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Summary

of the article: **The scope of application of the provisions of the Code of Administrative Proceedings regarding tacit disposition of a case**

The inclusion of the regulation concerning a tacit disposition of a case into the Code of Administrative Proceedings in 2017 raised some controversies whether they should be applied only in situations where the provisions are clearly provided. According to the Author of the article it is enough that the provisions generally specify about the permissibility of the organ to be silent in a case in which the act connects the legal result after the expiry of the time limit. This belief corresponds to the idea of codification of the administrative proceedings which was applied for the first time in Poland in 1928. The Author also presents his argument that defects of the qualified material such as the lack of legal basis, not having the quality of the party or *res iudicata* make that the silence of the administrative organ is legally inconclusive.

Keywords: Code of Administrative Proceedings, silence of an administrative authority, refers to the Code of Administrative Proceedings, protection of individual, idea of codification of administrative proceedings

Summary

of the article: **Tacit disposition of a case**

This paper discusses an institution of law which was regulated recently (2017) in the Polish Code of Administrative Proceedings. However, the institution of tacit disposition of an administrative case has long been known to the Polish legal system. It was known to the Polish legislation as early as in the period directly following World War I. Notably, the regulations providing for tacit disposition of a case the theory of law and jurisprudence understood – essentially as is the case now – to be legal norms allowing for any inactivity on the part of public administration authorities to be deemed a tacit, implied approval for undertakings whose intended implementation has been notified to the public administration by the entity required to report them.

Previously, these regulations were characterised by being dispersed in a number of legal acts relating to substantive and systemic administrative law, lack of general regulation, even a framework one, and also by a very diverse degree of completeness of the norms concerning tacit disposition of administrative cases. These regulations gave rise to numerous controversies. One of the most significant issues addressed the question whether tacit disposition of a case gives rise to res iudicata, similarly to a final administrative decision. On the basis of the new regulation, this issue seems to be a foregone conclusion. However, new legal solutions regarding tacit disposition of administrative cases have given rise to new issues. One of the most significant of them regards the question whether these new framework regulations, which were introduced to the Code of Administrative Proceedings in 2017, apply to the previously mentioned dispersed and more or less fragmented regulations regarding tacit disposition of administrative cases.

Key words: tacit disposition of a case, tacit consent, administrative proceedings, code of administrative proceedings, legislative technique of statutory preventive prohibition, legislative technique of statutory preventive notification order

Summary

of the article: **Waiver of the right of appeal in general administrative proceedings**

This paper provides legal analysis of the new regulation in administrative procedure, namely a party's right to waive an appeal. The insertion of new Article 127a in the Code of Administrative Proceedings has contributed to the extension of the procedural rights of the party that may decide to have proceedings concluded more expediently and, consequently, to have been rendered a decision which is final and non-appealable. The party should be provided with the conditions allowing them to avail of this regulation in a free and unrestricted manner. On a case-by-case basis, the party should decide on their own whether it would be more advisable for them to proceed with administrative proceedings and, conceivably, administrative court proceedings or to have the ongoing proceedings concluded as soon as practicable, due to other economic and social considerations.

Keywords: administrative decision, appeal, time limit for filing an appeal, public administration authority, final decision, non-appealable decision

Summary

of the article: **New enforceable title in administrative enforcement proceedings**

The analysis undertaken in this paper concerns the issue of the existence of legal grounds for a creditor to issue a new enforceable title covering the same mature obligation as previously covered by an enforceable title based on which the enforcement proceedings were initiated and subsequently discontinued. Primarily, this applies to a situation where enforcement proceedings have been discontinued due to the obligor's assets being insufficient to cover the enforcement costs.

Based on research, it should be concluded that re-initiation of enforcement proceedings in the same case is essentially based on the original enforceable title. This conclusion was accepted by the legislator in the amendment of 4 July 2019[1] whereby Article 61 of the Administrative Enforcement Proceedings Act of 17 June 1966[2] was supplemented by paragraph 4 containing relevant provisions, which will enter into force on 20 February 2021.

Keywords: administrative enforcement, enforcement proceedings in administration, enforceable title, discontinuance of enforcement proceedings, inadmissibility of enforcement, decision not to proceed with enforcement

[1] Act of 4 July 2019 amending the Administrative Enforcement Proceedings Act and certain other acts, Journal of Laws of 2019, item 1553, hereinafter: Amendment of 4 July 2019.

[2] Journal of Laws of 2019, item 1438, as amended, hereinafter: Administrative Enforcement Proceedings Act.

Summary

of the article: **Time limit for lodging a cassation appeal by the Commissioner for Human Rights**

The subject of the article is the analysis of principles for the Commissioner for Human Rights (Ombudsman) to lodge a cassation appeal against the decision of a voivodship administrative court. In the author's opinion, the rationality of the legal system supports the establishment of a separate term for the Ombudsman to file a cassation appeal in a situation in which he did not participate in the proceedings before the court of first instance. Adopting, for example, a six-month deadline for the Ombudsman would allow, first of all, to eliminate the contradiction of the legal system consisting in establishing subsidiarity as a principle of Ombudsman's operations and enabling the Ombudsman to challenge the judgment on the terms binding the parties, and secondly would give the Ombudsman a real opportunity to read the files. The author also wonders whether the amendment effected by the Act of 9 April 2015 amending the act – Law on proceedings before administrative courts amends lodge a cassation appeal by the Ombudsman.

Keywords: Commissioner for Human Rights (Ombudsman), cassation appeal, administrative court

Summary

of the article: **Initiation of fiscal penal proceedings as a premise for suspending the limitation period of a tax liability**

The aim of this paper is to present the main constitutional problems related to the initiation of the fiscal penal proceedings as the premise for suspending the limitation period of a tax liability. The authors point to the abuse of fiscal penal proceedings by tax authorities as grounds for suspension of the limitation period. The initiation of the pre-trial investigation into a penal fiscal case should be primarily justified by the suspicion that a prohibited act had committed. The point of the pre-trial investigation is the detection and punishment of the perpetrator of the crime. The practice of tax authorities, consisting in frequent commencement of criminal proceedings just before the expiration of the limitation period, significantly violates the purpose of the statute of limitations, which in the light of the above becomes a fictitious institution. In this respect, the authors point to the inability to control the legality of such activities of tax authorities, which may violate the principles of the right to the court, protection of citizens' trust in the state, legalism and the rule of law. The analysis of the practice of tax authorities and regulations carried out by the authors suggests that the tax authorities challenge the guarantee nature of the limitation period by arbitrary and discretionary actions.

Keywords: institution of prescription, suspension of the period of prescription, the initiation of fiscal penal proceedings, abuse of the law by tax authorities

Summary

of the article: **Social acceptance of an undertaking–selected issues**

The selected issues to which the author devotes the article are public participation in the proceedings, opposition of the local community to the planned project and the consequences resulting from this opposition for the implementation of this project. The obligation to guarantee public participation occurs in proceedings to obtain a decision on environmental conditions. However, it cannot be treated in the category of consent by the local community for the implementation of a given project. Acceptance of the public remains irrelevant to the legality of the project, however, it can be helpful in the real implementation of the investment.

Keywords: decision on environmental conditions, public's participation, environmental protection, public opposition

Summary

of the note **to the judgment of the Supreme Administrative Court of 20 September 2018 (Case No. I OSK 1359/18)**

This Supreme Administrative Court judgment concerns the issue of filing a request for access to public information in *parte sua*. In the Court's view, such a conclusion cannot be accepted since the concept of a "public matter" should refer to issues relating to the representation of a general and social interest rather than an individual interest. Indeed, the right of access to public information is a political right vested in members of the public in order to exercise control over State authorities. The right of access to public information as such cannot be exercised to deal with individual matters.

Key words: access to public information, public matter, Supreme Administrative Court, individual interest, political rights

Summary

of the note **to the judgment of the Supreme Administrative Court of 11 December 2018 (Case No. I FSK 1701/18)**

This note seeks to analyse whether the determination set out in the Supreme Administrative Court ruling issued as a result of a cassation appeal filed against a judgment of the administrative court of first instance issued under the so-called self-review procedure should refer only to said judgment, or whether, by reversing said judgment, the cassation court should likewise reverse the judgment "originally" issued in the case. The authors accept the view resulting from the analysed judgment that a ruling issued under the self-review procedure encompasses the original judgment of the Voivodship Administrative Court and, as such, the Supreme Administrative Court's determination should only refer to the self-review ruling.

Key words: administrative court proceedings, cassation appeal, self-review of a voivodship administrative court, devolutive nature of appeal

Summary

of the **note to the judgment of the Supreme Administrative Court of 17th October 2018 (Case No. II OSK 2132/17)**

This commentary has the aim of presenting the arguments in support of the thesis that the most important principle in the polish enforcement procedure in the administration is a principle of the desirability of proceedings. In the wake of this legal rule, it should be considered that the enforcement authority, having a possibility to use a various of enforcement measures should always choose the measure that best implements the indicated principle. The consequence of the adopted thesis is the position that in a case of having a choice between such measures as the fine to enforce a duty and an alternative embodiment of a duty, a competent authority should apply a fine in the first place, as a better way to enforce the specific duty. In view of the above, enforcement proceedings cannot be conducted with the assumption of causing the obligor complaints, for example in the aftermath of using of repressive measures. Consequently taken measures should be only intended to force a given entity to perform what constitutes the essence of administrative enforcement proceedings which is a fulfillment of a given obligation in the fullest extent.

Keywords: enforcement proceedings in the administration, enforcement measures, fines to enforce, order of execution measures.