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Summary

of the article: On the conflict of proceedings before administrative courts with the bankruptcy proceedings

The issues concerning the conflict of laws, in particular these resulting from the coincidence of the legal norms from different systems of law, are deemed in jurisprudence to be the issues of great importance. This is the basis of the conflict between the scope of regulation and application of the bankruptcy law and the law on proceedings before administrative courts. The normative and praxeological difficulties in reconciling theirauses. These include, first of all, the systemic and functional separation of the legal relations regulated by the conflicting norms. Given the defective nature of the conflict-of-laws rules and the lack of sufficiently clear validation principles, the science of laws and the court decisions must identify the appropriate solution by way of interpretative efforts.

This article presents issues recognised as representative. Supported by quotations from the judicial decisions and the legal doctrine, these issues include the theoretic and praxeological problems expressed in the form of dissenting opinions or conflicting rulings. In the author's opinion they result not only from the normative differences but also defective communication in the practical discourse. Although the attempts made so far permitted to identify the substantial difficulties in constructing universal conflict-of-laws directives, but there exist important arguments for the need to formulate the basic criteria they should satisfy. Such plan requires determining the catalogues of principles and values common for both fields and then the axioms relevant for the given discipline. Only from this perspective the nature of the conflict may be recognised.

Situating the plane of the dispute above the relevant branches resulted in considering the scope of limitation in the application of the norms of one proceedings due other norms pertinent to a competitive discipline. It is also the point of reference for the application of the rules of eliminating the conflict of laws classical in the legal dogma.

The cases analysed in the article led to the conclusion that the need to intensify the discourse in order to reach the satisfactory level of communication requires the positive understanding of competition. This means the co-existence (and co-application) of the conflicting norms to the extent necessary to guarantee the values comprising the systemic differences of both fields. This is the direction of the proposed interpretative solutions.

Summary

of the article: The results of deferring the date on which an unconstitutional normative act becomes ineffective in the area of application of law – a voice in the discussion

The Constitution of the Republic of Poland of 1997 authorises the Constitutional Tribunal to defer the date on which an unconstitutional normative act becomes ineffective. Such solution puts the courts in dilemma over the application of law in the period of deferral i.e. when a provision of law has been declared as unconstitutional but remains an element of the prevailing legal order due to the deferred date of its derogation. Both the judicial decisions and the legal doctrine present two competitive positions attempting to solve the presented problem. The first of them restrictively assumes the courts must apply the defective regulations until they are removed from the system of law. The contrasting opinion assumes that the presumption of constitutionality has been rebutted and permits making modifications to the application of the defective regulations during the period of deferral.

It seems that the latter concept allows the courts to search for the solutions that better reflect the sense of the institution of deferral and the essence of controlling

the constitutionality of law. Including a deferring clause in the Constitutional Tribunal's judgment may not lead to marginalising the role of the ruling on unconstitutionality. Both elements of the judgement's sentence (declaration that the object of control is inconsistent wigher act and determination of the date of its derogation) are equal and generally applicable as of the promulgation of the Constitutional Tribunal's judgment. Therefore, when the Constitutional Tribunal's judgment becomes effective the presumed constitutionality of a provision of law is rebutted and the axiological justification of its binding force is challenged. This must affect the application of law. The authorities administering justice making decision on the period of deferral should attempt to limit the scope of application of the regulations suffering from the defect of unconstitutionality. The means permitting to achieve such end may be not only the modified interpretation of the applied provision or suspension or deferral of hearing but also refusal to apply such provision. The period of time between the effective date of the Constitutional Tribunal's judgment and the date on which an unconstitutional normative act becomes ineffective must be perceived as the part of the process leading to removal of the hierarchic discrepancies in the system of law.

Summary

of the article: The selected aspects of court control of individual tax interpretations

Introducing the written official interpretations of tax laws and regulations in individual cases to the Polish system of law has undoubtedly increased the legal security of taxpayers making their way through an impenetrable maze of unstable tax laws and regulations. Such security would be illusory if the individual interpretations were not subject to court control ensuring not only control over the issuing of interpretations but also their content-related accuracy.

Interpretation of the provisions regulating the principles of issuing official tax interpretations in individual cases has stirred up many disputes, both in the science of tax law and the judicial decisions. The procedure of court control of the individual interpretations has raised many doubts, too. This article attempts to present and streamline the procedural problems that must be handled by the judges considering complaints against the individual interpretations.