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Summary

of the article: Providing legal assistance or defence *ex officio* and the sources of income

The point at issue is whether the professional fees of a legal advisor or advocate providing legal assistance or defence *ex officio* are to be qualified as revenues from activity carried on personally (Art. 10.1.2 of the Act on PIT) or non-agricultural economic activity (Art. 10.1.3 of the Act on PIT). It shall require determining the normative contents of the following expressions: „performing certain acts" commissioned by a court and „under relevant provisions" used in Art. 13.6 of the Act on PIT.

This analysis must be performed in the context of standards of clarity of the tax laws and regulations and pointing to the definition standards and their meaning in order to determine the meaning of: (1) „activity carried on personally" and (2) „non-agricultural economic activity". It is also necessary to determine the common meaning of terms such as: act/action, activity, active and the conditions of understanding the term: act/action.

The organisational-legal forms of practising the profession of an advocate or legal advisor are also important in the context of evaluation of qualification of the professional activity of an advocate to the source of income referred to in Art. 10.1.2 of the Act on PIT or to the source of income referred to in Art. 10.1.3 of the Act on PIT.

There are no substantive grounds – as evidenced by the contents of the terms „act/action, activity, active" in the Polish language and in particular the complex conditions of understanding the term „act/action" – to conclude that the normative expression „... court or public prosecutor (...) commissioned with performing certain acts" used in Art. 13.6 of the ACT on PIT refers to a legal advisor or advocate providing legal assistance or defence *ex officio*.

A legal advisor or advocate providing legal assistance or defence *ex officio* is not commissioned by a court or acting at the discretion and will of the court but of the person to whom he or she provides legal assistance or defence.

The analysis and legal arguments unambiguously show that revenues obtained by a legal advisor or advocate from the provision of legal assistance or defence *ex officio* must be qualified as revenues from non-agricultural economic activity (Art. 10.1.3 of the Act on PIT).

Summary

of the article: Advance on maintenance – selected issues

The Act on Dealing with Maintenance Debtors and Advance on Maintenance is difficult in practical application. It imposes on the administrative authorities and administrative courts the obligation to interpret the Act in such a way so as to bring it as close as possible to the purposes it is supposed to serve which is providing the persons and families who do not have funds with such funds and one of the reasons of such lack of funds is that the persons on whom maintenance obligations are imposed fail to perform those maintenance obligations.

It seems that the selected problems signalled in this article sufficiently illustrate the complexity of the Act and that in practice the Act does not always achieve the purpose for which it was adopted. Due to the fragmentary nature of its individual provisions coupled with references of two types to other legal acts in many instances its interpretations will be different which imposes on the decision-making bodies the obligation to establish its uniform understanding and application.

Apart from those comments a *de lege ferenda* suggestion must be made to amend the Act as soon as possible by introducing mechanisms of granting advances on maintenance clear for the persons using this form of support as well as universally applicable by the relevant state authorities.

Summary

of the article: Arrangement proceedings with the environmental protection authorities in the construction process

The article presents the procedural problems related to the obligation imposed on an investor of a construction project to obtain the permits, consents or opinions required by law which precede the issuing of a construction permit. The view prevailing in the doctrine and the judicature is that the obligation of co-operation of authorities is imposed by the substantive law on at least two entities while Art. 106 of the Administrative Procedure Code regulates only the procedural issues. Each of the co-operating authorities undertakes actions within its material, territorial and instance-based jurisdiction but in relation to the matter in which a decision is to be made by one authority and the other is to formulate an opinion necessary to handle the matter. Irrelevant of whether a provision requires an opinion or a arrangement, the decisions made in co-operation are an element of the main conclusion in the form of an administrative decision. Art. 7, 19 and 124.2 of the Administrative Procedure Code are fully applicable to those provisions.

This article discusses in detail the procedural issues related to the decisions on the environmental conditions of a project, especially those concerning the territorial and material jurisdiction of an authority and the parties to the proceedings to whom Art. 28.2 of the Construction Law of 1994 does not apply, while Art. 28 of the Administrative Procedure Code does. Art. 46.3 and 45.4 of the Environmental Protection Law provide that the environmental impact assessment proceedings are a part of the proceedings aimed at, among others, issuing of a construction permit. Those are environmental protection proceedings which by way of a final and valid decision conclude a separate administrative case, instituted and handled

before the formal institution of proceedings for issuing a construction permit. Such case is a part of proceedings aimed at issuing a construction permit in such sense that in the circumstances referred to by law it is a necessary element of legal events which must precede the instituting of proceedings aimed at issuing a construction permit as the result of those proceedings is a necessary arrangement which must be provided together with the investment design.

Decision on the environmental conditions is made following arrangements with the environmental protection authorities and the sanitary inspection. Such arrangements are made under Art. 106 of the Administrative Procedure Code i.e. in the form of decisions against which a party may bring an appeal.

Summary

of the article: On application of the Constitution by the administrative courts

In his article the author attempts to discuss the legal basis and present the methods of application of the Constitution by the administrative courts. Supporting the normative character of all provisions of the Constitution he analyses the obligation of its direct application and presents the aspects of application of the Constitution through other legal acts. He also sums up the views of the doctrine expressed so far.

The author shows the specific nature of application of constitutional norms in the administrative courts emphasising the difference between the powers of the courts and administrative authorities in that respect.

Presenting the methods of application of the Constitution by the administrative courts the author, first of all, analyses the intrinsic application understood as

treating a constitutional norm as an independent basis of decision, without relying on a regulation of lower rank. To that extent the author seeks the authorisation and limits for exercising independent control of the hierarchical consistency of norms by a court. Secondly, the author verifies the instances of joint application occurring when apart from a provision of the Constitution the court applies a provision of another legal act. Thirdly, he discusses the ornamental formula i.e. using the provisions of the Constitution in judicial decisions in order to enrich the motives of the judgement and strengthen the arguments in the rationale.

Furthermore, the article emphasises the meaning of instances went the Constitution is applied not only to exercise control over the functioning of public administration but also in the general understanding of the constitutional law.

The author's conclusions are mainly the result of extensive empirical research of the judicial decisions made by the administrative courts.