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Report of the proceedings of the meeting

On 10 June 2019 the annual General Assembly of the Judges of the Supreme Administrative Court in Warsaw was held in the Assembly Hall, at which *Information on the activities of administrative courts in 2018* was presented by the President of the Supreme Administrative Court prof. dr hab. Marek Zirk-Sadowski, and adopted by way of a resolution.

The assembly was attended by the President of the Supreme Administrative Court, Vice-Presidents: dr hab. Jacek Chlebny, Janusz Drachal, Jan Rudowski, judges of the Supreme Administrative Court and presidents of voivodship administrative courts, but also by invited guests, being the representatives of the highest authorities of the State and the judiciary: on behalf of the President of the Republic of Poland – Paweł Mucha, Deputy Chief of the Chancellery of the President of the Republic of Poland, on behalf of the First President of the Supreme Court – Dariusz Zawistowski, the President of the Supreme Court in charge of the Civil Chamber, on behalf of the Supreme Audit Office – Elżbieta Jarzęcka-Siwik – Deputy Head of the Department for Legal Affairs and Audit Case Law at the Supreme Audit Office, on behalf of the Commissioner for Human Rights – dr Hanna Machińska – the Deputy Commissioner for Human Rights, and Antoni Cyran, the Head of the Chancellery of the First President of the Supreme Court.

After the meeting was officially opened and the guests were welcomed, the President of the Supreme Administrative Court, prof. Marek Zirk-Sadowski, presented the information on the activities of the Supreme Administrative Court and voivodship administrative courts in 2018. The text of his speech is available *in extenso* at p. 9–19 of this issue of the ZNSA.

After the President of the Supreme Administrative Court, the floor was taken by the invited guests.

The first to speak was Paweł Mucha, Deputy Chief of the Chancellery of the President of the Republic of Poland, who read the letter from the President of the Republic of Poland Andrzej Duda addressed to participants and guests attending the meeting. The letter is available *in extenso* at p. 20–21 of this issue of the ZNSA.

The next speaker was Elżbieta Jarzęcka-Siwik, Deputy Head of the Department for Legal Affairs and Audit Case Law at the Supreme Audit Office, who read out a letter from the President of the Supreme Audit Office Krzysztof Kwiatkowski addressed to the participants of the meeting. The letter is available *in extenso* at p. 22 of this issue of the ZNSA.

At the end of the session, the President of the Supreme Administrative Court, prof. Marek Zirk-Sadowski, ordered a vote of the assembled judges of the NSA on the adoption of the presented *Information on the activities of administrative courts in 2018*. The General Assembly of the Judges of the Supreme Administrative Court unanimously passed a resolution on its adoption.

By Anna Rossmannith
(Supreme Administrative Court,
University of Warsaw)

Summary

of the article: **Binding character of a legal assessment arising from the non-appealable judgment of the administrative court dismissing a claim against the backdrop of the admissibility of the verification of a binding decision under the extraordinary measures of administrative proceedings. Part II**

The issue of admissibility of the verification of the final administrative decision in the extraordinary administrative proceedings in the light of the limits of binding force of the final administrative court's judgment and the final legal assessment which results from the final administrative court's judgment dismissing the complaint against the administrative decision is the subject of this study. The second part of the study is the continuation of the first part. The analysis in this part of the study has been focused on the issues of the limits of the binding force of the final administrative courts' judgment dismissing the complaint against the administrative decision in the extraordinary administrative proceedings for quashing or amending the final administrative decisions which are legally correct or which are affected by the defects of not grave degree. The considerations led to the conclusion that from the principle of binding force of the final administrative court's judgment (Article 170 of the Act of 30 August 2002 – The Law on Proceedings before Administrative Courts) results that the scope of admissibility of the verification of the final administrative decision which has been upheld by the administrative court by means of the final judgment dismissing the complaint against this decision in the extraordinary administrative proceedings, including the proceedings stipulated in the Art. 154, 155, 161, 162 and 163 of the Act of 14 June 1960 – The Code of Administrative Proceedings, is conditioned by the contents of the legal assessment which has been expressed in the final administrative court's judgment dismissing the complaint against this decision. Subsequent quashing or amending the decision in the extraordinary administrative proceedings of the above mentioned kind cannot be based on a such version of interpretation of the substantial or procedural law (which has been concretized by the administrative authority in the verified decision) which, contrary to the legal assessment which has been expressed in the final administrative court's judgment, would breach the binding force of this assessment and the form of its preservation – the final administrative court's judgment.

Keywords: validity of administrative courts' judgments; the binding force of the administrative courts' legal assessment which results from the administrative court judgment dismissing the complaint against the administrative decision; the administrative decision upheld by the administrative court and its verification in the extraordinary administrative proceedings intended for quashing or amending of correct or defective to an unqualified extent decisions; the binding force of the administrative court's judgment dismissing the complaint against the administrative decision and the subsequent resolution of the Supreme Administrative Court

Summary

of the article: **On the need to reflect on the interpretation of Article 68 of the Tax Ordinance**

The paper discusses the issue of the interpretation of the provision that constitutes a ground for decisions delivered if it is necessary to assess tax liability arising *ex lege* when the obligation of satisfying such liability has not been met. The sources of interpretation adopted by courts and the evolution of such interpretation are analysed. The basic issue raised is the determination of a date on which the liability arises if the first-instance decision has been appealed against. According to the case-law, the existence of tax liability is determined by the first-instance decision and, having been shaped as such, it may be only modified to the benefit of the taxpayer. In view of such interpretation, the statute of limitations period in respect of the tax liability is determined in relation to the first-instance decision and not in relation to the date on which the decision becomes final and binding. The main part of the paper is devoted to the considerations on the grounds for such interpretation, both in the light of the applicable legal order and in the light of the expected adoption of the new Tax Ordinance.

Keywords: decision, assessment decision, tax proceedings, tax liability, appeal, durability of the decision, statute of limitations, case-law

Summary

of the article: **Public procurement law and access to public information**

This paper analyses the mutual relationship between the provisions of the Act of 6 September 2001 on Access to Public Information (Journal of Laws of 2018, item 1330 as amended) and the Act of 29 January 2004 – Public Procurement Law (Journal of Laws of 2018, item 1986 as amended), as well as consequences related thereto. Common constitutional ground of the two acts is outlined in the introduction. Further parts of the paper discuss the overlapping of the two acts. Subsequently, consequences arising from the equal status of the two acts are presented in the context of information on public procurement procedure. The first focal point is the information on public procurement procedures which is public information, while the second one is the information related to public procurement procedures which creates competitive advantage. The practical meaning of the problem in question was emphasised in the summary.

Keywords: public procurement, public information, competition

Summary

of the article: **Place of carrying out a family background interview with a person experiencing homelessness**

The subject matter of this paper is the verification of a hypothesis under which the provision of the Regulation of the Minister of Family, Labour and Social Policy of 25 August 2016 specifying the place of carrying out a family background interview may be construed in such a manner that in practice it is impossible to carry out a background interview with a person experiencing homelessness staying in so-called non-residential places, such as vacant buildings, heating system channels or railway facilities. In order to verify the hypothesis, both the practice of the application of the provision at the level of administrative bodies and the case-law of administrative courts on the issue were analysed. The conclusions from the analysis confirm that such interpretation is present in the practice of applying the provision in question, but it is a minority interpretation. The prevailing interpretation allows a background interview to be carried out in any place where a person in the crisis of homelessness may be found, including a social welfare centre.

Keywords: family background interview, homelessness, place of residence

Summary

of the **Note to the Judgment of the Supreme Administrative Court of 10 October 2018 (Case No. II OSK 2552/16)**

The paper discusses the judgment of the Supreme Administrative Court concerning the creation of a Polish birth certificate by means of transcription (the conveyance of the foreign content of vital records) that is not compliant with the existing case-law in similar cases, in particular with the judgment of the Supreme Administrative Court of 20 June 2018 (II OSK 1808/16). It is assumed in the most recent judgment that the refusal by the Head of the Registry Office to transcribe the foreign act indicating, in accordance with the foreign law, the child's parental relationship (filiation) with two people of the same sex was groundless. This approach was motivated by the need to ensure the possibility of processing, within subsequent administrative proceedings, specific actions defined in Article 104(5) of the Law on Civil Registry Records (e.g., issuance of an ID card), for the purpose of which it is necessary to hold a Polish registration certificate.

The author provides a critical comment on the court decision and on some statements made in the statement of grounds and emphasises the need to take into consideration international private law, constitutional rules of the Polish family law and international standards. At the same time, the author points out that the issues related to further specific administrative proceedings (e.g. issuance of an ID card) may and should be resolved within such proceedings and not in the general proceedings concerning the creation of the Polish birth certificate by means of transcription.

Keywords: child's origin, registration, birth certificate, children, human rights, recognition of the foreign decision, maternity, paternity, nationality

Summary

of the **Note to the judgment of the Supreme Administrative Court of 19 July 2017 (Case No. II GSK 5301/16)**

The note presents the judgment of the Supreme Administrative Court of 19 July 2017, II GSK 5301/16, along with the approving position. It is necessary to agree with the judgment, in which it was pointed out that the purposeless of the concession for exploiting minerals from deposits may indicate the permanent illegality of the entrepreneur by the right to land real estate covered by this concession. An entrepreneur with the concession is not capable, in this case, to achieve the purpose specified in the concession, i.e. to extract minerals from the deposit.

Keywords: expiry of the concession, purposeless of the concession, exploiting minerals from deposits, the right to the land real estate, mining area

Summary

of the **Note to the Judgment of the Supreme Administrative Court of 15 December 2017**
(Case No. I OSK 1408/17)

In the judgment in question, the Supreme Administrative Court took its position on the disciplinary liability of students for a crime whose commission had no direct relationship with the course of their university education. The Court held that the assessment of such crime made by the court in criminal proceedings is not relevant for disciplinary liability purposes and for the imposition of a sanction for disciplinary misconduct. The author indicates the topicality of the matter considered by the Court, regardless of the change in legal circumstances, and approves of the interpretation laid down in the sentence.

Keywords: student, disciplinary liability, crime

Summary

of the Note to the judgment of the European Court of Human Rights of 6 December 2018, Application No. 68924/12, *Słomka v. Poland*

In the judgment in *Słomka v. Poland* case, the European Court of Human Rights ruled on the violation by Poland of art. 6 and art. 10 of the European Convention on Human Rights. The Court found a violation of the right to an impartial tribunal as a result of the accumulation of procedural roles by members of the court, who, being the subject of the applicant's verbal attack at the hearing, punished him with a penalty of 14 days imprisonment. In addition, the ECtHR found violation of the right to an effective remedy, because the order on the penalty was immediately enforceable, and the applicable law did not oblige the courts either to obligatory suspend enforcement of the order, or to investigate the complaint before the execution of the sentence. The Author of the note agrees with the ECtHR judgment. When quoting the views of the ECtHR from other similar matters in his elaboration, the Author presented the postulated directions for the implementation of this judgment. He raised the thesis that this judgment shows the necessity of a thorough remodeling of the principles of legal liability for violation of the seriousness, calmness or order of court actions.

Keywords: right of access to a court, deprivation of liberty