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Summary

of the article: **Conflict between the principles of the rule of law and legal certainty in the procedure of declaring the nullity of administrative decision issued with gross infringement of the law (reflection inspired by the judgment of the Constitutional Tribunal of 12 May 2015, Case No. P 46/1)**

The article analyses the issues of settlement of conflicts between the principles of the rule of law and legal certainty when declaring the nullity of administrative decision issued with gross infringement of the law, since the issuance of which a considerable amount of time has passed, and the decision has been the basis for the acquisition of a right or an expectancy right. The deliberations are based around the Constitutional Tribunal judgment of 12 May 2015 (P 46/13), in which legislative omission in art. 156 § 2 of the Code of administrative proceedings was declared unconstitutional. The discussion focuses on the possibility of taking the Tribunal ruling into consideration during administrative proceedings, particularly on the opportunity of not determining the nullity of a decision which is affected by gross infringement of the law defect on account of the considerable amount of time that has passed since its issuance.

Keywords: nullity of administrative decision, principle of legal certainty, principle of the rule of law

Summary

of the article: **Liability of a member of the management board of a beneficiary for a failure to reimburse an EU subsidy**

In this publication, the authors analyzed the issue of the liability of the member of the beneficiary's management board for a failure to reimburse an EU subsidy. In the event of ineffectiveness of the enforcement against the beneficiary's property, the member of its management board may be liable for the return of the subsidy with all his personal property. The article presents the legal basics for liability of management board members, exoneration basics exempting them from this liability, as well as an analysis of the jurisprudence in this matter. The authors analyze, among other things, when a management board member should file for bankruptcy of the beneficiary in order to protect himself against personal liability for the return of the subsidy. The publication criticized provisions of the Bankruptcy Law, the Public Finance Act and the Tax Ordinance, which do not create a coherent and transparent regime of liability of management board members for obligations related to the return of subsidies.

Keywords: subsidy repayment, liability of management board member, bankruptcy law

Summary

of the article: **Indication of the person entitled to the Bug River compensation vs. the *tempus regit factum* principle – comments on the margins of the note by A. Korzeniewska-Lasota to the judgment of the Supreme Administrative Court of 24 September 2019, Case No. I OSK 2808/17**

The article is a polemic against an affirmative commentary of Anna Korzeniewska-Lasota to the judgment of the Supreme Administrative Court dated September 24, 2019, I OSK 2808/17, which concerned the issue of validity of a statement indicating a person entitled to the compensation for the Bug River property, after the death of the „indicating person”. The author criticises a view presented by the Supreme Administrative Court, according to which after the „indicating person” dies, his statement on the indication becomes invalid and the right to the compensation, which he had, is automatically transferred to his heirs. As a result the „indicated person” loses the right to the compensation. According to the author, validity of such statement indicating a person entitled to the compensation should be considered on the grounds of regulations on the Bug River property, which were in force at the moment of giving the statement. The „indicating person”, acquiring a status of a party of the Bug River property proceeding, has the right to revoke or change his statement until he dies. In case he dies, his will should be respected in this regard, so the right to the compensation should belong to the „indicated person” or his heirs. On no account should an administrative authority decide arbitrarily on people entitled to the compensation. All the more should it not be a coincidence regarding whether or not the Bug River property proceeding is finished during the life of the „indicating person”.

Keywords: property left beyond the Bug river, exercise of the right to compensation for immovable property left outside the present borders of the Republic of Poland, request for confirmation of the right to compensation, Ronald Dworkin’s theory of law, indicating a person entitled to the compensation, substantive justice.

Summary

of the article: **Enforceability of permits for the removal of trees or shrubs**

Permits for the removal of trees or shrubs issued pursuant to Article 83(1) of the Nature Conservation Act of 16 April 2004 provide the basis for using the environment. Therefore, from a practical point of view, it becomes very important to establish precisely when it is possible to start enforcing them. The Nature Conservation Act has introduced a number of autonomous solutions in this respect resulting from the divisibility of the subject matter of the conducted proceedings. The enforceability of a permit may be affected, *inter alia*, by the time limits set out therein, which effectively change the general rules of enforcing administrative decisions. It may also be possible to enforce a permit for the removal of trees or shrubs where a building or demolition permit has been obtained in advance if the implementation of the project requires the removal of trees or shrubs. As a result, both the issuing and enforcing of permits for the removal of trees or shrubs must be done with extreme care and diligence due to the significant number of factors that affect the enforceability thereof.

Keywords: tree, shrub, permit for the removal of trees or shrubs, enforceability of permits for the removal of trees or shrubs, time limits for removing trees or shrubs, nature conservation, building permit

Summary

of the article: **On the independence of judges in Germany once again**

The purpose of this article is to show the German guarantees of judicial independence and to show them in the context of developments in the Polish judiciary after 2017. It seeks to answer the question: why does the German model of the guarantee of independence in the context of judicial appointments and administrative supervision of courts give rise to such divergent assessments in Poland? The German model of judicial appointments, although not devoid of political influence, does not pose a threat to judicial independence because the guarantees of this independence are deeply rooted in the standards developed over seven decades of the *Grundgesetz* and in legal culture. They are strong enough to prevent a threat to sovereignty even in the face of regulatory imperfections. Critical assessments of the degree of independence of judges in Germany do not take into account that the greatest problem of German judiciary is its resistance to populist tendencies, not the status quo in the German courts today. The current problems of the German judiciary do not give rise to views that the independence of the judiciary in Germany is threaten.

Summary

of the **Note to the judgment of the European Court of Human Rights of 15 October 2020 in *Muhammad and Muhamad v Romania* (Application No. 80982/12)**

Judgment of the European Court of Human Rights in the case of Muhammad and Muhammad v. Romania departs from the Tribunal's position presented in the judgment of the Grand Chamber of the ECtHR of 19/09/2017 *Regner v. the Czech Republic*, in which no violation of the article 6 of ECHR was found in the case in which a party of the proceedings and its representative were refused access to the classified documents and were not aware of the factual basis of the decision. The commented judgment increases the minimum guarantees that must be met in connection with the use of classified materials in administrative proceedings.

Keywords: procedural guarantees, expulsion , classified evidence

Summary

of the **Note to the judgment of the Supreme Administrative Court of 27 March 2019**
(Case No. II FSK 908/17)

The statutory system of joint property of spouses is characterized by significant complexity, because in this model there are matrimonial property and personal property of the spouses. In many situations, it is not easy to decide on the belonging of specific assets to separate or joint property, and this is also a matter of determining the addressee and the subject of the tax liability. In the commented judgment, the Supreme Administrative Court assumed that the applicable provisions do not entitle the authorities to factual presumption that an asset acquired during the course of the partnership by one of the spouses should be included in the matrimonial property. However, the position of the authorities applying the law is far from unanimous, and the case law is very modest. This is not tantamount to depriving us of the discussed institution in Poland.

Keywords: principle of objective truth; system of joint property of spouses; property separation; factual presumption; Tax Code

Summary

of the **Note to the judgment of the Supreme Administrative Court of 3 July 2019 (Case No. I FSK 119/17)**

The commented judgment concerned the Supreme Administrative Court's decision to limit temporal consequences of the CJEU's judgment in C-566/17 *Związek Gmin Zagłębia Miedziowego* case. Author does not approve the view of the Supreme Administrative Court of its competence to limit the temporal effects of the judgments of the CJEU. Introduction of such measure would require direct approval by the CJEU. Note also examines the possibility to introduce into Polish legal system some form of taxpayer's protection in case of their reliance on EU law interpretation presented in the resolution of the Supreme Administrative Court (Case No. I FPS 9/10), which turned out to be considered incorrect by the CJEU in its later judgment.

Keywords: limitation of the temporal effects of the judgments of the CJEU, legal certainty, consequences of the resolutions of the Supreme Administrative Court