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Summary

of the article: **Constitutional grounds of the right to an appeal in administrative procedure**

According to Art. 78 of the Constitution of the Republic of Poland “Each party shall have the right to an appeal against judgments and decisions made at first stage. Exceptions to this principle and the procedure for such appeals shall be specified by statute”. This provision grants the public subjective right to an appeal in the administrative procedure. Art. 15 of the Code of Administrative Procedure confirms this right providing that proceedings shall be two-tier, with provision for appeal. A party may bring an appeal against a first-instance decision only at one further instance. The proper body for dealing with an appeal is the public administration body of a higher level, unless a different appealing body is provided for by law. No appeal may be brought against a decision given at first instance by a minister or the local government appealing board, however, a dissatisfied party may ask the body to reconsider the case and the regulations regarding appeals against decisions shall apply in such case.

In the opinion of the Constitutional Tribunal, an application to reconsider the case from the constitutional perspective is equivalent to an administrative (hierarchical) appeal and the norm resulting from Art. 78 of the Constitution applies hereto. Scholars, courts and the Constitutional Tribunal are currently facing the necessity to revise the concept of an administrative appeal. The latest steps of Polish legislation, especially taking into account the patterns practised in other systems of law, encourage to advance the thesis about a large number of such appeals. Therefore, the following conclusion can be drawn: hierarchical appeal is the most important, but not the only means of exercising the right to an appeal in the administrative procedure.

Summary

of the article: **Prescription of tax liabilities – constitutional analysis**

The purpose of this article is to present the basic constitutional problems arising in the context of prescription of tax liabilities. This mechanism of cancelling liabilities being an element of the public fiscal policy requires the legislator to scrupulously balance many constitutional values. The author emphasises that prescription of tax liabilities introduces to the system of tax law a specific balance in the relations between an individual and a public authority. The necessity for such a mechanism is an element of constitutional axiology, particularly because it implements the values related to the principle of legal security and reliability of transactions (Art. 2 of the Constitution). The latter provision includes a legislator-addressed directive of developing the regulations that will promote cancelling – with the flow of time – the status of uncertainty. From the constitutional perspective the flow of time may strengthen the justified presumption that a taxpayer has duly discharged his/her tax liabilities.

The author also discusses the legislator's selection of the period of prescription emphasising that the prescription may not encourage taxpayers to evade taxation and treat the prescription instrumentally as a tool allowing them to avoid the payment of a tax after a certain period of time. On the other hand, the period of prescription delimiting the period when tax authorities may institute tax proceedings against taxpayers should not become a trap for honest taxpayers.

The article includes comments concerning the statutory conditions of prescription that should respect the constitutional principle of generality and equality of taxation. The author claims that when the regulation of prescription fails to comply with the constitutional guidelines an individual invoking the constitutional guarantees of ownership may not be denied protection.

Summary

of the article: **Prohibition on abusing EU tax law as a general principle of EU law?**

The article presents the development of the concept of the prohibition on abusing law as a general principle of law. The analysis of the CJEU's judicial decisions shows that it permits counteracting the circumvention and abuse of law and evasion or avoidance of obligations.

The EU legislator introduced the obligation to apply the solution preventing tax avoidance, tax evasion and tax law abuse in the regulations concerning tax law and – to a lesser extent – customs law.

In the opinion of part of the doctrine the principle of prohibition on abusing law as the general principle of EU law has already developed. However, it is not a common view. It gives rise to doubts due to creating a conflict with the unquestionable general principle of EU law – the principle of certainty in law. Applying the prohibition on abusing law in practice will in many instances result in the simple negation of the linguistically-understood provisions of law, the teleologically justified rejection of the results of the linguistic interpretation. The clause developed in the CJEU's judicial decisions is perceived as incomplete and rather unclear, which is a further argument in favour of recognising it as inconsistent with the principle of certainty in law. A conflict between the potential principle of certainty in law and the principle of supremacy of EU law is also mentioned in this context.

Even those who support the thesis that a general principle of prohibition on abusing law is already in force do not deem the fact that it is in force as an obligation imposed on the Member State to combat the abuse of law in each case, although some of them claim that national courts must follow the legal doctrine developed by the CJEU.

Summary

of the article: **Remuneration of an attorney appointed within the framework of legal aid in proceedings before an administrative court**

At the beginning the author emphasises that the regulation of awarding remuneration to an attorney appointed within the framework of legal aid in proceedings before administrative courts is separate from the solutions prevailing in the civil procedure. Such remuneration, unlike the remuneration of an attorney in civil proceedings, is not an element of the costs to be reimbursed by the other party, but is awarded from the State Treasury. It excludes from applying thereto the provisions setting out the principles on which the parties reimburse each other for the costs, in particular concerning the time limit for filing a request or the awards in which such reimbursement is determined.

The author presents the view that awarding the remuneration to an attorney is a decision made within the framework of legal aid. He justifies reaching for the provisions regulating certain procedural issues concerning legal aid, e.g. those specifying the procedure of considering such requests and the remedies against decisions made as regards such requests.

The article also discusses the substantive grounds for awarding the remuneration. The author states in particular that the remuneration may be due only for the activities that the attorney actually performed on the basis and within the limits of the power of attorney related to appointing the attorney within the framework of legal aid, i.e. for the activities for which such attorney was appointed. At the same time the author emphasises that in the course of making the decision concerning the remuneration the implementing regulations may be applied only accordingly. Their meaning is limited mainly to determining the amount of the remuneration due to the attorney in the specific procedural situation.

The author also points out that the provisions regulating the proceedings before administrative courts have gaps that may not be satisfactorily filled by way of interpretation and as a result require a legislative intervention. In particular, the issue of the parties to the proceedings in the case in question must be regulated, including the rights and status of the applicant and then his legal successors or entities representing his interests, if he has lost his capacity to perform actions in court proceedings.

Summary

of the article: **Procedural requirements of an application to reinstate a time limit in proceedings before an administrative court**

This article discusses the preliminary procedural requirements of an application to reinstate a time limit in proceedings before an administrative court regulated by the Law on Proceedings Before Administrative Courts dated 30 August 2002 (the Law). Under the Law such application should meet both the formal conditions applicable to all pleadings set out in Art. 46 of the Law and the preliminary procedural preconditions set out in Art. 86–87 of the Law that must be satisfied in order for the application to be considered. The author notes that if the formal requirements set out in Art. 46 of the Law or certain procedural requirements set out in Art. 87 of the Law are not satisfied, this defect may be rectified in the proceedings to supplement or correct a pleading referred to in Art. 49 of the Law.

The article analyses the main problems related to the preliminary evaluation of admissibility of an application and its submission within the time limit set out in Art. 87.1 of the Law. The author discusses the following issues that raise the most serious doubts in the decisions of administrative courts and the literature: the deadline for a last-resort attorney to submit the application to reinstate a time limit and perform the late procedural action when he/she was appointed after the lapse of the time limit for performing such action; the type of the judicial decision to be made following the conclusion that the application to reinstate the time limit was submitted after the lapse of the time limit of one year set out in Art. 87.5 of the Law and no exceptional event has occurred; the necessity to perform a procedural action when it has been already performed in breach of a time limit and the problem occurring only when a party, challenging the breach of the time limit to perform a procedural action – to apply a remedy at law, submits a relevant appeal against the decision on its rejection, at the same time requesting the court to reinstate the time limit to apply the remedy at law the application of which in breach of the time limit is challenged. Furthermore, the author discusses other preconditions of admissibility of an application to reinstate a time limit.

Given that the general shape of the institution of reinstatement of a time limit in proceedings before an administrative court was copied from the civil procedure, the article includes references to the relevant provisions of the Civil Procedure Code and the related literature and judicial decisions of common courts. Therefore, the author concludes that applying the institution of reinstatement of a time limit in proceedings before an administrative court one should draw from judicial decisions made in this area on the basis of analogous provisions of the civil procedure, but one must not ignore the specific nature of proceedings before an administrative court and, in general, the separate status of administrative courts that require independent interpretation of the provisions of the Law on Proceedings Before Administrative Courts dated 30 August 2002.