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(prepared by *Maria Poszwińska*) (insert)

Summary

of the article: **Postulates of changes in the scope of selected aspects of governmental and social control over the legislative activity of local self-government**

Local self-government units issue a number of resolutions, including enactments of local law, significantly affecting the scope of rights and obligations of members of a local self-government community. The independence of local self-government units in the sphere of enacting local law is not unlimited. In addition to the restrictions contained in the Constitution and statutes, it is subject to supervision or control by both executive organs and the local community. One of the mechanisms that interferes most deeply with the legislative activity of local self-government bodies are the supervisory decisions of supervisory bodies (in practice, mainly voivods) and complaints of citizens (other legal entities) about provisions (resolutions, ordinances) issued by the commune, poviast or voivodship bodies. The purpose of the article is to present a new look, through the prism of the problems and dysfunctions disclosed in the case-law of administrative courts, on the issues of selected aspects of governmental and social control over the legislative activity of local self-government. The article presents shortcomings identified in the case-law of administrative courts in the functioning of judicial review of supervisory decisions of voivods regarding the invalidity of resolutions of local self-government bodies and in the functioning of the institution of citizens' complaint against such resolutions. The author has formulated many demands for legal changes in this area.

Keywords: local self-government, supervisory settlement, resolutions of local self-government units

Summary

of the article: **Premises for appointing the curator *absentis* in administrative court proceedings**

The article's research goal is to analyse the necessary premises for appointing the curator for an absent person (*curator absentis*). This institution ensures protection of the party's rights and allows proceedings to be conducted in the event it is impossible to establish the address of their stay. The conditions for appointing a *curator absentis* are the fact that the party exists and has an identity, and the likelihood that their whereabouts are unknown, i.e. it has not been possible to establish them with appropriate efforts made. When it comes to appointing a *curator absentis* for organizational units, the condition is the lack of organs or the lack of knowledge about where their seats are. The positive conditions for appointing a *curator absentis* are the necessity to serve a party with a pleading or a decision requiring them to raise a defence of their rights, and the motion of an interested party. It is so because the administrative court is not entitled to appoint a *curator ex officio*. Unsubstantiated appointment of a *curator absentis* or a failure to appoint one despite all the conditions being fulfilled results in the invalidity of proceedings and is a basis for their resumption. The research methods employed in the article are the critical analysis method and the dogmatic method.

Keywords: representation of party, *curator absentis*, unknown place of residence, lack of authorities, unknown seats, proceedings before administrative courts

Summary

of the article: **Advertising resolutions in case-law of administrative courts**

The subject of the Article concerns the case-law of the administrative courts in matters related to the so called „advertising resolutions”. That resolutions, passes by municipal council on the basis of Article 37a of the Spatial Planning and Development Act, defines the rules concerning placing billboards and another advertising devices, fences and elements of small architecture. Since 2015, advertising resolutions was adopted in 22 communes. In 6 cases the advertising resolutions were controlled by administrative courts.

In case-law following issues concerning advertising resolutions was controlled: 1) legal interest to appeal from resolution; 2) terms and conditions of placing the advertising devices; 3) laying down rules for adaptation existing advertising devices to terms and conditions provided for in the resolution; 4) respect of acquired rights of the persons who placed the advertising devices before the entry into force of the resolution; 5) restriction of the right to ownership following the entry into force the resolution; 6) relation between the advertising resolutions and the spatial plan; 7) procedure concerning the draft resolutions.

Keywords: advertising regulations, billboards and advertising devices, billboards and another advertising devices, spatial planning, planning power of the commune, administrative judiciary

Summary

of the article: **Legal forms of direct participation of citizens in finance management of local self-government community**

In the modern legislation there is a tendency to create a legal basis for institutions which involve residents in decision-making processes in their territorial communities. Among various forms of social participation functioning in the Polish territorial self-government law, one can distinguish two mechanisms of a financial nature: the participative budget and the „sołectwo”¹ fund. They provide local communities with the direct impact on the financial policy implemented in a commune, district or province. Due to the recent numerous changes in the normative environment of these institutions, they require a closer study, determining, first of all, their legal nature, defining their subjective and objective scope and presenting procedural regulations. The paper points out positive and negative aspects of the newly adopted regulations and presents current views of the legal literature, as well as the latest judgements.

Keywords: social participation in the local self-government, participative budget, parish fund, local finances, budget of the local self-government unit

¹ *Sołectwo* is a subdivision (an auxiliary unit) of a rural municipality. The elected head of a *sołectwo* is a *sołtys* (both office and its name being derived from the German *Schultheiß*, Latin *scultetus*, *solthetus* – head of a municipality, an executive official of the ruler).

Summary

of the article: **Christian Pestalozza's conception of abuse of right as universal response to studying the issue of abuse of right**

Issue presented in the article regards analysis one of the concepts of the abuse of right. Christian Pestalozza's idea presented in the text is very unique due to the fact that it is not „values – focused” which are often placed outside the normative content of the text of legislative act and are basis to consider the fact if abuse has occurred. Article considers also author's comments about Cristian Pestalozza's idea of subsumption failure and briefly presentation of point of view of polish civil law legal academics and commentators on problem of abuse of right.

Keywords: abuse of right, objective public rights, subsumption failure, Christian Pestalozza

Summary

of the note to the judgment of the Voivodship Administrative Court in Warsaw of 16 February 2016 (Case No. III SA/Wa 890/15)

In the commented judgment the court subjected to legal analysis, in diligent compliance with standards of interpretation, interrelated legal provisions. The court assessed, if: (1) the bank's leasing activity falls under the concept of a bank's activity stipulated in Article 130 par. 1 of the Act on Banking Law; (2) it is admissible to cover such an activity with a general risk reserve. Answers to these questions shall determine, if the reserve concerning the leasing activity can be treated as tax deductible in compliance with Article 15 par. 1h section 1 of the Act on Corporate Income Tax.

In the legal formula for tax deductible, the normative phrase "for the purpose of" has a significant meaning. It explicitly refers to tax payer's activities aimed at generating revenues, retaining or securing the source of revenues. This normative phrase is ambiguous, which means that it always requires to be referred to individual conditions of a specific tax case. Each factual and legal situation requires, in fact, distinct treatment and separate assessment. An established pattern of behaviour cannot be applied, as it is unreliable and may lead to false conclusions. And such an individual, legal relativisation was carried out by the Court by accurately proving that pursuant to Article 15 par. 1h section 1, the general risk reserves in the scope of financial leasing, performed by the bank, do not constitute tax deductible.

Keywords: bank's leasing activity, International Accounting Standards, International Financial Reporting Standards, catalogue of banking activities, banking activities *sensu stricto*, banking financial services, general risk reserve, tax deductible

Summary

of the note to the judgment of the Supreme Administrative Court of 3 April 2019 (Case No. II FSK 1281/17)

The commented judgment examined the possibility of independent, i.e. by one of the parents, correction of the tax deduction concerning the so called pro-family tax relief, devoted to taxpayers having an immature child. Authors approve the view of the Supreme Administrative Court that taxpayer's right to correct tax declaration cannot be questioned. However submitting a correction of tax declaration by only one of parents is not sufficient to assume that there has been a change in the joint determination of both parents previously made (in the first tax declaration) as to the method of distribution of pro-family relief. On the other hand, such correction forms the basis for initiating explanatory proceedings regarding the parents' agreement concerning the proportion of deduction for the relief.

Keywords: personal income tax, pro-family tax relief, correction of tax declaration

Summary

of the article: **A model of mediation proceedings in German administrative court proceedings**

The study presents the assumptions of the mediation model in German court-administrative proceedings (*Güterichtermodell*). Mediation in this system is not mediation in the strict sense – its feature is entrusting the conduct of conciliation between parties to a judicial process to a judge who is not appointed to adjudicate in a case that is the subject of mediation proceedings. The advantages of this concept are widely recognized in science, and its effectiveness is confirmed by statistical data (60-80% efficiency). The article attempts to analyze and evaluate the mediation solutions in the Polish Act on Administrative Court Proceedings. Recognizing that the reason for not using them in practice is the shape of the statutory regulation, it was proposed to modify it in reference to German models in order to increase its functionality.

Keywords: administrative court proceedings, administrative court, court mediation, conciliation, *Güterichter*