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Summary

of the article: **Order regulations in administrative proceedings and administrative court proceedings – a rational divergence or unjustified differentiation of legal solutions?**

The provisions of procedural law should be designed in a manner which prevents any doubts as to the application thereof as well as to the consequences of such application. The application of different procedural regulations in similar legal situations may prove misleading for citizens and thus violate the principle of trust for the state and for the laws it enacts, which itself is derived from the constitutional principle of the democratic state based on the rule of law.

In his article, the author analyses the legal solutions applied in the general and special administrative proceedings as well as in the proceedings before administrative courts insofar as they relate to the time periods the final day of which falls on a Saturday, the manner in which compliance with the specified time periods may be ensured by persons staying abroad as well as the manner in which various documents are to be delivered to such persons. The reason for this is that various legal solutions have been applied for the aforementioned proceedings. The author also discusses the question of the effectiveness of the use by the participants of the proceedings of the services of postal operators other than the designated operator through which they have received letters from administrative authorities or administrative courts.

The findings of this study indicate that there are significant differences in the manner in which these issues are regulated in the procedural legislation referred to above. The differences in question occur in very similar legal conditions, which not only may, but actually does prove misleading to the participants of the proceedings, exposing them to unfavourable legal outcomes. In the author's opinion, it would be advisable to enact a piece of legislation called the "act on the general provisions of administrative law," which would ensure greater consistency with respect to the issues outlined above insofar as the differences in question do not stem from the provisions of the applicable Community law. Attempts to enact such an act, intended to form the basis of the legislative intentions of the Polish Parliament with respect to the broadly understood administrative law, have already been made on a number of occasions. The author suggests that this concept should be reintroduced, on condition that the provisions of such an act would include solutions which are common to all procedural legislative acts in the field of administrative law (and administrative court procedure), governing the issues examined in the article.

Summary

of the article: **Right to a fair trial as exemplified by the implementation of the rules of Community law concerning the protection of competition in the public interest**

The effective protection of the single market against anti-competitive practices constitutes one of the EU priorities which find their regulation in treaties. The enforcement of the competition rules is based on an administrative model with great supervisory authority of the body implementing them and a significant scope of discretionary powers. Considering the fact that the Charter of Fundamental Rights was granted the status of primary legislation, the legislative activities of the EU or law enforcement practice, or the implementation of the requirements of that legal framework by Member States must not fail to comply with its regulations. This applies to, *inter alia*, the right of an individual to good administration.

The article raises selected issues concerning the right to defence of an entrepreneur in the enforcement procedure of the law in question. A discussion of case law has a special place in the study, including the judgement of the EU Court of 15 July 2015, which revokes the decision of the European Commission on the grounds that it violated the right to defence of the entrepreneur in the proceedings. A new element in the Court's argumentation is a certain extension of the right to defence, and within the framework thereof – of the right to being heard, to situations in which the party is given the opportunity to prepare the strategy of his/her defence in a better way. The axiological dimension of the EU Court's argumentation is harmonized with the case law of administrative courts referred to in the present article.

Summary

of the article: **The impact on the provisions of the Constitution on the computerisation of proceedings before administrative courts**

The aim of the article is to point out the constitutional basis for the introduction into the Law on Proceedings before Administrative Courts of legal solutions pertaining to the use of information and communication technologies in the course of such proceedings. For the above reason, the question which needs to be answered is whether the Constitution of the Republic of Poland of 2 April 1997 justifies the introduction of changes in the proceedings before administrative courts which resulted from the enactment of the 2014 amendment. Furthermore, the article also contains a discussion on the constitutionality of the stance adopted by the Supreme Administrative Court in its resolution dated 12 May 2014, I OPS 10/13, according to which, under the present applicable legislation, in the light of the provisions of article 46 of the Law on Proceedings before Administrative Courts, it is not possible to submit to administrative courts any documents which bear a safe electronic signature, including through a public administration body, using electronic means of communication.

In the author's opinion, the determining factor of computerisation of proceedings before administrative courts is the constitutional principle which provides that public institutions need to operate in a diligent and effective manner. This principle – where implemented in an appropriate way – may, to a certain extent, significantly contribute to what one may term as "unclogging" the principle of the right to a fair trial, taking the said principle to a new level.

However, when evaluating the aforementioned resolution of the Supreme Administrative Court, one may reach the conclusion that the Court refrained from the ostensible "unclogging" of the access to justice, as such a move could – given the circumstances prevailing on the day of adoption of the said resolution – lead to the right to a fair trial being obstructed even further than before. Allowing for correspondence between the administrative court and the parties to the proceedings sent and received using means of electronic communication to be considered effective would, in the absence of appropriate legal regulations and adequate equipment and systems, bring about negative consequences that would significantly outweigh the benefits which flow from the use of state-of-the-art technologies. One may even conclude that allowing for correspondence between the administrative courts and the parties to the proceedings sent and received using means of electronic communication to be considered effective would result in a violation of the constitutional right to a fair trial.

Summary

of the article: **Abuse of the right to public information**

The right to public information remains a privileged right, both under the provisions of the Constitution of the Republic of Poland and of the act on access to public information. The right to request access to public information regardless of the quantity and quality thereof is practically unlimited in scope. The use of the said right is made even easier due to the lack of the need to justify the requests made as well as due to the fact that such requests are to be fulfilled free of charge and according to a simplified procedure. All these solutions remain conducive to the abuse of the right to information, i.e. the use thereof for purposes inconsistent with those for which it was originally intended. The right in question has, in many cases, been used as an effective tool for disorganising the functioning of governing bodies. At the same time, the existing regulatory environment lacks effective legal measures which would make it possible to counteract this phenomenon in an efficient manner. Against this background, the article presents a series of issues pertaining to the abuse of the right to information as a phenomenon which is clearly apparent both in administrative proceedings and in administrative court proceedings.

Summary

of the article: **Administrative enforcement of claims from a joint bank account**

The article covers the issue of administrative enforcement of claims from a joint bank account. Administrative enforcement of claims from a joint bank account became permissible following the entry into force of the amendment to the act dated 17 June 1966 on enforcement proceedings in administration (Dz.U. [Journal of Laws] of 2014, item 1619), introduced under the act of 1 April 2004 amending the Banking Law and certain other acts (Dz.U. [Journal of Laws] no. 91, item 870, as amended).

The issue of administrative enforcement from joint bank accounts has not, until now, formed the subject of any research despite being a relevant issue both from theoretical and practical standpoint for a number of reasons, including, *inter alia*, the fact that the seizure of a joint bank account has a direct impact on the legal situation of the co-owner of the account, who appears in the capacity of a third party in the course of enforcement proceedings, i.e. of a party to whom the duty to perform the enforced obligations does not extend. The analysis of the provisions of the act on enforcement proceedings in administration has shown that the provisions in question provide insufficient protection to the legal rights of the co-owners of bank accounts who appear in the capacity of third parties in the course of administrative enforcement proceedings.

The publication also contains an analysis of legal solutions in the field of court enforcement of claims from joint bank accounts. The analysis in question leads to the conclusion that the legal solutions adopted in the Code of Civil Procedure which pertain to enforcement from joint bank accounts establish adequate legal guarantees with respect to the protection of the rights of third parties, i.e. of persons whose role in such proceedings is not that of debtors, but merely of co-owners of a bank account held jointly with the debtor.