SPIS TREŚCI

MATERIAŁY Z OBRAD DOROCZNEGO ZGROMADZENIA OGÓLNEGO
SĘDZIÓW NACZELNEGO SĄDU ADMINISTRACYJNEGO
W DNIU 16 KWIETNIA 2012 ROKU W WARSZAWIE

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Summary

of the article: **The written interpretations of Polish tax law as the institutional guarantee of protection of trust in the statutory law – comparative analysis**

The principle of protection of trust is contemporarily recognised as one of the basic constructions of a democratic state of law. In many legal systems it has the value of a constitutional principle or at least a general principle of law (legal order) whose contents and individual elements are determined by the more detailed rules and examples of conduct, mostly non-legal. The guarantee ensuring that in the sphere of Polish tax law this principle will be respected is the institution of the written interpretations of tax laws shaped by the provisions of the Tax Code dated 29 August 1997. In the author's opinion the legislator reasonably set the limits of the granted legal protection generally authorised by the assumptions of the estoppels, giving it the quality of being conditional. Obtaining legal protection is restricted

with a few reservations, in principle clear and justified and requesting protection – conditional on satisfying certain formal rigours. By nature of things this is subsidiary and exceptional protection. As such it must be, if the legislator applies the interpretation, subject to far reaching legal control (restrictions). The acts of interpretation of tax law issued in individual cases are subject to full court control.

Summary

of the article: **The problem of unconstitutionality of Art. 105 of the Tax Code**

This article evaluates the reasonability and constitutionality of Art. 105 of the Tax Code determining the procedure of refunding to heirs the overpayments and refunds of taxes due to the testators. Apart from the necessity to satisfy the general pre-conditions necessary for the succession of the right to receive an overpayment or tax refund, in Art. 105 of the Tax Code the legislator introduced additional conditions in this respect. The most controversial of them is the condition of submitting to a tax authority a joint declaration of intent of all heirs on the distribution of the amounts due to them provided for in Art. 105.2. In the author's opinion this requirement is a negative solution. Distribution of an overpayment or tax refund should be made merely by reference to a court decision confirming the acquisition of inheritance or registered deed certifying the right of inheritance.

Currently the legislator, declaring succession of the right to receive an overpayment refund and tax refund, creates such conditions that the effective obtaining of such a refund in many cases will be uncertain or impossible. If obtaining a joint declaration of intent of all the heirs turns out to be impossible, there is no alternative method of determining the circle of the entities authorised to obtain the refund. From the perspective of evaluating Art. 105 of the Tax Code important are, among other, the provisions on constitutional protection of the right to inheritance (Art. 21.1 and Art. 64.1 and 64.2 of the Constitution). I the light of these provisions the regulation in Art. 105.2 of the Tax Code should be recognised as unconstitutional. Art. 105.2 of the Tax Code – given the lack of its convincing justification – may be also deemed inconsistent with the principle of proportionality stemming from Art. 31.3 and Art. 2 of the Constitution. The conclusion that the solutions in Art. 105 of the Tax Code violate the constitutional rights of heirs is therefore justified in the light of the discussion presented in the article.

Summary

of the article: **The selected aspects of the local government elections in the administrative courts' decisions**

This article attempts to define the selected problems concerning the local government elections that appeared in the administrative courts' decisions. The opinions these courts expressed will also apply to the new provisions concerning the law on the local government elections included in the Election Code.

The administrative courts' decisions in many instances included the questions whether an administrative court is competent to settle specific cases related to the local government elections. Its scope of competence shall not include, among others, deciding on the validity of the elections or in the case concerning refusal to grant access to public information – due to the exclusion of its public status for the sake of protecting personal data or settling disputes concerning questioning the costs of removing election posters and banners. This cases are settled by civil courts.

As regards the condition concerning the place of residence for the purpose of determining the electoral register, the administrative courts have so far presented a uniform opinion that a person is included in the electoral register and, therefore, granted an active electoral right, on the basis of his/her place of residence and not registration of his/her residence for permanent stay with the relevant authorities. The right to vote in the local government elections should not be linked with the material-technical action of registering one's place of residence for permanent say with the relevant authorities but with the fact of permanent residence referred to in Art. 25 of the Civil Code. Therefore the administrative criteria are irrelevant, while the fact of staying in a given locality and intention to stay there permanently which should be established on the objective criteria is material.

The provisions of the Tax Code are the source of the principle of stability of boundaries of constituencies and electoral districts. The municipality boards cannot change their borders for reasons other than these the legislator specified *express verbis*. In particular these cannot be the social premises resulting from the will of a local community; additionally the statutory premises may not be interpreted extensively. Furthermore, many judgements emphasised that the stability must be also applied to the divisions into constituencies and electoral districts made by authorities other than a municipality council (electoral commissioner, municipality board in 1998, or a head of a voivodship) notwithstanding the fact whether their authorisation stemmed from the current or former provisions of the law on the local government elections.

In spite of the lack of uniform adjudication it must be assumed that the resolutions on divisions and changes in the division of a municipality into constituencies and electoral districts are acts of local law. That is because they have the qualities of generality and abstractness, they are adopted on the basis of an express statutory authorisation and must be published in a voivodship's official journal. Art. 101 of the Act on Municipal Local Government does not apply to these resolutions due to introducing a specific procedure of their correctness consisting in transferring the competence to consider complaints to an electoral commissioner and the National Electoral Commission. It must be emphasised that the general supervision exercised by the head of a voivodship under Art. 86 ff. of the Act on Municipal Local Government was neither suspended nor limited.