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ADRES REDAKCJI
Naczelny Sąd Administracyjny
00-011 Warszawa, ul. G.P. Boduena 3/5
tel. 22 551-67-25, e-mail: msawicka@nsa.gov.pl; www.nsa.gov.pl/zeszyty-naukowe.php

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SPIS TREŚCI

TABLE OF CONTENTS

STUDIES AND PAPERS

Summary

of the article: **In the wake of the reborn judiciary of the Second Polish Republic**

This is the text of a lecture delivered to commemorate the centenary of regaining independence – on the eve of the 100th anniversary of the establishment of the Provisional People's Government of the Republic of Poland in Lublin. In the socialist tradition before the World War II the date of formation of this government was the date of regaining independence, although another date gradually gained prominence: 11 November 1918 – the date of the end of the World War I in the West and, at the same time, the day when Józef Piłsudski, freed by the Germans, returned to Poland and was entrusted by the Regency Council of the Kingdom of Poland, formed by the German and Austro-Hungarian occupying forces, with military power (and, after three days – with full power). The date of 11 November, which has been the National Independence Day since 1989, did not become the official Independence Day until 1937. However, the formation of the institutions of the reborn Polish state on the territory of the Kingdom of Poland began much earlier – first within the framework of civic institutions created spontaneously after the outbreak of the war with the consent of the authorities of Russia, of which the Kingdom was part, then the institutions of the 'Polish Kingdom', established and developed gradually under the control of the new occupation authorities. Among those institutions an important role was played, as from 1 September 1917, by the judiciary of the Polish Kingdom, with the Supreme Court operating since 14 December 1917. Various difficulties in the creation of judicial institutions and their subsequent development in the territories acquired by the reborn Polish state, as well as the difficulties in their unification, are addressed. As far as the Supreme Court is concerned, unification took place as early as in 1919; however, as regards common courts, it did not take place until 1929. Administrative courts developed separately. The establishment of the Supreme Administrative Tribunal in 1922, which was a temporary solution, was of fundamental importance; however, even on this basis this branch of the judiciary was not unified in the Second Republic as the system of lower instance judicial authorities in the former Prussian partition was maintained.

Keywords: rebirth of the Polish state, Second Polish Republic, common courts, Supreme Court, Supreme Administrative Tribunal

Summary

of the article: **The subject of protection in cassation proceedings, and the issue of depriving a party of the possibility of defending its rights**

This paper concerns selected elements of protection of the objective legal order in cassation proceedings before the Supreme Administrative Court (SAC). This issue is of key importance in terms of research on the instances of administrative court proceedings. In this respect, the most important issue is the possibility to overturn the judgment of the court of first instance in cassation proceedings on grounds of invalidity of the proceedings. The value which is protected by the institution of invalidity of proceedings is the rule of law of administrative court proceedings. As the prerequisites for invalidity in cassation proceedings are taken into consideration *ex officio* by the SAC, the question arises as to whether the plea that a party (participant in the proceedings) is deprived of the possibility of defending its rights in administrative court proceedings may be formulated as the ground for a cassation appeal by any party, or only by an entity whose rights have been potentially infringed. This article supports the position of the SAC that a cassation appeal cannot effectively invoke such an infringement against other participants in court proceedings.

Keywords: administrative court proceedings, administrative courts, Supreme Administrative Court, deprivation of the possibility to defend rights, party to the proceedings, cassation appeal

Summary

of the article: **The legal nature of the decision on the environmental conditions of venture realization**

Decision on the environmental conditions is an institution regulated by the provisions of the Act of 3 October 2008 on sharing information about the environment and its protection, public participation in environmental protection and environmental impact assessments (Dz.U. [Journal of Laws] from 2018 item 2081 as amended). This decision plays a very important role in the investment process. First of all, the possibility of issuing other administrative acts, in particular decisions on building permit or planning permission, depends on obtaining this decision. The aim of this institution is to determine possible negative effects on the environment related to the implementation of projects. The proceedings regarding the issue of an environmental decision are complex, multi-stage proceedings, requiring the activity of both the entity planning the project implementation and the local community. Obtaining a decision on environmental conditions is for the investor one of the first stages of preparation of the planned investment and plays a very important role, because it affects not only the conditions of its location or characteristics, but above all determines the possibility of its implementation.

This article attempts to determine the legal character of decisions on environmental conditions as an administrative act, indicating the basic features of this decision, based on the division of administrative acts introduced in the literature. The article also contains an analysis of the provisions regarding the content and justification of environmental decisions, including in particular the obligations that an administrative authority may impose on the investor in the framework of this decision, taking into account practical problems arising from the application of these provisions. The article also describes the effects that may be caused by issuing a decision on environmental conditions both for the public administration bodies, as well as for the investor or designer of a construction object.

Key words: decision on the environmental conditions, environmental impact assessment, environmental conditions of venture realization

Summary

of the article: **Case law of Polish administrative courts on good faith in tax law**

The paper forms a substantial part of chapter III "The case law of Polish administrative courts" of the author's master thesis.

In the course of the argumentation, the assumptions underlying individual judgments of Polish administrative courts are presented, providing examples of interesting jurisprudence concepts of the Polish administrative courts in the field of good faith. In most cases, an additional factor in choosing specific judgments was the fact that they had not yet been analysed more widely by the doctrine.

The paper primarily deals with the issue whether the case law of Polish administrative courts regarding good faith complies with the judgments of the Court of Justice of the European Union. To organize the argumentation, a concept was adopted to present the main assumptions underlying the individual rulings of Polish administrative courts, and juxtaposing these assumptions each time with the position of the Court of Justice of the European Union presented in individual judgments.

The argumentation also seeks to find which of the rulings had the greatest bearing on Polish case law. The CJEU judgment of 21 June 2012 in joined cases C-80/11 and C-142/11 *Mahagében Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága*[1] *and the CJEU judgment of 22 October 2015 in case C-277/14 PPUH Stehcemp sp.j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek v Dyrektor Izby Skarbowej w Łodzi*[2] may be considered to be such a ruling.

The paper concludes with a summary containing the main findings on the compliance of Polish rulings with the position of the CJEU, which logically follows from the presented argumentation. The main findings include the conclusion that the case law based on the rulings of Polish administrative courts in the area of good faith, shows a number of differences in relation to the position of the CJEU, such as the excessive rigorism of the Polish administrative courts in tax cases, attempts to shift the burden of proving the absence of good faith to the taxpayer, or unreasonably requesting that the taxpayer carry out a general inspection of each contracting party. When comparing the indications resulting from the Polish case law, that are intended to prove the existence or non-existence of good faith on the part of the taxpayer, one should note that the requirements of national authorities and courts are not very often justified by the case law based on the CJEU judgments. This proves that there is a significant discrepancy between the case law of the CJEU and the practice of the Polish courts.

All of the arguments presented in the paper lead to the conclusion that, as a rule, the body of case law resulting from the judgments of the CJEU is not sufficiently reflected in the practice of Polish tax authorities and administrative courts.

Keywords: good faith, tax law, Court of Justice of the European Union

1 ECLI:EU:C:2012:373.

2 ECLI:EU:C:2015:719.

Summary

of the article: **Inheritance and gift taxes in Poland and Germany. Selected issues**

The following conclusions can be drawn from the comparison of structural elements of the tax structure, the Polish and German act on inheritance and gift tax:

– there are no significant differences in the structure of the taxpayer and the subject of taxation (and the existing ones are related to different civil law solutions – a gift in the event of death, a succession contract),

– difference is in the taxation of succession, not provided for in Polish civil law,

– moment when the tax obligation arises is differently shaped, because in the German law, taxable income (retention) is already taxed,

– in the scope of determining the taxable base, the German law uses a flat-rate solution allowing the application of the principle that the tax rate would be as low as possible,

– the German Act does not apply, contrary to Poland, a broad subjective exemption, and in the case of acquisition of an enterprise (current assets), it also does not always provide for a total exemption,

– in the German Law on inheritance and gift tax, thresholds have been defined in a differentiated way, taking into account not only the inclusion in the tax group,

– in both laws, instrumental duties have been regulated differently, as it seems the German law is not as strict as Polish in this respect.

In general, the solution covering the subject matter of this tax of any (in principle) cases of gratuitous acquisition of property and property rights is considered favorable for taxpayer of inheritance and gift taxes in Poland.

Keywords: inheritance and gift taxes in Poland; inheritance and gift taxes in Germany, subsequent succession and inheritance and gift taxes in Germany, taxation on repeated acquisition of the same property in Germany, the offsetting of foreign inheritance and gift taxes, activity-based exemptions, person-based exemptions, tax groups