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Summary

of the article: **Concerns regarding the solutions adopted in the 2021 amendment to the Code of Administrative Procedure relating to the statute of limitations for declaring a decision invalid**

In its judgment of 12 May 2015, P 46/13, the Constitutional Tribunal stated that Art. 156 § 2 of the Code of Administrative Procedure, to the extent that it does not exclude the admissibility of declaration of the invalidity of a decision issued in gross violation of the law, when a significant time lapse from the decision was issued, and the decision was the basis for the acquisition of a right or expectation, is inconsistent with Art. 2 of the Constitution of the Republic of Poland. The Code of Administrative Procedure was amended by the Act of 11 August 2021. A provision was introduced into it, pursuant to which, regardless of the defect of the previous decision, the decision is not declared invalid if ten years have elapsed from the date of its delivery or publication. After the expiry of this period, it is only permissible to declare such a decision unlawful. It is true that, as a result of it, the decision will still be in force, but the party who has suffered damage as a result of issuing this defective decision will be able to claim damages in this respect before a common court pursuant to Art. 417¹ § 2 of the Civil Code. However, after thirty years from the date of notification of the decision, it will no longer be possible to initiate proceedings for annulment of the decision, and consequently it will no longer be possible to claim this compensation. Moreover, the new provisions apply to pending cases concerning the annulment of decisions. The construction of the new regulations raises many doubts which the author analyzed in the text.

Keywords: the principle of durability of final decisions, invalidity of a decision, annulment of a decision, declaration of the unlawfulness of a decision, limitation of the annulment, refusal to initiate proceedings, discontinuance of proceedings

Summary

of the article: **Conflict of a trademark with principles of morality as an absolute ground for refusal of its registration in the light of Council Regulation (EC) No 207/2009**

In view of the Council Regulation (EC) on the on the European Union trade mark, an autonomous condition for registering the designation applied for as an EU trademark is contrary to public policy or to accepted principles of morality. We are dealing here with an external, non-legal reference to values falling within the sphere of the axiology of law. In the judgment in the case of Constantin Film Produktion GmbH v European Union Intellectual Property Office, commented on in this study, the Court of Justice of the European Union declared that each of the general clauses indicated must be interpreted in a transparent manner, which cannot be said about the practice of the European Union Intellectual Property Office. Meanwhile, transparency in the scope of determining the conditions for applying prohibitions and, consequently, the predictability of the out-of-court settlements before such settlements is of great importance for practice. The plans are crucial for assessing the feasibility of profanity in the reported applications for registration.

Keyword: trade mark, examination of absolute premises, good customs, morality violation, public order, policy

Summary

of the article: **Parties to administrative proceedings regarding consent to appointment of a financial institution to the management board**

The article analyzes the problem whether a candidate for the management board of a financial institution has the status of a party in administrative proceedings regarding the permit of the Financial Supervision Authority for appointment to the management board. The latest judicial decisions of the Supreme Administrative Court present significant arguments that the decision of the Financial Supervision Authority indirectly shapes the legal situation of the candidate. He has – because of the reflex law – a legal interest that justifies granting him an adequate procedural protection and treating him as a party in such administrative proceedings. Recent legislative changes which deprive him of the possibility to participate actively in the proceedings violate the constitutional requirement of proportionality in relation to the right to a fair trial.

Keywords: party of the administrative proceedings, Financial Supervision Authority, reflex right

Summary

of the article: **Access to administrative case files as a right of a party**

The article discusses the problem of the party's access to case files in proceedings conducted under the Act of June 14, 1960 – the Code of Administrative Procedure. The request for access to the files is an element of the party's right to actively participate in the proceedings; if such a request is made, the authority is obliged to satisfy it, and refusal is only possible in the cases enumerated in the Act.

The article also presents forms of access to case files by dividing them into direct (the right to review files, making notes and copies), and indirect (request for certification of copies made by the party or issuing certified copies). The analysis of individual forms of access was carried out taking into account the views of doctrine and jurisprudence.

The conclusion is drawn to the need to provide a guarantee of access to the file or case information by electronic means and to introduce a definition of legal administrative files.

Keywords: public administration, administrative case files, active participation of the party, administrative law

Summary

of the article: **Expiration of an individual [tax law] interpretation due to its incompatibility with the general [tax law] interpretation**

The issue of mutual correlation between the individual tax law interpretation and the general tax law interpretation has raised doubts for years. Based on the current wording of the regulations, it may be concluded that the legislator considers the general tax law interpretation to be more important. This arises from the authority of the Minister responsible for public finance to issue a general tax law interpretation in the event of identifying inconsistencies in the application of the tax law by tax authorities (e.g. in individual tax law interpretations). Furthermore, the Director of National Fiscal Information may ex officio declare that an individual tax law interpretation has lapsed if it is inconsistent with a general tax law interpretation issued under the same legal position. The subject of this paper is an attempt to answer the question of whether this inconsistency is of a gradual nature, i.e. whether the inconsistency of the individual tax law interpretation with the general tax law interpretation should have a qualified form (or how to set its limits), or whether any inconsistency should cause a reaction in the form of stating the expiration of the individual tax law interpretation. Further, it is also necessary to determine what elements of the individual tax law interpretation should be verified for the purpose of determining whether it is consistent with the general tax law interpretation. Considerations in this regard were made in the context of the case law of the administrative courts.

Keywords: individual advanced tax law interpretation, general tax law interpretation, expiry of the individual tax law interpretation

Summary:

of the **Note to the judgment of the Supreme Administrative Court of 10 November 2020**
(Case No. II GSK 833/20)

The aim of the elaboration is to analyze the judgment of the Supreme Administrative Court of 10 November 2020, II GSK 833/20, which contains important issues regarding the interpretation and application of the law, including the precedent interpretation *in dubio pro vita humana* reimbursement of the so-called orphan drugs. The essence of the judgment is the interpretation of Art. 39 sec. 3E point 5 of the Act on the refund, which was the basis for the Minister of Health to refuse the refund. The first part of the elaboration presents the issues of legal interpretation, including the theory of interpretation and interpretation directives (linguistic, systemic, functional). Then, relying on the principle of completeness of the interpretation, the accuracy of the conclusions drawn by the Supreme Administrative Court was confirmed and the statements of the Supreme Administrative Court were developed and supplemented with regard to the interpretation of Art. 39 sec. 3E point 5 of the Act on the refund. Then, the authors' view was presented, supported by the position of the doctrine that interpretation always requires the use of all three types of interpretative directives, i.e. linguistic – *prima facie*, systemic and functional. In this light, the understanding of Art. 39 sec. 3e point 5 of the Act on the refund should be considered as a *prima facie* interpretation which does not implement the constitutional axiology. As a result, the view of the Supreme Administrative Court was divided that Art. 39 sec. 3e point 5 of the Act on the reimbursement cannot be interpreted in such a way that it deprives persons requiring orphan drug treatment of the right to apply for an individual reimbursement, and doubts have been expressed as to the opinion that the decision issued pursuant to Art. 39 sec. 1 in conjunction with art. 12 of the Act on the refund is a not discretionary decision.

Keywords: refund, orphan drugs, interpretation, the right to health protection

Summary

of the **Note to the judgment of the Voivodeship Administrative Court in Warsaw of 19 June 2020 (Case No. II SA/Wa 2722/19)**

The commented judgment concerned the issue of granting an annual award for the functionary of the State Protection Service for the period of the service in the Police in the calendar year in which there occurred transfer to service in the State Protection Service. The Voivodeship Administrative Court in Warsaw took also a position related to the legal construction of the transfer between services (militarized formations) referred to in Art. 70 Act of the State Protection Service. This position was criticized in this commentary. There were indicated that the transfer between services is the legal instrument which serves a specific migration of the functionaries between particular formations. The transfer is not a modification of the same service relationship but it is the special legal construction causing termination of one service relationship in the formation from which the transfer takes place with automatic establishment of another service relationship in the formation to which the functionary is transferred.

Keywords: State Protection Service, service relationship, officer (functionary), transfer to the State Protection Service, administrative decision, personal command

Summary

of the **Note to the judgment of the Court of Justice of the European Union of 29 October 2020 (C-243/19)**

The gloss contains arguments approving the position of the CJEU granting an EU Member State the right to assess the fulfillment of the conditions for authorization to go to another EU Member State in order to undergo treatment and prior authorization to reimbursement of the costs of cross-border healthcare. While in the first case the objective criterion of refusal to grant authorization may be the protection of the financial stability of the health insurance system, in the second case the objective criterion of refusal to grant authorization may be the maintenance of treatment capacity or medical competence, under the condition that the refusal is necessary and proportionate to the purpose which is to be achieved, which is ultimately for the national court to assess.

Keywords: social security systems in EU Member States, patients' rights in cross-border healthcare, non-discrimination

Summary

of the article: **The reform of administrative procedure and judicial review of administration in Kazakhstan** (translated by dr hab. Agnieszka Krawczyk, professor of the University of Lodz)

The article concerns the assumptions of the new administrative and administrative court procedure, regulated by the Code of Administrative Procedure of the Republic of Kazakhstan. The code was adopted on 29 June 2020 and will enter into force on 1 July 2021. Work on the act lasted many years, and the result was assessed by the Venice Commission, which gave a positive opinion on the draft code. Although Kazakhstan is not a member of the Council of Europe, the authors of the code tried to incorporate international standards of administrative procedure into it. The article presents the assumptions of both procedures, pointing to those elements which are new in the Kazakh legal order and which correspond to the principles established in the European systems. This applies in particular to the creation of a separate administrative judiciary and, therefore, to standardize the rules of procedure before these courts in a uniform manner.

Keywords: Kazakhstan, reform of administrative procedure, establishment of administrative courts, code of administrative procedure, judicial review of administration