeatedly emphasised that clear expression of considerations in the reasoning for the issue of an administrative act was important in order to ensure judicial control as well as general legitimisation of the administrative act, the *Villa Benita* judgement expressed for the first time *expressis verbis* that under certain circumstances, a court reviewing a discretionary administrative act may also take into account reasoning submitted by the administrative body only during the judicial proceedings. Six months is an appropriate period to analyse the first effects of Supreme Court practice on the adjudication of matters in lower instance courts.

In this article analysing court practice, several aspects explaining why the analysis of court practice is an innovative method of unification of court practice have been presented, providing the following internationally applicable lessons:

1. In the practice of a highest court of every country there are situations where the Supreme Court decides to supplement established practice with new motives but a novel approach may not be accepted in the courts of lower instance quickly enough. The analysis of court practice helps draw attention to the novel approaches of the Supreme Court.
2. Another global problem lays in the fact that in case of more complex Supreme Court decisions, the lower instance courts may not accept the new practice or interpret it correctly. This may lead to a situation where the interpretation of judges and courts regarding one legal position differs. Giving explanations about court practice helps address this issue efficiently.
3. Analysing court practice in cooperation with the adviser to the chamber that had participated in the reviewing of the case and taking into account the remarks of the justices adds additional value to the analysis, which is an innovative aspect of court practice analysis. For example, it would be much more complicated to coordinate multilateral communication in a cooperative effort between a university and a court due to different objectives and tasks of these institutions.

Contents

The *Villa Benita* judgement is introduced and an analysis presented of how the judgement has been understood and used in court practice, i.e. has it been treated as a 180-degree turn from the earlier positions of the Supreme Court or as a marginal exception that does not depreciate previous practice. The focus was primarily on aspects concerning procedural law because they constituted the novelty of the judgement of the Supreme Court regarding *Villa Benita*. The *Villa Benita* case was referred to the full composition of the Administrative Law Chamber; two justices of the Supreme Court maintained dissenting opinions in this case. The authors also analyse the dissenting opinions of the judgement and draw attention to the hazards that the too far-reaching interpretations of the *Villa Benita* judgement may have on court practice.

Summary

It is determined that the *Villa Benita* judgement of the Supreme Court had an effect on the administrative (first instance) and circuit courts` (appellate courts) practice in six months. Mostly two positions in the *Villa Benita* judgement were referred to in court practice.

1. A court may take into account the reasoning submitted by an administrative body during judicial proceedings when reviewing an administrative act, provided that the court is convinced that the administrative body had issued the administrative act based on this reasoning.
2. A court can identify (in the operative part) the unlawfulness of an administrative act as a precondition for satisfying a claim for annulment based on an annulment action. The court shall not look beyond the claim when making such decision.

The analysis reveals that the main issue – whether lower instance courts had noticed the change of practice in the *Villa Benita* judgement and understood the core idea of the novel positions – was solved as follows. The courts rarely took into account the reasoning presented later during judicial proceedings and considered the *Villa Benita* judgement to be an exception. This tendency was a positive sign and it was found that it could continue.

However, it was also established that ascertaining unlawfulness of an administrative act in the operative part of a judgement when adjudicating an annulment action has been interpreted in a surprisingly broad manner in court practice, i.e. when the *Villa Benita* judgement was made, solutions that were not intended, were found. It is questionable whether the initial idea of the Supreme Court judgement has been understood in all judgements in which an administrative court and a circuit court have used the *Villa Benita* judgement. Still, no negative effects on administrative or court practice predicted in the dissenting opinion were found.

Author of the analysis and publication

The analysis was carried out in cooperation between the Analyst of Administrative Law (Marelle Leppik) and the Adviser to the Administrative Law Chamber (Maarja Oras). The remarks of the justices were taken into account in the analysis.

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