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STUDIES AND ARTICLES

JUDICIAL DECISIONS

Summary

of the article: **The succession of public-law rights and obligations**

This article discusses the admissibility of transferring public-law rights and obligations under an administrative act.

Until very recently it has been consistently accepted in the Polish legal literature discussing public-law issues that transferring public-law rights and obligations is impossible due to their personal nature i.e. a public authority grants them to a specific entity. It was commonly recognised as inadmissible for a public authority to determine the scope of rights and obligations of an entity and for that entity to transfer those rights (and obligations) to other entities.

That traditional approach to this problem must be verified. The legislator has introduced a number of regulations representing a deviation from the indisputable principle.

In certain, clearly defined cases, the legislator allowed an authority to grant its consent to the transfer of rights and obligations resulting from an act of an administrative body (an individual administrative act). It is a specific continuation of the earlier concept as it permits transferring rights and obligations but only upon a consent of an authority granted in the form of an administrative act. It applies, among others, to a „construction permit" which may be transferred to another entity by force of another decision.

Notwithstanding the above, it has become necessary to regulate the situations when the rights and obligations under an administrative act are addressed to e.g. entities carrying on business activity which e.g. intend to sell their business or to merge with another entity or to effect a demerger or organisational and legal transformation.

Attempting to meet such needs the legislator has introduced a number of regulations providing for the succession of all public-law rights and obligations. Those regulations indeed constitute a new principle of transferability (succession) of all public-law rights and obligations by force of legal actions specified by law performed by the parties to legal transactions without the administrative authorities being required or even able to make decisions specifying such rights and obligations. The legislator has introduced certain restrictions to that general principle constituting exceptions which must be explicitly specified by the legislator.

Seemingly, in the administrative law we have to do with two separate situations – individual succession which in principle is inadmissible, unless the legislator explicitly provides for an exception, and general succession. The latter occurs when an event specified by law has taken place (e.g. an action of an authority) unless the legislator provides for explicit exceptions excluding the succession of a specific set of rights and obligations.

Summary

of the article: **An act of inspection proceedings as the object of inspection activities of administrative courts**

The inspection proceedings defined in the Act on Tax Inspection dated 28 September 1991 are a particular administrative procedure. The actions taken in the course of the inspection proceedings exceed the set of actions comprising the classical model of inspection. A tax inspection body does not restrict its actions to comparing the prevailing status (designations) with the actual status (implementations), but also performs certain actions of binding nature directly intervening into the rights and obligations of the entity under inspection. In spite of the appropriate application of the Tax Code in that respect, those are neither tax proceedings nor tax inspection.

The very nature of the inspection proceedings is as complicated as the nature of the administrative acts issued in the course of those proceedings. Those acts to a various extent are subject to inspection by the administrative courts. Due to their specific nature, in the course of the inspection there arise numerous and often ambiguous problems.

This article describes the nature of the inspection proceedings and the resulting specific nature of the administrative acts issued by the tax inspection authorities. Analysing the doctrine and the judicial decisions the author identified the main problems related to inspection of those acts by the administrative courts. Those problems are rooted mainly in the incorrect designation of the decision-making powers of the tax inspection authorities. It predominantly applies to the decisions in tax matters as well as the results of inspection. The author attempted to solve some of those problems.

Furthermore, sharing the opinion that the form of functioning of the tax inspection authorities must be significantly changed the author formulated his own *de lege ferenda* conclusions in that respect. Among them he postulated that the tax inspection authorities be deprived of the right to issue tax decisions and he presented a number of systemic arguments in support of his postulate.

Summary

of the article: **The principle of equality in the judicial decisions of the Supreme Administrative Court and the Voivodship Administrative Courts**

Under Art. 32.1 of the Constitution of the Republic of Poland „All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities" and under Art. 32.2 „No one shall be discriminated against in political, social or economic life for any reason whatsoever". Those are not „just" constitutional provisions as equality is one of the rudimentary principles defining the status of an individual (and other entities, as applicable) and relations between an individual and public authorities. The introductory part of this article discusses the notion of equality in the meaning defined by the science of constitutional law.

This article analyses the decisions of administrative courts in order to verify the application of the output of the legal doctrine in the area of equality and its development in relation to the application of law to the specific entities in various areas of community life. Under Art. 184 of the Constitution „the Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration". The

statutory norm was developed in the systemic laws. Under Art. 1.2 of the Law on the System of Administrative Courts, control shall be exercised in respect of compliance with law and in particular breach of substantive law by its erroneous construction if it affects the result of a case. In practice the administrative courts may easily refer to the basic constitutional principles. The judicial decisions of administrative courts in the area of protection of the constitutional rights and freedoms have become increasingly important and deciding in the individual administrative cases is one of the guarantees of human freedoms and rights.

This analysis has led to a few conclusions the most important being the following ones.

There exists a strong relation between the content-related decisions of administrative courts and the procedural bases of their functioning. For example the cassation control performed by the Supreme Administrative Court covers the application of procedural and substantive law, but the grounds of a cassation complaint are fairly limited due to the fact that a cassation complaint may be considered only to its extent (unless there exist grounds for the lack of its validity). For this reason the Voivodship Administrative Courts seem to have slightly more room for application of the Constitution. This is supported by Art. 134.1 of the Law on Proceedings Before Administrative Courts providing that a court shall decide to the extent of a given case while not being bound with the charges and motions included in the complaint and the invoked legal basis.

In principle the administrative courts do not decide if the criteria of differentiation of entities selected by the legislator are relevant. An arbitrary decision in this area may serve as the basis for a reference for a ruling to the Constitutional Tribunal. The argument of reasonable application of law seems to be playing a more important role than in the decisions of other courts. The judicial decisions of administrative courts clearly show the need for a reasonable justification of all differentiations in the legal situation of the subjects of law made by the public authorities applying law.

A considerable number of the verified judicial decisions concerns the detailed aspects of equality, and in particular the equality as a tax principle, equal access to public service or access to medical benefits funded from public means. The issue of equality of subjects of law is most probably as important to the protection of human rights and freedoms as the general equality before or under the law.

Summary

of the article: **The method of implementation of a Community regulation on protection of designations of origin**

Qualified geographical indications play an important role in the contemporary business relations. Their protection promotes the undertakings enjoying economic success due to the application of traditional methods of production and ensuring quality and is in the best interest of the consumers who expect to buy products meeting specific conditions and displaying original qualities. Covering such indications with protection under Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs directly applicable in the Member States (replacing the regulation of the same nature dated 14 July 1992) should unify the standards of protection on the Common Market. The interpretation of the above regulation by the European Court of Justice serves the same purpose. Although the judgement of the ECJ presented in this article was based on the former act, but the interpretation of the selected articles included therein remains up-to-date and obligates the national courts take it into consideration when settling disputes concerning the implementation of the Regulation.

This article discusses the limits of protection of the qualified geographical indications in the Member States other than the place of business of the entity holding rights under a geographical indication. In its judgement of 26 February 2008 (Commission of the European Communities v Germany, Case C-132/05) the ECJ provided a useful response to the preliminary question referred by a national court if a Member State should prosecute on its own initiative (*ex officio*) an infringement of the Regulation such as the placing on the market of the cheese under the designation :Parmesan;, which does not conform to the specification of

the registered name (protected designation of origin) :Parmigiano Reggiano;. The ECJ based its arguments presented in the judgement on the assumption that in order to ensure the effective protection of the qualified geographical indications it is not enough for the entity holding rights under a geographical indication to exercise control but also for the Member States to co-operate and thus to prevent the abuse of such protected designations of origin or certain their elements. Due to the lack of uniform regulations for the entire Community the procedural and, to certain extent, substantive-law issues related to implementation of the Community law are regulated on the national level. In its judgement the ECJ emphasised that under the current normative Community order regarding the implementation of the Regulation the Member States are not obliged to take the relevant measures on their own initiative (*ex officio*).

Propagation of those issues has both theoretical and practical dimension. Due to the fact that the EC regulations are directly effective in the national laws, which the Supreme Administrative Court has emphasised in its judgements, special attention is paid to their uniform application in the Member States as in practice the construction of their provisions is far from being uniform which violates the principle of certainty of law. Publishing the judicial decisions of the national courts and the ECJ in Luxembourg made in cases concerning also the question discussed in this article has become increasingly important for the limits between the permitted and forbidden to be marked more clearly.