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Summary

of the article: **Judicial Activism**

Judicial activism which is founded on Article 178(1) of the Constitution gives judges a right to interpret a statutory act [act of parliament] or a regulation in a pro-constitutional manner, in accordance with Article 8(2) of the Constitution. This is one of four forms of direct application of the Constitution. Pursuant to Article 178 of the Constitution, the framework of free judicial decisions is shaped by the Constitution and statutory acts. Since judges are bound by the Constitution, they are equally bound by its values and axiology. The idea of a fair decision, as far as the application of law by the court is concerned, is a part of the judge function's ethos. Pursuant to Article 175(1) of the Constitution, the administration of justice in the Republic of Poland is implemented by: the Supreme Court, common courts, administrative courts and military courts. Fairness must be taken into account in every act of interpreting and applying law by a judge. The above arises from the fact that justice, human dignity (Article 30 of the Constitution) and good are universal values, and this is an argument for using them as guidance, while interpreting legal regulations. Only an independent judge is able to act in this manner. The stronger the need to run the state of law, the more emphasis is put on who judges are and who they should be. Judicial independence is not a privilege of judges, but it is a privilege of every person's right to a fair trial before a court that is free from pressures.

A judge, who is respected, takes proper care of the good entrusted to them and administers justice by giving fair rulings. This is also a moral duty of a judge.

Keywords: justice of law, fairness of law, legalistic justice, law and axiology, judicial dimension of law, Constitution and the contents of law, direct application of the Constitution

Summary

of the article: **Language of effective communication with a public authority body**

Polish language, as a cultural good, is subject to legal protection not only under the Constitution but also under many ordinary statutory acts [acts of parliament]. It is a duty of any public authority body to ensure that official texts are comprehensible and written in correct Polish, as this is not only a manifestation of care about national culture, but also satisfies the obligation imposed on public authority bodies (under Article 8 and 9 of the Code of Administrative Proceedings) to build trust and provide any necessary information on the circumstances of cases.

Keywords: Constitution, official language, Polish language, administrative proceedings, public authority body

Summary

of the article: **An indirect prohibition *reformationis in peius* in the tax proceedings – constitutional aspects**

The principle of the non-deterioration of the appellant's situation belongs to the catalogue of principles governing all of the proceedings. It was also included within the framework of the tax procedure, however, the prevailing regulations and the practical application thereof indicate that there exists an area where no sufficient protection is afforded from the point of view of the prohibition *reformationis in peius*. This takes place in a situation in which after the taxpayer exercised its right to judicial review, the tax case was referred for review to the first instance or to the second instance body (the indirect prohibition *reformationis in peius*). From the practical experience it appears that at this stage the appellant's situation may be deteriorated, taking into consideration its position at the time preceding the lodging of a complaint to the administrative court. This takes the form of a tax assessment in an amount higher than the one determined in the former decision, which was set aside by the court in response to the initiative launched by the taxpayer.

Such practice was the subject-matter of judicial decisions of administrative courts and no violation of law was discerned in this regard. However, the analysis of this institution should be made with consideration given to the constitutional standards. In particular, the following principles stemming from the Constitution of the Republic of Poland are meant here: the principle of trust in the state and in the codified law (statutory law) and the principle of legal safety, the principle of non-taking advantage by the state of unlawful actions taken the state bodies, the principle of property protection and the right to have recourse to the court of law. The taking into consideration of the constitutional values leads to the conclusion that the deterioration of the appellant's situation as a result of appeal measures it has lodged at its own expense gives rise to legitimate doubts as to the compliance with the constitutional principles. This is indirectly confirmed by the direction of the evolution of the tax regulations, including the solutions drafted within the framework of the new Tax Ordinance.

Keywords: non-deterioration of a taxpayer's situation, appeal measures, the Constitution of the Republic of Poland,

Summary

of the article: **The review of discretionary powers of historical monuments protection bodies in the Polish administrative courts case law**

The sovereign nature of the forms of operation of historical monuments protection bodies, the polarization between the individual interest and the public interest, discretion margin in the activities of the authorities, all these elements create a kind of "explosive mixture", which is the source of the legal disputes between the owners of historical monuments and historical monuments protection bodies. The key element of the guarantee of individual freedom is judicial review of public administration. Therefore, it is a matter of dispute to which extent the public administration is subject to judicial review when performing the tasks entrusted. The aim of this article is to analyze how Polish administrative courts approach the problem. What methodology of the review of the margin of they use? How they solve the dilemma: who makes the final decision – the body or the court? Whether they retain the judicial self-restraint or rather they are ready willing to interfere in the merits of the decision?

Keywords: protection of historical monuments, judicial review, margin of discretion, discretionary powers, public and individual interest, property right

Summary

of the article: **President of the Material Reserves Agency's competence to decide on the liability of the member of the capital company's management board for spare payment and financial penalties unpaid on time**

The article deals with the issue of the possibility of adjudicating the liability of management board members for arrears of companies due to crude oil's charge and a fine imposed under the provisions of the Act of 16 February, 2007 on stocks of crude oil, petroleum products and natural gas and the rules for dealing with threats to fuel security of the state and disruptions in the oil market. In the opinion of the authors, adjudicating such liability is included in the provisions of the binding law. A wide range of referral to the provisions of the Tax Ordinance provides grounds for considering that in the case of both public law liabilities it is permissible to apply the provisions on the liability of a member of the management board of a capital company in accordance with the principles provided for in Article 116 of the Tax Ordinance.

Keywords: minimum stocks of crude oil and/or petroleum products, liability of a member of the management board of capital company, crude oil's charge, the supply of crude oil, emergency stocks

Summary

of the note to the judgment of the Supreme Administrative Court of 19 September 2018 (Case No. II GSK 2404/16)

The commented judgment concerns the decision of the Patent Office of the Republic of Poland declaring the invalidity of 'Upper guide for sliding doors' (*Prowadnik górny drzwi przesuwnych*) industrial design. Both before the Supreme Administrative Court and before earlier instances it was correctly established that the design was identical to the product that the applicant requesting cancellation had presented earlier in its product catalogue; the applicant also provided invoices to prove its selling activity before the date of registration. An important part of the judgment is the refusal to share the first instance court's view that 'the lack of individual character is equivalent to the lack of novelty'. The Supreme Administrative Court stated that the novelty and the individual character are separate criteria, and if any of them is not satisfied the mark should not be subject to protection. Despite emphasising the distinctiveness of the two criteria, the Supreme Administrative Court did not avoid an error in assessment thereof. It repeated, after the decision under review and the judgment of the Voivodship Administrative Court, that the guide is identical to the one disclosed earlier, but shared the opinion included in the decision under review to the effect that the result of this is lack of individual character. Since all essential features of the disputed design are identical to the previously disclosed one, this speaks for the lack of novelty.

Keywords: industrial design, declaration of the registered mark invalid, novelty of design, individual character