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00-011 Warszawa, ul. G.P. Boduena 3/5
tel. 22 551-67-25, fax 22 826-74-54, e-mail: msawicka@nsa.gov.pl

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Summary

of the article: **Designatum of the principles of proper holding of managerial functions in financial institutions in the light of case law of administrative courts**

The specific nature and complexity of mechanisms under which the financial market operates, the high level of commercial risk that is related to the multiplicity of capital funds to be allocated, they all decide on the necessity to guarantee the trading security and the protection of legitimate interests of the traders. Private, administrative, and penal law instruments serve to pursue those purposes. The principle of interference of the public law in the sphere of freedom to undertake and pursue business activity must be, as a rule, perceived as playing a servient role to the private law instruments by the supervisory bodies. The material presented below concerns a selected excerpt of the precautionary regulations implemented by the Financial Supervision Authority [KNF], focused on ensuring the relevant level of competence and the credibility of the personnel that manages financial institutions.

As per the title of this paper, the centre of gravity of the deliberations concentrated on the guarantee of the proper holding of managerial functions by the mandataries. In the practice of reaching by that body for the aforementioned premise causes many problems, in particular the challenges raised by the appellants addressed to the court due to failure to adhere to the procedures in the administrative proceedings and due to violations of the substantive law in the area that affects the resolution of the matter. The access to the court, the right to a just settlement of the dispute – guaranteed by the constitution and acts of international law – are to provide an individual with protection against unlawful actions of a public administration authority. In general, the national, potential standards of this protection do not deviate from the standard regulations present in the Western countries. However, this begs the question of the actual guarantees expressed in the quality of the case law of administrative courts.

Keywords: guarantee of proper holding, reputation, financial institutions, management board

Summary

of the article: **Request for interest on overpayment**

The rule that arises from the provisions of the Act – Tax Ordinance is the fact that interest is charged on overpayment. In practice, there are many exceptions applied from this rule, and the provisions of law regulating this area are quite complex. While the very entitlement to gain interest may be interpreted from the provisions of the said Act, the problems arise while claiming such interest in disputes with the fiscal authorities.

The aim of this paper is to discuss this issue taking the quite extensive case law of administrative courts on this topic into account. In the light of the deliberations made, it was proven that the issue of interest on overpayment fits within the notion of a "tax matter", mentioned in Article 207(1) of Tax Ordinance. As a result, a tax payer is authorised to demand initiating tax proceedings in this respect and to be awarded a decision.

Keywords: taxes, overpayment, interest on overpayment

Summary

of the article: **The voluntary principle of mediation in administrative matters**

The purpose of this paper is to analyse and evaluate, using the dogmatic method, the voluntary principle of mediation in administrative matters. This principle is one of the fundamental structural elements of this alternative dispute resolution method; however, in terms of administrative mediation, it gains a special dimension. The understanding of the voluntary principle of mediation that arises from Article 96a § 2 of the Polish Code of Administrative Proceedings requires taking into consideration the specific nature of administrative procedure, the catalogue of its general principles, the position of its participants, the extent of regulation of mediation in the code, or the dual nature of mediation in administrative matters.

In this paper, the voluntary principle of mediation was presented, divided into the entities to which it may refer, accordingly to the participants in the proceedings, administrative authorities, and mediators. Interpretation problems were also noted, related to the fact that the scope of regulation is incomplete (e.g. as regards the lack of consent of the mediator to undertaking mediation), in particular as regards the proper understanding of the voluntary principle of mediation with respect to vertical mediation (i.e. with the participation of the public administration authority). In the latter case it is necessary to take into account the principle that arises from Article 13 of the Code of Administrative Proceedings, i.e. the principle of resolving disputes amicably, which restricts the freedom of the authority in terms of participating in mediation. Referring the matter to mediation should therefore be determined in particular by the will of the parties to the proceedings and the positive assessment of the nature of the matter by the authority (the so-called fitness for mediation).

Keywords: mediation in administrative matters, voluntary principle of mediation, consent, horizontal mediation, vertical mediation, nature of the matter, participant, administration authority, mediator

Summary

of the article: **Weighing the rules of law in the case law of administrative courts**

The aim of this paper is to answer the question whether and in what types of cases do administrative courts use the notion of rules of law within the meaning of the theory of Robert Alexy. The authors present the fundamental findings associated with this theory and then make a reference to case law in administrative matters. A review of rulings in this area shows that administrative courts must face the issue of competition of procedural, material, and systemic rules, extensively applying the proportionality principle, to which the aforementioned theory refers. Therefore, the understanding of the rules of law that is characteristic for Alexy's concept does function in the adjudicating practice. Ruling on the matter of collision of laws is no longer solely the domain of constitutional courts in the wide sense of this word, i.e. those that operate both within national and international jurisdictions. However, it is associated with new challenges for administrative courts in terms of legitimisation (justification) of the undertaken rulings, as the adopted criterion of compliance with the law is more extensive than the narrowly-understood compliance with the letter of the law only.

Keywords: rules of law, weighing the rules, proportionality principle, administrative law, judicial application of law

Summary

of the article: **Procedural position of the Prime Minister in the administrative jurisdictional proceedings**

The aim of this paper is to present the procedural position of the Prime Minister in the administrative jurisdictional proceedings. The procedural position of this body is complex and may sometimes be ambiguous. The above is, among other things, due to the fact that the Prime Minister resolves administrative matters by way of a decision, sometimes serves as a higher instance body, and additionally holds some other procedural entitlements that other bodies usually lack (e.g. the Prime Minister resolves disputes concerning the jurisdiction between public administration authorities, when one of those authorities is a minister). The greatest doubts are associated with the procedural position of the Prime Minister as a body that resolves individual administrative matters, because the legislator omits this supreme body while defining by law a public administration authority.

Keywords: Prime Minister, procedural position, administrative decision, jurisdictional dispute

Summary

of the article: **Legal succession under an administrative decision concerning a security certificate for an entity that operates a railway siding**

The following entities are obliged to hold a security certificate entitling them to operate a railway siding: infrastructure manager and railway carrier who operate railway lines and entities managing infrastructure that has the status of a railway siding. The President of the Railway Transport Office is the authority entitled to issue security certificates.

The nature of the security certificate, in particular the role that it plays in the railway traffic security system results in the fact that a security certificate is an example of a personal act. A security certificate is an entitlement that is closely related to the entity itself and the fact that it holds relevant qualifications confirmed by the administrative decision issued by the President of the Railway Transport Office. No enterprise may begin operating a railway siding before being awarded a security certificate. The objective of a security certificate is to confirm that the subject entity confirmed the fundamental organisational schemes intended to ensure a high level of security of traffic on the railway siding by the public administration authority.

In turn, there is no general rule of legal succession in administrative law. Legal succession is only possible if the legislator explicitly so allows.

In the case of changes related to the entity, in terms of security certificates, there is no competence entitlement granted to the President of the Railway Transport Office to transfer the entitlements under the certificate onto another entity. Moreover, if the entity listed in the original decision was transformed, as a result of which a new entity was created, we may not say that the administrative matter remains the same in this sense, therefore the mode under Article 155 of the Code of Administrative Proceedings may not be applied.

There are no precise provisions of law, which therefore does not make it easier for the enterprises who wish to render railway transport services to operate. By way of this paper the author wishes to initiate a discussion on the proper legislative solutions in the act on railway transport, which are to facilitate the functioning of the railway market entities.

Keywords: railway transport, security certificates, railway siding, administrative decision, legal succession