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Summary

of the article: **Binding character of a legal assessment arising from the non-appealable judgment of the administrative court dismissing a claim against the backdrop of the admissibility of the verification of a binding decision under the extraordinary measures of administrative proceedings.** Part I

The issue of admissibility of the verification of the final administrative decision in the extraordinary administrative proceedings in the light of the limits of binding force of the final administrative court's judgment and the final legal assessment which results from the final administrative court's judgment dismissing the complaint against the administrative decision is the subject of this study.

The first part of the elaboration is devoted to the essential premises and assumptions of the system of administrative court control and its relation to the administrative proceedings and the principle of the binding force of the final administrative court's judgment and the administrative court's legal assessment which results from the administrative court's judgment dismissing a complaint against an administrative decision. The further considerations are concerned with the theoretical and positive-legal limits of the binding force of the final administrative court's judgment dismissing the complaint against the administrative decision in relation to the conceptual constructions of the "reference norm" and the "complement norm". The analysis of the construction differences and the contents of the "reference norm" and the "complement norm" in the sphere of the administrative court's adjudication proves that the legal assessment which results from the administrative court's judgment dismissing the complaint against the administrative decision must be extended not only to the conclusion that the grounds for the quashing or invalidating of the contested administrative decision by the administrative court are not be fulfilled but also to the positive assessment of the legality of the interpretation and the application of the law by the administrative authorities in the administrative matter. The issue of the verification of the final administrative decisions which have been uphold by the administrative court by means of the final judgment dismissing the complaint against these decisions in the extraordinary administrative proceedings for quashing the final decisions affected by grave defects, i.e. in the procedures of reopening of administrative proceedings and declaration of invalidity, has been subjected to the separate consideration.

Keywords: validity of administrative courts' judgments; positive effect of the validity of an administrative court's judgment dismissing a complaint against an administrative decision; limits of the binding force of an administrative court's judgment dismissing the complaint; the binding force of an administrative court's legal assessment which results from the administrative court's judgment dismissing a complaint against an administrative decision; administrative decision upheld by an administrative court and its verification in the proceedings regarding the reopening of the proceedings and the declaration of invalidity of the decision

Summary

of the article: **The concept of objection against a cassatory decision issued under Article 138(2) of the Code of Administrative Proceedings – critical reflections**

A critical reflection is induced by the analysis of solutions included in the Act of 7 April 2017 amending the Code of Administrative Proceedings and certain other acts, by means of which the concept of objection against a cassatory decision issued under Article 138(2) of the Code of Administrative Proceedings was introduced. The solutions are of systemic nature. Decisions issued under Article 233(2) of the Act – Tax Ordinance remain outside their scope, which results in the entirely groundless difference in procedural circumstances of the parties and participants to proceedings pending under the specified procedural acts. The concept of objection against a cassatory decision entails a risk of breaching procedural rights of a party to administrative court proceedings, in particular when their legal interests are in conflict. The introduction of the new solution may also result in a high risk of multiplying administrative proceedings and administrative court proceedings. Constitutional deficits and defects related to the objection against a cassatory decision issued under Article 138(2) of the Code of Administrative Proceedings, given controversies around them, will need to be solved through case-law until the legislator decides to intervene adequately in this regard.

Keywords: effectiveness of a legal solution, objection against a cassatory decision, standard of the right to a fair trial, risk of multiplied proceedings

Summary

of the article: **The evolution of a gross breach of law as a ground for declaring invalidity of administrative decisions in legal theory and case-law**

The paper discusses the most widely used, and the most controversial ground for declaring invalidity of an administrative decision, namely a gross breach of law. To this end, it was necessary to analyse the historical evolution of the understanding of the concept in legal theory and case-law, starting from the first Polish regulation of administrative proceedings dating back to 1928. The above considerations became a point of departure for the analysis of currently applicable Article 156(1)(2) of the Code of Administrative Proceedings, namely theoretical and practical aspects related to its application, in view of the most recent case-law and legal theory, including the underlying theoretical concept of administrative act defectiveness. In the conclusion, it is proposed that the superior disposition in the light of case-law and theory be that in the application of Article 156(1)(2) in fine of the Code of Administrative Proceedings, i.e. in the process of analysing whether there has been a 'gross' breach of law in issuing a decision, the general principle of decision stability should be taken into account (Article 16(1) of the Code of Administrative Proceedings). The final conclusion reflects the view that in contemporary systemic and legal conditions in Poland, the main task of reviewing the legality of decisions should be carried out by the administrative court, being the competent judicial body for this purpose.

Keywords: gross breach of law, invalidity of administrative decision, extraordinary procedure in administrative proceedings

Summary

of the article: **Possibility of challenging an administrative decision before the court without lodging an available motion for a reconsideration of the matter**

The purpose of this article is to present changes in the provisions regarding the motion for a reconsideration of the matter. In 2017 a new legal regulation was introduced to the Law on proceedings before administrative courts. It is now possible to complain to the court against an administrative decision without prior using the legal remedy indicated in Article 127 § 3 of the Code of Administrative Proceedings.

In the author's opinion a new solution is only seemingly beneficial for the party to the administrative proceedings, because the judicial control of the legality of the decision is not equivalent to a substantive reconsideration of the administrative matter. Furthermore, there will be a lot of procedural complications related to introduced provisions. Therefore, the decision of the legislator should be assessed negatively.

Keywords: administrative proceedings, administrative court proceedings, administrative decision, motion for reconsideration of the matter, principle of two-instance proceedings, complaint to the administrative court, admissibility of the complaint

Summary

of the Note to the judgment of the Supreme Administrative Court of 20 February 2019 (Case No. II OSK 694/17)

Z Because of the importance of the matters raised in the reasons for a judgment related to the direct application of the Constitution, the application of judgments issued by the Constitutional Tribunal by courts, the enforceability of the judgments issued by the Constitutional Tribunal and judges' activism, the note is a summary of the Supreme Administrative Court's case-law on using the Constitution as a legal act.

Keywords: application of the Constitution, legal effects of judgments issued by the Constitutional Tribunal, invalidity of decisions, enforcement measures for judgments issued by the Constitutional Tribunal

Summary

of the Note to the Supreme Administrative Court's judgment of 29 November 2018 (Case No. II FSK 3229/16)

According to the provisions of the Act on taxes and local fees, in specific cases, a holder (*posiadacz*) of real estate or its part or building structures or their part owned by the State Treasury or local self-government becomes a tax payer. Numerous controversies both in case-law and in theory are raised by the fact of imposing real estate tax when with respect to the same real estate both a permanent manager (*zarządca trwały*) and a dependent possessor (*posiadacz zależny*) exist. In the judgment commented on in the note, the court stated that a tax payer for the purpose of real estate tax would be the dependent possessor, also if the agreement was entered into via the permanent manager. Agreements of such type are treated as entered into with the proper owner, which results in that it is the dependent possessor who is a tax payer and not the permanent manager who acts as *stationes fisci*.

Keywords: permanent management, dependent possession, real estate tax

Summary

of the Note to the judgments of the Supreme Administrative Court of 10 and 30 Octobr 2018 (Cases Nos. II OSK 1868/16, II OSK 1869/16, II OSK 1870/16, II OSK 2552/16)

The note addresses the most recent jurisprudence of the Supreme Administrative Court on the legal status of the children born and raised abroad by same-sex couples, whereas at least one parent is a Polish citizen. The judgments issued by the Supreme Administrative Court in October 2018 confirm that such minors also hold Polish citizenship and their foreign birth certificates can be transcribed into Polish registrar records. Accordingly Polish ID card or Polish passport can be issued for the child. The judgments in question break the deadlock on the legal situation of such minors within the Polish legal system. Author approves the solution adopted by the Supreme Administrative Court, which is a correction to the preceding administrative courts' case-law.

Keywords: same-sex marriage, citizenship, children, transcription, human rights

Summary

of the article: **Honorary judges as the manifestation of society's contribution in administrative court proceedings – possibilities of implementation in Poland on the basis of German Code of Administrative Court Procedure of 21 January, 1960**

The elaboration provides analysis of German statute considering administrative court procedure institution of honorary judge and eventual possibilities of introducing it in the Polish legal order. As the Polish constitution establishes the rule of society's contribution in the judicature it is unknown why, on the assumption that administrative courts, just like the common courts, are pronouncing judgments, there are no jurors in administrative courts procedure as they exist in civil or criminal one. The starting point of the considerations is the constitutional notion of pronouncing judgments and what other rules we can derive from it. The author will then analyze the German regulations and think if the similar ones are possible to set in Poland and what consequences could it have for the quality of such procedure.

Keywords: administrative court proceedings, honorary judges, jurors, German legislative act