SPIS TREŚCI

TABLE OF CONTENTS

STUDIES AND ARTICLES

VARIA

JUDICIAL DECISIONS

CHRONICLE

BIBLIOGRAPHY

Summary

of the article: The Tribunal of State – stagnation or changes

It's worth considering if we actually need a tribunal appointed anew every 4 years with a different bench whose activities are limited – as was the case in the years 2001–2005 – to participating in the nomination of its members. Following the example set by certain democratic states the powers of the liquidated Tribunal of State could be transferred to the Constitutional Tribunal. And if such body as the Tribunal of State exists it could be revived somehow. This article attempts to present certain suggestions to that extent.

The Tribunal of State decides on liability for violations of the Constitution or a law or act committed in connection with an office held or within its scope. The following persons shall be constitutionally liable towards the Tribunal of State: the President, the Prime Minister and members of the Council of Ministers and the other persons holding the highest state positions. The very construction of constitutional liability complies with the standards of the democratic state of law. However, there are no effective mechanism of enforcing such liability. One of such mechanisms would be extending its subject-related scope by including the deputy-ministers and the MPs.

Unfortunately, the Polish political culture does not imply resignation of the persons holding the highest state positions upon institution of criminal proceedings against them. Hence the proposal of the Tribunal of State to make decision on suspending such persons in his or her duties until the competent court makes its final and valid decision.

Alike in the case of the MPs, the persons holding the highest state positions may display behaviours which impair the dignity of their office but do not represent basis for instituting criminal proceedings. In such event the Tribunal of State should be able to decide on removing such persons from their positions.

As the Tribunal of State has jurisdiction over the persons holding state positions then it would be logical to entrust to it the cases for dismissal of a judge and grant to it the powers to decide on withdrawing the immunity of a judge and on the disciplinary liability of the judges and public attorneys.

The above proposal to extend the powers of the Tribunal of State and the resulting increase of its systemic role must be coupled with increasing its independence of the Parliament of one term and making its appointment a non-political process. The most simple solution would be making the election of its members similar to the election of the judges of the Constitutional Tribunal. Therefore the Tribunal of State should be composed of 15 members – alike the Constitutional Tribunal – appointed individually by the Sejm for the term of 9 years.

Summary

of the article: The justice of taxation as the legislative and judicial premise

Justice must always with the quality of good law and at the same time must be the basic criterion for evaluation of law. This is due to the fact that law should be just by its nature. Although the notion of justice, including tax justice, is exceptionally ambiguous, but one cannot negate the existence of justice. The laws and regulations which are not just, shall remain only laws and regulations but will never acquire the dignity of law.

The constitutional regulations applying to the principle of equality in taxation and the principle of universality of taxation evoke a few reflections.

Firstly, they impose the understanding of the function and role of the state in the area of fiscal legislation. The Constitution set out the principles governing the relations between the public authorities and an individual.

Secondly, in the democratic state of law, the law, including the tax laws, must be the instrument of freedom. The touchstone shall be the effectiveness with which the constitutional regulations counteract such solutions in the area of fiscal legislation which are arbitrary as they obviously breach the prevailing constitutional standards.

Thirdly, the fiscal legislation displays the dilemma related to the substance of the tax liabilities. It concerns settling the ethical, legal and economic conflicts when deciding what is due and to whom in the area of taxation i.e. which principles should be used in order to determine the substance and scope of tax liabilities and how to distribute them between the taxpayers.

Fourthly, there is a problem of liability of the public authorities for defective fiscal legislation. The key role is played here by the results of the decisions of the Constitutional Tribunal as to the unconstitutionality of laws and regulations in the area of fiscal legislation.

Summary

of the article: The legal interest of the applicant in the proceedings for cancellation of the right of protection for a trademark in the practice of administrative courts

This article discusses the very important and interesting problems of understanding, both in the literature and, first of all, in the judicial decisions, of the legal interests determining the recognition of a title of a party to appear in proceedings before administrative authorities and administrative courts. The authors summarise the opinions in that respect expressed in the literature and confront them with the judicial decisions of the administrative courts. They notice that at the level of general, notional ponderings there are no material discrepancies in the understanding of legal interest, while in the judicial decisions, in which that notion refers to a particular legal and factual status, one can notice certain diversity. This article analyses a few judicial decisions in which the court examined the existence of legal interest being the basis of request to cancel the right of protection for a trademark. The analysis includes critical elements.

Furthermore, the authors emphasise that the understanding of legal interest of an applicant in judicial decisions (giving that term a narrower or wider scope of meaning) translates into the scope of freedom to carry on business activity with the use of competing trademarks. It also delimits the possibility of defending one's rights in proceedings before administrative authorities and administrative courts.

The arguments raised in the article are duly corroborated with quotations from the literature and judicial decisions.

Summary

of the article: The stamp duty on a power of attorney (proxy) in proceedings before administrative courts (comments against the background of the Act on Stamp Duty of 16 November 2006)

This article presents the general problems related to the principles of payment of the stamp duty on a documents evidencing the granting of a power of attorney (proxy) in proceedings before administrative courts introduced in the Act on Stamp Duty of 16 November 2006 (Journal of Laws of 2006, No. 225, item 1635, as amended) which came into force on 1 January 2007.

The author used the comparative method – the issues regulated in the above mentioned act is presented in connection with the regulation of the said problem prevailing until 31 December 2006 under the Act on Stamp Duty of 9 September 2000 (Journal of Laws of 2004, No. 253, item 2532, as amended). The analysis has the nature of a comment to the consecutive provisions of the Act of 16 November 2006 regulating the issues related to the submission of a power of attorney (proxy) in proceedings before administrative courts.

The author presented (within the above mentioned limits) the subject scope of the obligation to pay the stamp duty, among others, specified the types of documents the submission of which triggers the obligation to pay the stamp duty and included the doubts related to the payment of the stamp duty on submission of a document evidencing the granting of a substitutive power of attorney and an authorisation to representation in proceedings granted to a legal trainee which arise in the context of regulation. She also presented the admissible method of evidencing the payment of the stamp duty, in particular the problems related thereto in the practice of the administrative courts. She charcterised the circle of entities obliged to pay the stamp duty and the principles of liability for defaulting

on that obligation. This publication also includes comments on discrepancies between the provisions of the Act and the implementing regulations thereto (in particular concerning the moment of the arising and expiration of the tax liability) and the provisions of the Tax Code of 29 August 1997 (Journal of Laws of 2005, No. 8, item 60, as amended). The issues related to exemptions from the obligation to pay the stamp duty in the Act of 16 November 2006 were discussed marginally due to the vast scope of that problem.