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# Summary

of the article: **Administrative penalties available under the Act on Games of Chance dated 19 November 2009 in the rulings of administrative courts**

This article analyses the rulings of the Polish administrative courts made after the judgement of the European Court of Justice. In its judgement of 19 July 2013 in joined cases C-213/11, C-214/11 and C-217/11 the ECJ ruled that Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Council Directive 2006/96/EC of 20 November 2006 (OJ 1998 L 204, p. 37), must be interpreted as meaning that national provisions, such as those of the Act on Games of Chance of 19 November 2009, which could have the effect of limiting, or even gradually rendering impossible, the running of gaming on low-prize machines anywhere other than in casinos and gaming arcades are capable of constituting 'technical regulations', within the meaning of that provision, the drafts of which must be the subject of communication as provided for in the first subparagraph of Article 8(1) of the directive, in so far as it is established that those provisions constitute conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine.

Summary

of the article: **Defence in the enforcement proceedings in administration**

This article analyses the legal norms regulating the procedure of examination of defences concerning administrative enforcement in the aspect of exercising one of the most elementary functions of the procedural law, i.e. the protective function. This procedure is highly characteristic and untypical when compared to the other remedies at law. In the current legal status the creditor's statement concerning the defences is binding on the enforcement authority. This puts the creditor in a highly preferential position: in such situations he actually "decides" whether the debtor's defences are justified.

The defences are examined in two stages. Firstly, the enforcement authority must obtain the creditor's position (which puts him in a highly privileged position). In the last stage the relevant enforcement authority examines the defences. The scope of cognition of the enforcement authority depends on the type of the defences the debtor raised. In the situation when the enforcement authority is bound with the creditor's position, it is not entitled to conduct explanatory proceedings in order to establish the grounds to allow the defences and examine the creditor's position. In that case the scope of control in the complaint proceedings and the proceedings before administrative courts is limited.

An analysis of the norms concerning the procedure of examination of the defences shows that in the case of the procedural grounds of the raised defences the applicable provisions guarantee the debtor a proper protection of his rights. The debtor's legal situation is completely different when the debtor raises the substantive-law defences which were not or are not examined in separate administrative or court proceedings. In such situations it is actually the creditor who decides if such legal remedy is justified. The role of the enforcement authority is significantly reduced. Such status does not guarantee full protection of the debtor's rights and therefore the guarantee function of the procedural provisions is distorted. Consequently, the court control of the creditor's decisions concerning his position as to the raised defences will be extremely important.

# Summary

of the article: **Is an administrative court judge subject to disciplinary liability in institutions of higher education?**

Pursuant to Art. 6.1, 6.2 and 6.4 of the Law on Proceedings Before Administrative Courts dated 25 July 2002 (the LPBAC) persons holding the scientific title of a professor or a scientific degree of a doctor habilitated may be employed as a judge, also part-time. The author answers the questions if an administrative court judge is subject to disciplinary liability in the institution of higher education where he is employed and if yes, then whether holding him disciplinarily liable requires the consent of the Supreme Administrative Court which under Art. 9 of the LPBAC is the disciplinary court in disciplinary cases of administrative court judges or a judge will be liable disciplinarily to the relevant judicial disciplinary authority. In the author's opinion, applying the principle "argument from major to minor" leads to the conclusion that if an immunity protects a judge when he commits an offence (always) for which he is liable only disciplinarily (Art. 81 of the Law on the System of Common Courts), then it should even more protect the judge from punishment or even participation in disciplinary proceedings conducted by an institution of higher education. Therefore, an immunity should protect a judge also in disciplinary proceedings pending before a scientific institution employing him, but the breaches of his professional duties reported by the institution employing the judge may be qualified as an impairment of the dignity of his office and must be carefully considered by the disciplinary prosecutor of the Supreme Administrative Court who should react firmly when the charges raised against the judge seem justified. Moreover, pursuant to Art. 139.2 of the Law on Institutions of Higher Educations, disciplinary liability of an academic teacher thereunder does not preclude disciplinary or professional liability provided for in separate regulations.

# Summary

of the article: **Basic terms of construction law in rulings of administrative courts**

Construction investments are regulated in the Construction Law dated 7 July 1994 which apples to designing, constructing, maintaining and demolishing structures and sets out the principles of functioning of the public administration authorities in these areas. Administrative courts exercise control over the functioning of construction supervision authorities and interpret the provisions of construction law. This interpretation is a guideline for these authorities in the cases they decide in. Judicial decisions of administrative courts concerning the key institutions of construction law are not always uniform and the discrepancies hamper the application of the provisions of the Construction Law.

The Construction Law introduces the principle according to which everyone is entitled to develop a plot of land if he/she demonstrates the right to use this plot of land for construction purposes and the construction project is consistent with the law. The Construction Law includes the catalogue of definitions of 23 terms which define its subject scope. The article discusses the most important terms, including the terms imprecisely defined in the Construction Law and the terms without a legal definition (such as extension of and adding a superstructure to a building structure, assembly, installing, permanent attachment to the ground) interpreted in judicial decisions of administrative courts. The catalogue of definitions in the Construction Law does not include all the terms important for its application. In this event judicial decisions of administrative courts are the basic source of interpretation of the terms not defined by the legislator. The selection of the terms was determined by the importance of a given issue for the practical application of the provisions of the Construction law.

The article presents an analysis of, among others, the term “area impacted by the structure” and of the determination of the scope of parties to administrative proceedings. The difference between legal and actual interest is of key importance for determining the scope of parties to the proceedings in an investment process. Numerous judicial decisions of the Supreme Administrative Court and Voivodship Administrative Courts also refer to the issue of permanent attachment of a structure to the ground. The interpretation of this term determines the necessity to observe certain formalities in the construction of a structure, which is of particular importance in the event of advertising facilities.

# Summary

of the article: **The basic assumptions of the EU reforms of taxation of entities linked by capital and their effect on the substantive and procedural Polish tax law**

The article discusses the problems related to the taxation of entities carrying on cross-border business. Currently it is one of the most important issues of the EU tax law. This is related to the fact that this matter is not regulated in a complex manner and has many gaps and inaccuracies and the national laws of the individual Member States regulate these problems fragmentarily. The tax-law systems of the Member States are nor harmonised in this respect.

Consequently, the European Commission attempted to reform this matter. It presented a proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB). The proposal for a directive attempts to streamline the tax-law system concerning cross-border business and, therefore, minimise the increasing practice of tax evasion. One of the directive's main assumptions is the harmonisation of the tax systems of all the Member States. The concept of the CCCTB not only implements new tax construction solutions to the national systems but also introduces the new principles of tax proceedings as well as proceedings before administrative courts. In this context the concept of the CCCTB will be of particular importance for the doctrine and rulings of the European and national courts which face problems resulting from the existing system of corporate taxes in the European Union or rather from its lack, because one may only refer to 27 barely harmonised national systems.