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Summary

of the article: **On the constitutionality of the statutory regulation of tax liabilities time-barring suspension**

The Constitution of the Republic of Poland does not regulate in full the institution of time-barring and sets out only the exceptions to its application to the extent provided for

by the penal law. It must be concluded in the light of the Constitutional Tribunal's and the Supreme Court's decisions and the views presented in the science of law that the constitutionally protected right to time-barring does not exist. The legislator may freely shape the time-barring, but its legal constructions in the individual branches of law must be consistent with the Constitution. In tax law the basic purpose of time-barring is to ensure the certainty of legal transactions.

Under Art. 70.6.1 of the Tax Code the time-barring of liabilities is suspended on the date of instituting the criminal proceedings or proceedings in the case of a fiscal offence or a fiscal petty offence. This statutory provision changes the limit of time-barring and the tax authority does not inform the taxpayer that the proceedings in the case of a fiscal offence were instituted and for quite a long time the taxpayer may act having trust in the legal norm permitting the tax liabilities time-barring. This violates the principle of the citizens' trust in law stemming from the principle of the democratic state of law expressed in Art. 2 of the Constitution of the Republic of Poland. Furthermore, it violates the freedom of business (Art. 20 of the Constitution) as the person carrying on business activity, having trust in the period of time the lapse of which bars tax liabilities specified by law and making decisions after its lapse, may be surprised by the tax authority and forced to discharge the tax liabilities it deemed to be time-barred which it is unable to pay due to the lack of funds. The unconstitutionality of the tax liabilities time-barring suspension may have specific results in the course of the direct application of the Constitution by the administrative courts.

From the perspective of the legal relations the legislator issuing the constitutional norms finally determining for a long time the issue of suspending the time-barring of tax liabilities seems more favourable than the direct application of the Constitution by the administrative courts. This issue should be universally regulated in the tax law and the criminal laws (the Criminal Code and the Fiscal-Criminal Code) using the same principles concerning the suspension of operation of time-barring.

Summary

of the article: **Proceedings concerning preparation of investment regarding a public-use airport as the example of "exceptional" administrative proceedings**

The proceedings concerning preparation of investment regarding a public-use airport is regulated in Act on Special Principles of Preparing and Implementing Investments Regarding Public-Use Airports dated 12 February 2009. These proceedings precede the commencement of the construction works. In the matters not regulated by the Act the provisions of the Administrative Proceedings Code will apply. The proceedings are initiated at the request of the authorised person. The materially competent authority conducting the proceedings and issuing the decision in the 1st instance is the voivod. Prior to filing its application the applicant should obtain the positions, opinions and other documents required by law. The application's defects are rectified on the general terms and conditions. The authority or body the applicant requested for an opinion should take its position within the specified period of time and the failure to issue the opinion is equal to issuing a positive decision. The authority gives notice of instituting the proceedings to the applicant and the owners of holders of the right of perpetual usufruct of the real properties referred to in the application. The remaining parties are notified by public announcements. The deadline for considering the case is three months and starts on the date of filing the application. If the deadline is not observed and the decision is not made in 95 days of the proceedings institution date the authority of higher instance must impose on the 1st instance authority the penalty of PLN 500 per each day of delay. The proceedings are closed with issuing the decision on granting the permit to implement the investment regarding the public-use airport; in principle the decision may also be negative. The decision closing the proceedings is served upon or notified to the parties in the same manner as when the parties were notified of opening the proceedings. The decision has numerous legal effects: obtaining a permit is equal to obtaining the decision on the terms and conditions of land development and management and the building permit, the decisions expires a limited property right, has the expropriating effect, etc. The decision may be appealed against to the minister in charge of construction and zoning. The period of time for bringing an appeal for the party who did not receive the decision in writing starts after the lapse of 14 days of the date of announcement (Art. 49 of the Administrative Procedure Code). The act specifies the time limit of 30 days for the authority of the 2nd instance to consider the case in the appellate proceedings. The party may challenge the inaction of the appellate authority on the general terms and conditions. The decision of the appellate authority is serviced in the same manner as in the case of the decision made by the authority of the 1st instance. The legislator attempts to stabilise the issued decision. Under the act it is not possible to quash the decision as a whole or declare it invalid in the appellate proceedings or the proceedings before an administrative court when only a part of the decision concerning the real property or a plot of land suffers from a legal defect. A final decision may not be declared invalid in the extraordinary administrative proceedings if the application to declare it invalid is made after the lapse of 14 days of the date on which the decision became final and at the same time the investment was commenced. The voivodship administrative court's ability to declare invalid or quash the decision when it admitted the complaint against the decision suffering from qualified defects referred to in Art. 145 or 156 of the Administrative Procedure Code declared immediately enforceable became limited. After the lapse of 14 days of the commencement of the construction works the administrative court may only declare that the decision violates law for the reasons set out in Art. 145 or 156 of the Administrative Procedure Code.

Summary

of the article: **The procedural position of a public university vice-chancellor in the individual student cases**

Under the Act on the System of Higher Education dated 27 July 2005 a vice-chancellor is, apart from the heads of the basic organisational units, the one-person authority of a college authorised to make decisions in all the college-related matters, except for the matters reserved by law or the statutes to the scope of powers of the other college authorities or the chancellor. However, a vice-chancellor is not a public administration authority within the systemic meaning but merely an authority of an organisational unit which is not a government or a local-government authority, appointed to perform public tasks and authorised to enter into the legal-administrative relations. In the individual student cases a vice-chancellor plays a few roles. First of all, he is an authority considering appeals against the decisions made by the head of the basic organisational unit, irrelevant of the fact whether these decisions are of external nature or were issued in exercising the so-called internal management of an institution. Secondly, a vice-chancellor is the higher degree authority authorised to initiate the so-called exceptional procedures in the cases completed with the final decisions made by the head of the basic organisational unit and to perform other tasks within the competence of the higher degree authority in the Administrative Procedure Code. Thirdly, he is a supervision authority authorised to annul the decisions of the subordinate college authorities for their non-compliance with the laws and regulations prevailing in the college. In the proceedings before the vice-chancellor the provisions of the Administrative Procedure Code are applied accordingly, but with many exceptions given the nature of his decisions issued in the individual student cases and the vice-chancellor has no superior or a higher instance authority. The vice-chancellor's activities in these matters are within the powers of an administrative court if they are external, and in these cases both the acts issued by this authority and its inaction are subject to verification of legality.

Summary

of the article: **The special administrative proceedings in the cases for awarding payments from the direct support schemes in agriculture - the outline of problems**

In Poland we can currently observe the process of emancipation of the State's interventionist instruments from the regime of the administrative proceedings and the supervision exercised by the administrative courts. This is achieved via quasi-administration represented by various types of funds, agencies functioning in the form of the state-owned legal persons. Their scope of activity consists in redistribution of the public and EU funds to public and private entities. The use of "quasi" in this case is fully justified as these units are not a part of the traditional administrative structures and their legal personality is separate from these of the State Treasury and the local government units. This article discusses the aid measures for the agriculture and rural development distributed by the Agency for Restructuring and Modernisation of Agriculture. The specific nature of the proceedings to award the aid measures in agriculture as well as the other proceedings concerning aid under the State's interventionist instruments have remained beyond the doctrine's interest so far. This article was supposed to describe the prevailing legal procedures in this respect, compare them with the Administrative Procedure Code as the standard form, to verify the purposefulness and effectiveness of the adopted solutions against the background of the judicature, to analyse their constitutionality and to formulate the *de lege ferenda* postulates.

The analysis of the subsidy granting procedure in the direct support schemes within the scope of Art. 3.2 and 3.3 of the Act on Payments under the Direct Support Schemes dated 26 January 2007 leads to the conclusion that it excludes the principles of the objective truth, the active participation of a party in the proceedings, the openness of proceedings and free access to information and therefore violates Art. 2 and 46 of the Constitution of the Republic of Poland and Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Furthermore, it is an ineffective solution not affecting the efficiency of the subsidy granting scheme and its only purpose is to ensure the unjustified strengthening of the public administration authority's procedural position at the expense of the party's basic rights and powers. In the author's opinion the provision in question should be deleted or substantially modified.

Summary

of the article: **Objection to the inspection activities in the administrative court decisions**

The amendments to the Act on Business Activity Freedom dated 2 July 2004 (the ABAF) entered into force on 7 March 2009. Since then the tax inspection of a taxpayer being an undertaking has been governed by the provisions of Chapter 5 of the ABAF. One of the fundamental amendments to the inspection of taxpayers being undertakings was granting them the right to bring an objection against the institution and performance of the inspection activities by the inspection authorities, including the tax inspection offices to whom until then the ABAF had not applied.

The main reason for introducing the institution of the objection was withholding the inspection activities when they are carried on in breach of the principles set out in the ABAF. More than a year has lapsed since the effective date of the amendments to the ABAF which allows the author to present the preliminary evaluation of the effect an objection may have on the tax inspection from the perspective of both the undertakings and the tax authorities. This evaluation is not favourable as the objection has failed to become a useful measure of protection of the undertakings' rights in the course of a tax inspection, and when it is used, it is usually used improperly.

The doubt arising in the practice of the tax authorities' activities concerns the method of considering an objection which is inadmissible due to the lack of the formal legal grounds being the so-called quasi-objection. These are the situations when an undertaking charges the tax authority with such violation of the procedure which is not listed as the grounds for bringing an objection in Art. 84c.1 of the ABAF or is listed as an exception in Art. 84d, resulting in the objection becoming inadmissible.

Given that the procedure of considering the quasi-objection brought so is not regulated in the ABAF, then solving this problem by way of the systemic interpretation one must adopt the method of consideration of such inadmissible objection, taking into account the purpose of introducing a provision and the effects the decision will have on the taxpayer's rights. The practice of the tax authorities' activities to date has shown that the uniform operating procedure has not been developed. As a result the quasi-objections are considered in different ways and therefore the undertakings themselves have doubts con-

cerning the correct method of challenging the decision of the 1st instance authorities but they enjoy different scopes of powers in this respect, depending on the authority in charge of the tax inspection and its practice in considering the quasi-objections.

Therefore, the solution would be ensuring the coherent activities of the administrative courts which by passing judgements may interpret the disputed provisions and create a coherent line of adjudication. Analysing both the decisions of the fiscal authorities and the judicial decisions concerning the consideration of the quasi-objections brought in breach of the ABAF, the author has managed to identify as many as six methods of their consideration.