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Summary

of the article: **Access to public information in the judicature of administrative courts (selected issues)**

The article discusses basic problems of administrative courts' judicature in connection with application of the Act on Access to Public Information. It was highlighted that in the cases related to access to public information, in principle, the current line of judicature regarding broad understanding of the term of public information is being continued. However, at the same time, by considering these cases, differences of quite substantial nature occur. They refer, first of all, to linking the obligation to provide information with the fact of its material reflection. Accepting the above thesis, the author emphasizes the necessity and possibility of executing control in this scope by administrative courts. The discrepancy refers also to the nature of the so called internal documents, i.e. such documents that are not addressed to external entities. They may be used to share information between employees of a given entity, they may specify the principles for their conduct in specific situations, they may also represent a preparatory stage of an act constituting a form of activities of a given entity. In the author's opinion, excluding this type of documents on a general basis from the obligation to make them accessible under the Act on Access to Public Information has no legal basis. Such limitation may occur only under an explicit regulation included in a specific act.

In the article also other disputable issues have been indicated, regarding, among others, the scope of court control of the decisions denying access to public information due to the protection of confidential information, personal data, right to privacy and secrecy of an entrepreneur. While analysing the aforementioned issues the author points out that protected secrets are characterized by the material element (material premises for keeping information secret) as well as the formal element (explicit, and sometimes alleged will of keeping information secret). At the same time it is emphasized that both these elements are subject to the control of administrative courts. It cannot, however, come down only to examination of the aforementioned premises.

Cases of collision of specific values require also finding a certain balance between them. Hence this control has to be exercised in the context of a specific case, considering the constitutional principle of proportionality and weighing interests, stemming from art. 7 of the Code of Administrative Proceedings.

Summary

of the article: **Trial and material aspects of trademark protection right annulment proceedings**

In the article many important, often controversial issues regarding opposition proceedings in the cases for trademark protection right annulment have been discussed, including the course of the proceedings before the Patent Office of the Republic of Poland, the title to bring the action before the court, the petitioner's legal interest and the role and tasks of the authority in these proceedings.

The Patent Office resolves cases regarding invalidation of trademark protection right under opposition proceedings within the limits of the petition or opposition and is bound by the legal basis indicated by the petitioner or the opposing party. The principle mentioned above in the discussed procedure is even more significant, since it is characterised by opposition, hence it is of an adversarial nature. In the opposition proceedings before the Patent Office the principles stipulated in the Code of Administrative Proceedings are significantly limited, including the ex officio principle or the principle specifying that administrative authorities shall care for the interest of the party to the proceedings. Therefore, in art. 265 sec. 1 of the Industrial Property Law – with respect to opposition proceedings – the principle of proper application of the provisions of the Code of Administrative Proceedings, rather than the principle of direct application of these provisions, has been adopted. In opposition proceedings The Patent Office should most of all exhaustively consider and evaluate the evidence provided by the parties. The initiative to invoke arguments and present evidence measures lies with the parties, especially when they use professional proxies, whereas the nature of the role of the authority is supplementary. The authority's task is to admit any pieces of evidence presented by the parties that have to be examined in order to explain the factual circumstances and that may have a significant effect on the result of the case.

The petition may concern full or partial annulment of trademark protection right. Due to the limitations imposed by the petition, the Patent Office may not cancel the exclusive right in a broader sense that goes beyond the petitioner's claim, however, nothing prevents it from considering the petition in a narrower scope, if the result of the examination of the evidence supports such a resolution. It is beyond any doubt that partial annulment of the right may consist in invalidating it only with reference to specific goods. Whereas, in principle, it is not permissible to partially invalidate a trademark by removing any element from it. It would violate the essence of the protected mark and lead to the creation of a new mark, not examined in terms of its registration capacity.

Summary

of the article: **Principles of the re-use of public information constituting a work within the meaning of the Act on Copyright and Related Rights of February 4th, 1994**

The article explains the principles of the re-use of public information that has the characteristics of a work within the meaning of the Act on Copyright and Related Rights in the Polish legal order. The discussed issues have been analysed mainly based on chapter 2a of the Act on Access to Public Information, hereinafter referred to as “Act”. The assessment concerned the principles for the re-use of information meeting the following criteria: 1) the information constitutes public information, 2) the information is at the same time a work within the meaning of art. 1 of the Act on Copyright, 3) principles for the re-use of this information have not been stipulated by specific acts (art. 23a sec. 4 item 1 of the Act), 4) public information does not constitute legally protected information (art. 23g sec. 8 item 1 of the Act), 5) the information is held by entities obligated under art. 23a sec. 2 of the Act and exemptions of objective nature, referred to in art. 23a sec. 3, do not apply.

For discussion purposes three groups of cases have been distinguished in the article. The first one concerns the rules for reusing information constituting a work, to which art. 4 of the Copyright Law applies, the second one refers to the rules for reusing information, the intellectual property right to which belongs to third parties, the last one concerns the rules for reusing information, the intellectual property right to which belongs to an obligated entity.

The analysis carried out in the article involves criticism of some of the adopted legal solutions, most of all art. 23b sec. 3 of the Act. Determining its normative contents requires complicated interpretative operations, which gives rise to substantial problems in practice. It seems also that it would be appropriate in this area for the obliged entities to develop common standards regarding the agreements meeting the conditions specified in art. 23b sec. 3 of the Act, as well as to adopt standard license agreements, under which works constituting public information should be made, free-of-charge, accessible to third parties, based on the principles set forth in the Act. It seems also that it is necessary to amend art. 4 of the Copyright Law. It should have a comprehensive nature, providing for the provisions of the Act on Access to Public Information, especially in the scope of chapter 2a, and should be drawn up in cooperation with representatives of the administrative law doctrine. Changes should be correlated with amending the Act on Access to Public Information in the scope of making public information accessible and distinguishing the category of internal documents.

Summary

of the article: **Interruption of the running of the time limit for expiration of a tax liability due to the course of penal-fiscal proceedings – discussion article**

The author made an attempt at analysing art. 70 § 6 item 1 of the General Tax Regulations Act in the context of related regulations of broadly defined penal procedure, referring the resulting conclusions to the previous judicature of administrative courts and the doctrine's outlook on the tax law. The analysis of the indicated regulation refers in particular to the interpretation of the terms used therein, which concern the commencement of fiscal-penal proceedings *in rem* and the meaning of the move thereof into the phase of *in personam*, as well as determining the relationship that is to occur between a fiscal tort and a non-performed tax obligation and the possibility of applying this regulation to an undue tax return. This study provides also for legal outlooks resulting from the judgement of the Constitutional Tribunal of July 17th, 2012, files no. P 30/11, to consider whether and to what extent the conclusions included in this judgement currently obligate the authorities applying the law to a different than previous interpretation of art. 70 § 6 item 1 of the General Tax Regulations Act and what actual additional obligations are imposed under this judgment on these authorities, in order to enable legal interruption of the time limit for expiration of a tax liability. The article refers also to changes that are anticipated and drafted in this scope.

The regulation of the General Tax Regulations Act indicated above has been analysed mainly from the perspective of understanding of the terms used therein on the basis of substantive law and the penal procedure. Substantial differences that result from such an approach with reference to the currently applied interpretative operations performed by representatives of the tax law doctrine and partially by administrative courts have been pointed out.

This article constitutes an invitation to further discussion about the relations between the tax and penal proceedings, addressed mainly to representatives of the tax law doctrine, in order to make the interpretation of the regulations of the tax act and of broadly defined penal law, determined as a result thereof, consistent and to accept the achievements and judicature based on these fields of law.

Summary

of the article: **When the enterprise is related – applying for European funds by micro-, small- and medium-sized enterprises**

This article explains essential issues in the field of public aid – determining the existence of relations between enterprises and the effect thereof on the support granted from European funds to micro-, small- and medium-sized enterprises (SME). This is an up-to-date topic and it causes some trouble not only to the entrepreneurs and institutions involved in the assessment, but also arouses controversy in the judicial practice.

The first part of the article presents EU regulations regarding the provision of public assistance in the projects co-financed from European funds. The following sections concern judicial achievements of the European Commission and the Court of Justice of the European Union regarding the manner of determining relations between enterprises for the purposes of the common market. Further, key decisions and judgements of administrative courts have been presented.

On the basis of the analysis of judicial decisions it may be concluded that determining whether any relations exist between enterprises, should be comprehensive, which means that the institution granting the support cannot limit its actions only to determining the facts resulting from e.g. the company's registration documents or determining the existence of a relationship between members of the enterprises' bodies, but first of all it should examine whether such relations may actually contribute to disturbing competition on a relevant market. On the other hand, it means that – in case of doubt – entrepreneurs should, in their own interest, examine whether existing relationships may prevent them from applying for support. Otherwise they are exposed to the risk of returning the received funds.

The article discusses also the consequences of changing an enterprise's status due to its merger/acquisition with a non-SME enterprise.