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Summary

of the article: **A public administration authority in administrative proceedings (proposed amendments to the Administrative Procedure Code)**

In October 2012 the President of the SAC appointed the Team to prepare the modification of the administrative procedure concept in Poland. The Team prepared the study on the public administration authority the extended version of which is discussed in this article.

At the outset the author opposes the intention to adopt a brand new act regulating the administrative procedure. In turn, he is for amending the Administrative Procedure Code, believing that replacing the Administrative Procedure Code with a new act is unnecessary. Although it was enacted 50 years ago, it has not become seriously outdated. A well-prepared amendment would suffice. The provisions regulating the issues related to a public administration authority included in the Administrative Procedure Code have many gaps, are mutually inconsistent and in certain events their construction is a source of numerous controversies in judicial decisions and the legal literature. For example, it concerns the very definition of a “public administration authority”, the term “minister” in the light of the Administrative Procedure Code which is at least unclear and goes as far as to the practical lack of regulation on the collegiate bodies in the Administrative Procedure Code. The Administrative Procedure Code does not include a precise construction of determining an authority competent to conduct proceedings in the extraordinary mode when – as a result of amendments to law – the material and instance competence of the authorities conducting proceedings in the ordinary mode has changed.

Following the diagnosis of the existing regulations, the author presents his proposals of restatements to the prevailing provisions concerning: the term “public administration authority”, determining the competence of an authority (including in the cases conducted in the extraordinary mode), the authorities competent to settle disputes concerning competence and the legal consequences of the participation in proceedings of an employee of an administrative authority who is excluded by virtue of law. He also proposes adding to the Administrative Procedure Code provisions which would exhaustively regulate the issue of the decisions made by collegiate public administration authorities as well as the provision excluding the minister from participating in the proceedings instituted by a request to reconsider a case when the minister has already issued the decision acting as a first-instance authority. The last part of the articles includes a justification of the proposed provisions.

Summary

of the article: **The demand to remedy a breach of law in administrative proceedings and in proceedings before administrative courts**

Pursuant to Art. 52.3 and Art. 52.4 of the Law on Proceedings Before Administrative Courts, if an act does not provide any remedies at law in the case constituting the subject-matter of the complaint, a complaint against the acts or actions, referred to in Art. 3.2.4 and 4a, may be filed upon first requesting the relevant authority in writing – in 14 days of the day on which the complaining party learnt or might have learnt that an act was issued or another action was taken. In case of other acts, if an act does not provide any remedies at law in the case constituting the subject-matter of the complaint and does not provide otherwise, the relevant authority should be requested in writing to remedy the breach of law before the complaint is filed. The time limit referred to in Art. 52.3 shall not apply. The request to remedy the breach of law is differently interpreted in the science of administrative law and judicial decisions. The explicit indication that the request is a formalised petition filed in connection with the intention to request the administrative court for protection (remonstrate) more sufficiently demonstrates the essence and aim of this remedy at law and its relation to a complaint.

Summary

of the article: **Inaction and excessive duration in the light of Art. 149 of the LPBAC**

11 April 2012 was the effective date of the provisions which changed the regulations governing the filing of a complaint against the lack of timely functioning of a decision-making authority in administrative proceedings and accordingly modified the scope of court control. The new solution in the provisions of both acts is the institution of the excessive duration of proceedings.

The applied solution raised great interest in literature. The authors focused mainly on the problems of its functions, both in the administrative and court proceedings. Relatively little attention was paid to the fact that the precondition of the excessive duration of proceedings as the object of court control on the grounds of the Law on Proceedings Before Administrative Courts considerably exceeds the mutual relationship between the court and administrative proceedings. The article is devoted to the effect of the new solution on the grounds of court control. The problems of the excessive duration of the jurisdictional proceedings, which have been already extensively discussed, are considered only marginally.

The basic thesis of the article is focused on the fact that the specific nature of the new solution largely deviates from the previous object of the court control of the inactivity of an authority. This specific nature is also intensified due to the diversified object of the court control. Apart from the awards the court controls also other forms of activity. The object of control, mainly in the case of decisions, refers to an express temporal standard. In other cases both the object of control and the temporal limits to take an action are diverse.

Certain factual actions controlled for their excessive duration may be put in the time-frame specified by the legislator. Other are performed without a statutory time limit. In turn, the control of the excessive duration of issuing individual interpretations of tax law provisions is based on the construction which in general is not subject to the court control of inaction or excessive duration.

The subject matter of the court control of excessive duration is different than in the case of the jurisdictional proceedings. In particular, in the case of the decisions made in enforcement proceedings both the time to take the actions and the scope of entities authorised to file a complaint against them to a court is much more extensive than in the case of other objects of court control set out in Art. 3.2.8 of the LPBAC.

Finally, the author discusses the admissibility of applying the adopted solution from the perspective of the criterion of control. Evaluating excessive duration is different from evaluating inaction because it requires evaluating the purposefulness of the actions taken by the authority applying law. Deviating from the criterion of legality for the sake of the criterion of purposefulness gives rise to doubts. Where such evaluation performed by an administrative authority supervising the functioning of a decision-making authority is consistent with its supervisory function, in the case of a court it deviates from the basic criterion on which the court control is based.

Summary

of the article: **The problem of defining the notion of irreversible legal effects of an annulable administrative decision and the concept of a legal effect**

For many years the problem of interpretation of the notion of irreversible legal effect of an annulable administrative decision as a negative precondition of declaring it invalid (Art. 156.2 of the Administrative Procedure Code) has been the source of many disputes and doubts in literature and judicial decisions.

The first part is a synthetic-critical analysis of the existing state of discussion on the ways of understanding the precondition of an irreversible legal effect of an annulable administrative decision. Presenting the view expressed in judicial decisions of the administrative courts (in particular the Supreme Administrative Court) the author distinguishes three elementary construction problems and focuses on the elementary interpretative divergences. Firstly, the object of the disputes is the scope and semantic contents of the notion of the legal effect of a decision suffering from the defect of invalidity. Depending on the assumptions made it is possible to distinguish various ways of understanding the notion of legal effects and then – its irreversibility. Secondly, the problem of the scope of the legal effects of an annulable decision, i.e. the response to the question if the effects of a decision are only its direct effects or maybe also indirect (the so-called indirect legal effects), has been the source of considerable divergences in judicial decisions and the administrative law theory. Thirdly, the problem of setting the correct legal path for cancelling (i.e. reversing) the effect of an annulable decision has been the source of serious divergences in the decision-making practice of administrative authorities and courts. The above dispute concerns in principle the jurisdictional grounds and the procedure of cancelling the effects of a defective decision.

In the second part the author presents the issue of irreversibility of the legal effects in the light of the specific theoretic concept of a legal effect of an administrative decision. Accepting the assumptions of the so-called dualistic concept of a legal effect and the concept of the administrative-law relationship crystallised in an administrative decision made it possible to put forward the thesis that a full or partial breaking up of an identical, defectively crystallised relationship implies the cessation of the legal effects caused by the defective decision. It means that the reasons for termination of the relationship crystallised in the decision are at the same time the reasons for termination of the legal effects of such decision. If the legal effects in the form crystallised in the annulable decision no longer exist and as such may not be “reversed” by means of a decision on invalidity, then in the legal sense they may be undoubtedly understood as “irreversible”.

Summary

of the article: **The legal nature of the time limit to file a request to update a perpetual usufruct fee**

The article presents the views of the doctrine and the positions of the judiciary as regards the nature of the time limit referred to in Art. 78.2 of the Act on Real Property Management and the interpretation of Art. 79.7 thereof which concerns the appropriate application of certain provisions of the Administrative Procedure Code in the proceedings before the local government board of appeal concerning the updating of a perpetual usufruct fee. In the author's opinion the time limit referred to in Art. 78.2 of the Act on Real Property Management is a strict time limit. Therefore the decision if the holder of the right of perpetual usufruct observed this time limit shall be made by the local government board of appeal and, if the dispute is transferred to a common court, by such common court. In turn, the board's decisions on incidental issues may be appealed against to an administrative court. Such a complaint may concern, among others, the board's inaction in considering an application submitted by a holder of the right of perpetual usufruct or the board's decision refusing to issue a certified copy of documents from the file. In the author's opinion it is inadmissible that the administrative courts decide on the incidental issue most frequent in the judicial decisions – refusal to restore the time limit for a holder of the right of perpetual usufruct to submit an application. Accepting the opinion that Art. 78.2 of the Act on Real Property Management refers to a material time limit means that the board is not competent to decide on restoring such a time limit.

Summary

of the article: **The notion of legal interest in the decisions of the SAC in the area of industrial property law**

“Legal interest” is an institution of the administrative procedure the purpose of which is to determine who is eligible to be a party to the relevant proceedings. Although the legislator used the construction of “legal interest”, various legal acts lack the legal definition of this term. It is shaped by the doctrine and the judiciary.

The specific nature of the regulation of the industrial property law resulted in the formation of a few basic preconditions justifying the existence of legal interest. They mainly include: the cease and desist order, the request to remedy the effect of infringement of law, to pay damages and make the relevant declaration in the press (or a pending proceedings before a common court), early obtaining of a patent, a protection right or a registration right, the title of ownership, including the title to a business name, and the principle of freedom of business. The existence of a legal interest may be also related to the type of business run by the applicant or the function of such business.

In the course of reviewing the decisions of the Economic Chamber of the Supreme Administrative Court one can see that the notion of “legal interest” in the cases from the area of the industrial property law is in principle understood uniformly. Given it reflects the views presented in the doctrine and the judiciary on the basis of Art. 28 of the Administrative Procedure Code, it must be used for the purpose of determining other matters, including in particular the administrative and administrative court procedure.