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Summary

of the article: **Article 145a of the Law on Proceedings before Administrative Courts in view of the Constitution of the Republic of Poland**

In August 2015, one of the most extensive amendments came into force to the Law on Proceedings before Administrative Courts. By way of this amendment, a possibility was introduced of revocation by the administrative court of a decision or ruling (in whole or in part) in the event of an infringement by the public administrative authority of substantive law affecting the outcome of the case and in the event of determination of invalidity of a decision or ruling (in whole or in part) in the cases stipulated in Article 156 of the Code of Administrative Procedure or in other provisions. Article 145a of the Law on Proceedings before Administrative Courts, introducing the above changes, gave rise to considerable controversies as to its compliance with the Constitution of the Republic of Poland. It was raised that administrative courts were granted competence to rule in cases which are delegated to public authorities. The introduced changes were undoubtedly desired from the social point of view, as they will facilitate and accelerate proceedings in administrative courts, but they were not developed with sufficient diligence which may be expected of commonly-binding legal acts. In consequence, great doubts arose as to the consistency of those amendments with Articles 2, 10 and 184 of the Constitution of the Republic of Poland.

Summary

of the article: **Formal requirements of a complaint and their evaluation in administrative court proceedings**

On 15 August 2015, the Law of 9 April 2015 on the Amendment to the Law on Proceedings before Administrative Courts came into force and introduced amendments to, *inter alia*, the provisions concerning formal requirements of a complaint. The article describes practical aspects of preparing a complaint and formal evaluation thereof, which is conducted before a voivodeship administrative court. The article discusses both general elements of the complaint, as covered by Article 46 of the Law on Proceedings before Administrative Courts, and detailed elements of this remedy, as listed in Articles 57 and 57a of the Law on Proceedings before Administrative Courts. Based on court jurisprudence, the basic criteria of evaluation of the meeting by the complainant of formal requirements of the complaint are indicated. A diagnosis has also been performed regarding the actual impact of the amended provisions within the analysed area on facilitating access to administrative justice and on the speed of obtainment of a final settlement. Those were precisely the objectives indicated by the legislator in the justification of the draft amendment.

In the summary of the considerations, it was stated that the amendment refers, in fact, to two formal elements of the complaint, i.e. its claims (by adding Article 57a of the Law on Proceedings before Administrative Courts) and attachments (by modification of the wording of Article 46 § 3 and adding point 4 in Article 57 § 1 of the Law on Proceedings before Administrative Courts). However, it was evaluated that none of those procedures provided for the achievement of the goals set by the introduction of the amendment. At the same time, risks were indicated resulting from significant formalisation of the complaint for the interpretation of the provisions of the tax law issued in an individual matter. What was also undermined was the rationality of the imposition of a duty upon the complainant to accompany the complaint with certain documents in all cases, even if such documents are already in the case files, submitted to the court by an authority together with the compliant, according to Article 54 § 2 of the Law on Proceedings before Administrative Courts.

Summary

of the article: **Access to public information versus protection of classified information. Selected issues**

The purpose of the article is a presentation of relations between access to public information and protection of classified information. The article mainly presents a relation between the Law of 6 September 2001 on Access to Public Information and the Law of 5 August 2010 on Protection of Classified Information. The undertaken analysis is directed at the issue of protection of classified information. In order to present relations which occur between the aforementioned laws, three issues are discussed: the first covers the relation between the notion of public information and the notion of classified information; the second concerns the issues related with the Law on Protection of Classified Information as a special law in relation to the Law on Access to Public Information; the third concerns protection of classified information as the basis of refusal of access to public information.

In Article 61 section 3 of the Constitution of the Republic of Poland, the legislator indicated the values which are considered to be fundamental, and in view of which the right to information may be limited on statutory grounds – classifying as such values, for instance, public order and safety. Those values constitute axiological justification of protection of classified information. In view of those values, we should also call for amendments to the provisions of law concerning the opening of a possibility of the administrative authority of dissenting from justification of a decision on refusal of access to public information due to protection of classified information. Otherwise, classified information will be disclosed, and thus, the goal of issuing such an administrative decision will be undermined. The analysis described in the article leads to the conclusion that the legislator did not perceive the problems connected with the necessity of drawing up justifications of decisions issued on the basis of Article 16 in conjunction with Article 5 section 1 of the Law on Access to Public Information and, what follows from that, forced the administrative authorities to face a difficult choice. They have two solutions – either to violate Article 107 § 3 of the Code of Administrative Procedure or to disclose classified information. Such situation seems to be impermissible in a democratic state of law. The law may not put administrative authorities before such a dilemma, because they are bound by the constitutional rule of law and, consequently, are obliged to act on the basis of and within the limits of law. Therefore, a situation in which the violation of one or another legal standard is inevitable, and the authority has to choose the "lesser evil", is unacceptable. It is beyond doubt that a possibility should be opened by the provisions of law of limitation or even dissenting from justification of a decision due to the necessity of protecting classified information. Therefore, this issue requires the legislator's interference . Various solutions are possible. However, regardless of what decision will be taken by the legislator, it is important that he sees the problem and undertakes the appropriate legislative steps. That is because the continuation of such state of affairs not only abuses the constitutional rules – including mainly the rule of law and the rule of a democratic state of law, but it may also constitute an actual threat to the interests of the Republic of Poland.

Summary

of the article: **Complaint against the decision of the Central Commission for Degrees and Titles expressing an objection against the decision regarding the award of rights equivalent to the rights resulting from the fact of holding the title of a habilitated doctor**

The purpose of this article is the presentation of legal aspects forming part of the issue connected with the possibility of lodging a complaint with the administrative court against the decision of the Central Commission for Degrees and Titles expressing an objection against the decision regarding the award of rights equivalent to the rights resulting from the fact of holding the title of a habilitated doctor.

In the course of the implementation of this analytical undertaking, firstly, the author presented the issues connected with the prerequisites of being awarded equivalent rights, and, in particular, their positive evaluation by the vice chancellor/president of a university (director of a scientific institute of the Polish Academy of Sciences (PAN), director of a research institute). Secondly, an analysis was presented of the issue connected with the procedure of passing such a decision, its coming into force and its revocation by the Central Commission for Degrees and Titles by way of an administrative decision which may be complained against before an administrative court. At the same time, special consideration was given to the issues connected with the procedure of lodging a complaint with an administrative court, the authorisation to lodge a complaint, stages of examination of the complaint, the degree of the adjudicative power of the administrative court and the adjudicative authority of voivodeship administrative courts in such matters.

The conducted analysis of the whole spectrum of issues indicated in the title of the article, as well as the evaluation of the views presented so far in the jurisprudence, provide arguments supporting the conclusion that, in addition to the formal authority of the vice chancellor/president of a university (director of a scientific institute of the Polish Academy of Sciences (PAN), director of a research institute), there arises the necessity of admitting in such matters also the substantive authority to lodge complaints vested in persons applying for the award of equivalent rights. Moreover, it was shown that the adjudicative authority of the court in the analysed matters is set only by the provisions of Articles 145 and 151 of the Law on Proceedings before Administrative Courts.

Summary

of the article: **Varied criteria of combating the phenomenon of avoiding taxation with corporate income tax**

The subject of the article is an analysis of the functionality of the artificiality criterion in combating the phenomenon of avoidance of taxation on the grounds of the Law on Corporate Income Tax. The notion of artificiality should be understood as lack of economic justification for a certain activity (transaction/operation) undertaken by the tax-payer in order to reduce the amount of tax.

The artificiality prerequisite is an inevitable component of clauses aimed against tax avoidance, also defined as anti-abuse clauses, both with regard to general anti-tax avoidance clauses (known as *general anti-abuse rule/*GAAR), and *ad-hoc/*special standards (known as *special anti-avoidance rule/targeted anti-avoidance rule*). Polish regulations concerning corporate income tax also apply such clauses, however, so far, there has been no practice of their application in settlements of tax authorities and judicature. Such state of affairs should change, mainly in view of the introduction, according to the recommendations of the European Commission, of a general clause against avoidance of taxation in the Polish tax ordinance in the middle of 2016.

Nevertheless, relevant guidelines regarding the interpretation of anti-abuse clauses may be found in the hitherto jurisprudence of the Court of Justice of the European Union, which examined the permitted scope of their application by other states, having more mature tax systems. A special role in the above process is served by the doctrine of tax law abuse. This doctrine, developed by courts, imposes limitations on the method of interpretation of the criterion of artificiality in the case of anti-abuse regulations concerning trans-border operations. Within the non-harmonised area of direct taxes, Member States were authorised to combat tax avoidance only to the extent in which the actions of the tax-payer lead to the arising of the so-called wholly artificial arrangement, i.e. an arrangement deprived of any economic contents. Meanwhile, within the harmonised area of direct taxes, as well as in the area of indirect taxes, such criterion does not exist.

The author wishes to draw attention to the fact that the above differentiation may lead to a varied level of tax law abuse accepted in EU relations within the framework of the Polish Law on Corporate Income Tax, i.e. this threshold would be higher in the non-harmonised area due to the possibility of questioning the activities of the tax-payer only in the event that such activities have the characteristics of a wholly artificial arrangement, whereas this threshold would be different (lower) in the harmonised area, i.e. in the area regulated on the basis of the provisions of tax directives implemented in the Law on Corporate Income Tax (the fusion directive and the directive on parent companies and daughter companies).

In the opinion of the author, an attempt aimed at solving the above, undesirable situation would be to attribute the wholly-artificial arrangement standard with the criterion of proportionality, i.e. to evaluate the actions of the tax-payer not only from the angle of their actual (real) character, but also of their appropriateness.