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Summary

of the article: **Participation of supreme courts in the legitimacy of the Polish legal system**

In the article authors consider position and functions of Polish supreme courts (Supreme Court and Supreme Administrative Court) in the context of constitutional crisis in Poland. Elaboration involves institutional analysis, which emphasizes active role of both courts in providing integrity of Polish legal system. Authors stress that only discursive and integrative approach to application of legal norms in Dworkinian sense can rebuild social trust to the idea of the rule of law and judiciary (especially SC, SAC and Constitutional Tribunal) as its guardian.

Słowa kluczowe: sądy najwyższe, legitymizacja prawa, kryzys konstytucyjny, dyskurs prawny, wykładnia prawa

Keywords: supreme courts, legitimization of law, constitutional crisis, legal discourses, legal interpretation

Summary

of the article: **Legal consequences of appeal submitted by a person who is not a party to administrative proceedings**

The subject of the analysis carried out in the study are issues relevant to submitting, by an entity that does not have legal interest in a case and therefore is not a party to the administrative proceedings, an appeal against an administrative decision. Until the amendment of the Code of Administrative Procedure in 2011, due to the lack of relevant regulations in the Code, it was assumed that the appellate authority had to pass the decision discontinuing the appellate proceedings. According to the author, it was not the most fortunate solution, since appellate proceedings are brought upon request of a party; bringing an appeal by another entity did not result in commencement of the proceedings. After the amendment, on the basis of Article 61a, in relation to Article 134 of the Code, the appellate authority may refuse to commence such proceedings by way of a decision. Nevertheless, such a decision will be acceptable only when the lack of legal interest is evident. If explanatory proceedings have to be carried out in this matter and as a consequence it turns out that the appellant lacks in attributes of a party, then indeed the appellate proceedings shall be discontinued.

The author also analyses whether the condition for an appeal against a decision of the appellate authority is submitting an appeal against the first instance decision, or is it sufficient for this legal measure to be brought by another entity. At the same time, he presents a view that for an appeal to be admissible it has to be brought beforehand by the appellant. As one of the key motives of his position the author points out that otherwise relevant arguments raised for the first time in the appeal could have been omitted in the appellate proceedings, which would facilitate the conclusive settlement.

In the last part of the article, according to the judgment of the Supreme Administrative Court of 5 February 2016, II OSK 1406/14, the author presents a view that the decision on the lack of the appellant's attribute of a party, irrespective of whether it is made in the form of a decision on the inadmissibility of the appeal or a decision of discontinuance of appellate proceedings, is strictly connected to the addressee, and as a consequence, only the latter has legal interest in appealing against the decision before an administrative court.

Słowa kluczowe: strona postępowania administracyjnego, interes prawny, złożenie odwołania przez podmiot nie będący stroną, konieczność wyjaśnienia posiadania interesu prawnego, niedopuszczalność odwołania, umorzenie postępowania odwoławczego, dopuszczalność zaskarżenia decyzji o umorzeniu postępowania odwoławczego ewentualnie postanowienia o niedopuszczalności odwołania przez osobę która nie wniosła odwołania

Keywords: party to the administrative proceedings; legal interest; filing an administrative appeal by the subject, who is not a party to the proceedings; necessity of finding out of the possession of legal interest; inadmissibility of appeal; discontinuation of the appellate proceedings; admissibility of complaining against a decision on discontinuation of the appellate proceedings or an order on the inadmissibility of appeal by the person who did not file an administrative appeal against an administrative decision

Summary

of the article: **On the model of administrative and legal responsibility in environmental protection**

Administrative and legal responsibility in environmental protection constitutes one of the main environmental protection institutions of the legal system, guaranteeing the implementation of legal obligations. Significant interest of theory and practice in issues analysed in this article can be explained by, *inter alia*, a comprehensive set of legal instruments of administrative responsibility, whose legal character generates numerous problems of interpretation.

The author of the article emphasises that the term “responsibility” regarding issues of environmental protection is used in philosophy and in law, and has different meanings. The article primarily concentrates on the construction of a legal model of administrative and legal responsibility in environmental protection and on implications of its use on the process of the application of law.

The design of the model presented in this study refers to the values resulting from legal regulations that environmental protection is subject to. The basic task which was undertaken by the author was to present assumptions that reflect the complex character of the model of administrative and legal responsibility in environmental protection.

In the analysed model, attention was paid not only to the factors of legal nature, but also to the framework of economic, technical, social, and political conditions of environmental protection. The article attempts to outline basic issues that are linked also to the functions of administrative responsibility in environmental protection, which are illustrated by chosen opinions, doctrines, and judgments.

Słowa kluczowe: sankcja administracyjna, odpowiedzialność prawna, obowiązek ochrony środowiska, negatywne oddziaływanie na środowisko.

Keywords: administrative sanction, legal responsibility, obligation to protect the environment, negative impact on the environment.

Summary

of the article: **Adjustment of tax revenues and costs resulting from business activity in the case of reimbursement of benefit**

The article relates to the consequences of reimbursement of a benefit on the tax on income, the said reimbursement usually resulting from unanimous termination of contractual arrangements, complaint on faulty goods or failure of legal cause of transaction (e.g. invalidity of an agreement).

The analysis argues that the taxation act should clearly regulate conditions of admissibility and time and manner of making an adjustment to revenues and expenses in the analysed case, since such an adjustment is neither grounded on civic law or balance sheet law, nor in reference to the economic sense of events that were subject to income taxation. Without such regulation it is not known if the adjustment is acceptable and how it needs to be made.

Under the applicable legislation of 2015, the regulation was fragmented and raised doubts whether the adjustment is admissible in the case of reimbursement of other benefits than goods (if this reimbursement is at all possible) or whether it has to be made during the current period (when the reimbursement was actually made), or retroactively through the adjustment of the tax return for the period during which the original revenues and expenses (resulting from the transaction made) were registered. In the author's opinion, the "current period" method is correct, since the reimbursement of benefits is a new economic event which results in a new tax obligation, and adjustment is made only to incorrectly declared tax (in this case original revenues and expenses remain correct). This approach is consistent with the rules and regulations of account-keeping and with regulations on the adjustment of tax return. There is a prevailing view in judicial decisions and literature that regulations on the tax on income, until the end of 2015, administered the retrospective adjustment.

Amendment of 1 January 2016 removed most of interpretation ambiguities and clearly confirmed the "current" method; in the author's assessment, as a rule this change only clarifies the previous legal status.

Słowa kluczowe: Korekta podatku dochodowego, korekta przychodu, korekta kosztu, zwrot towaru, zwrot świadczenia, faktura korygująca

Keywords: adjustment to the tax on income, adjustment to the revenue, adjustment to the expense, reimbursement of goods, reimbursement of benefit, adjustment invoice

Summary

of the article: **Taking of evidence in cases of imposition of fines for the destruction of greenery**

Greenery is one of the main components of the environment with which we come in contact most frequently. Therefore, legal solutions that guarantee its effective protection are of great importance. In the Polish legal system, they are stipulated mainly in the Act of 16 April 2004 on Nature Conservation (Journal of Laws 2015, item 1651).

One of the instruments aimed at sanctioning the violation of regulations laying down the principles for using greenery are fines imposed on the basis of Article 88 (1) of the Nature Conservation Act for:

- tree or bush removal without required consent (Article 88 (1)(1)),
- tree or bush removal without the property owner's consent (Article 88 (1)(2)),
- tree or bush destruction (Article 88 (1)(3)),
- tree destruction caused by works performed near the tree crown (Article 88 (1)(4)).

The proper imposition of a fine must be preceded by taking evidence that confirms the violation of law and records the factual circumstances affecting the amount of the fine to be imposed.

The taking of evidence for the imposition of a fine is characterised by significant autonomy. That is because the administration authority must take into account both the provisions of the Code of Administrative Procedure and the Nature Conservation Act. Therefore, the article exhaustively presents the principles governing the taking of evidence by inspection and from experts' opinion, as in practice they are the most relevant and cause problems related to taking such evidence.

The taking of evidence also inextricably entails methods used to determine the size of trees for the purposes of proceedings for the imposition of a fine. Therefore, the article also discusses solutions arising from Article 89 of the Nature Conservation Act, which introduced principles governing which tree trunk circumferences are to constitute grounds for imposing a fine in the case of a tree log, tree trunk or absence thereof.

The observations are summarized by the statement that the taking of evidence in the relevant category of cases is characterised by significant autonomy. Therefore, it is postulated that conflict-of-law rules be introduced that may limit the scope of existing doubts in the future. Introduction of organisational solutions is also suggested, which would lay down the principles governing the conduct of administrative proceedings in environmental protection cases.

Słowa kluczowe: ochrona przyrody, drzewo, zieleń, kara pieniężna, dowód, oględziny, biegły, postępowanie dowodowe

Keywords: environmental protection, tree, greenery, fine, evidence, inspection, expert, taking of evidence

Summary

of the article: **Saturday as a day equivalent to statutory holidays in administrative proceedings in the light of judicial practice**

The article includes an analysis of judicial decisions of administrative courts in the scope of qualifying Saturday as a day off in the administrative proceedings pursuant to Article 57 § 4 of the Code of Administrative Procedure. In this matter, the representatives of jurisprudence and doctrine were inconsistent in their statements, from the resolution of a panel of seven judges of the Supreme Administrative Court of 25 June 2001, files no. FPS 7/00, through the judgments of voivodeship administrative courts and the Supreme Administrative Court, to the resolution of a panel of seven judges of the SAC of 15 June 2011, files no. I OPS 1/11. In judicial practice and literature, two contradictory interpretations were presented: linguistic, according to which Saturday is not a statutory holiday, and purpose-bound, assuming that Saturday has a status of a day equivalent to statutory holidays. Currently, there is a prevailing tendency to acknowledge Saturday as a day equivalent to a day off pursuant to Article 57 § 4 of the Code of Administrative Procedure. The analysis ends with *de lege ferenda* postulates to amend the provision of Article 57 § 4 of the Code. Thanks to such an amendment, neither the controversial adjustment of rules of law by the judiciary, nor the extension of their content by introducing the term “day equivalent to statutory holidays” will be necessary.

Słowa kluczowe: sobota, dzień ustawowo wolny od pracy, dzień równorzędny z dniem ustawowo wolnym od pracy, postępowanie administracyjne, orzecznictwo sądów administracyjnych

Keywords: saturday, a day free from work under statutory law, a day equivalent to a day free from work under statutory law, administrative proceeding, jurisdiction of administrative courts