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Summary

of the article: **On the legal nature of the commune [municipal] council's resolution approving collective water supply tariffs**

The Act of 7 June 2001 on the Collective Water Supply and Collective Waste Water Disposal regulates the terms and conditions of collective supply of water intended for human consumption and collective waste water disposal, including the rules of functioning for water and sewage operators, rules of establishing conditions ensuring continued supplies and adequate water quality, reliable water disposal and treatment, requirements on the quality of water intended for human consumption, as well as the rules of protecting the interest of service users, including environmental requirements and cost optimisation. Due to the equivalent nature of the services named above, it would be desirable to have a situation in which the rule of protecting the interest of service users covers the possibility of controlling the adequacy, regularity and legal compliance of rates and fees for using such services by ensuring legal remedies in proceedings before administrative courts.

Although it seems that the Act on the Collective Water Supply and Collective Waste Water Disposal satisfies such a requirement, different approaches to the assessment of the legal nature of the commune council's resolution approving collective water supply tariffs (prices and rates) observed both in legal theory and to some extent in the case-law of administrative courts raises a question whether the resolution adopted is an act of local law or not.

The analysis of specific provisions of the Act on the Collective Water Supply and Collective Waste Water Disposal leads to a conclusion that the said resolution is not an act of local law, but an act of local self-government authorities other than an act of local law, belonging to the scope of competence of administrative courts and adopted in matters related to public administration, referred to in Article 3(2)(6) of the Act – Law on Proceedings before Administrative Courts. An act of checking and verifying tariffs by the head of a commune (mayor), which has a form of an ordinance, is of the same nature.

Summary

of the article: **The Code of Administrative Proceedings in the light of the Amending Act of 7 April 2017 – general characteristics**

This paper discusses the most important changes in administrative proceedings introduced by the Amending Act of 7 April 2017. The scope of changes includes general rules governing administrative proceedings. New provisions were added to the Code that refer to the rule of silent resolution of the case, simplified proceedings, as well as imposition of administrative pecuniary penalties. A thesis presented in the paper is that, due to the changes introduced, too much attention is paid to legal circumstances of the party to the proceedings and too little – to the reality and needs arising from the functioning of public administration.

Summary

of the article: **Further disputes over the definition of a building as the subject to real property tax – the case of wind power plants**

This paper discusses the real property tax on a building (*budowla*). In its definition included in Article 1a(1)(2) of the Act of 12 January 1991 on Local Taxes and Fees, a reference is made to broadly understood "provisions of construction law", including also geological and mining law, energy law, telecommunications law, etc. As a result, the definition of the subject to the tax and components of the tax arise from the wide array of normative acts and amendments thereto that are often of minor importance for the basic branch of the law, while they substantially affect the tax law. Such changes became a basic mechanism to amend the real property tax, which is evidently in breach of the principle of a decent legislation.

The aim of this paper is to order terminological links between the Act on Local Taxes and Fees and the construction law with the use of the example of wind power plants in the context of changes introduced by the Act of 20 May 2016 on Wind Power Plant Investments (as amended on 1 January 2017). The literature and case law show two perspectives on the taxation on buildings: either tax is calculated based on construction-related elements or the entire facility is taken into account along with systems, machines and technical equipment (their value is included in the tax base). The Act on Wind Power Plant Investments requires that the entirety of a wind power plant along with power generation machinery be treated as a building within the meaning of construction law, which has tax consequences. This provision does not, however, resolve the issue with respect to other types of facilities.

Summary

of the article: **Judicial review of decisions issued by national authorities in proceedings integrated with the law of the European Union**

The subject of this paper is judicial review of decisions issued by national authorities in administrative proceedings whose procedural rules are, at least partially, defined by the EU legislator. The fact of establishing EU procedural standards (effective directly or requiring to be transposed into the national legal system) has an impact on the model according to which law is applied by national authorities in such proceedings (known as proceedings integrated with the EU law), and as a result, should be reflected in the case-law of administrative courts. Depending on the nature of EU procedural rules, administrative bodies use domestic procedural standards directly to matters not regulated by the EU law (simple model) or they reconstruct multi-centric norms based on EU and domestic regulations (complex model). Judicial review of decisions issued in integrated proceedings should, therefore, include the assessment of simultaneous application of domestic and EU procedural norms, taking into account general principles of EU law, such as the principle of the primacy or the principle of effectiveness. In view of the above, the revocation of the decision pursuant to Article 145(1)(1)(c) of the Law on Proceedings before Administrative Courts may occur when the court finds a breach of procedural rules (other than a breach providing grounds to reopen the proceedings) which, at the same time, will constitute a breach of procedural standards derived from or determined by the EU law.

Summary

of the article: **One-instance project assessment procedure in operational programmes for 2014–2020 in the context of Article 78 of the Constitution of the Republic of Poland**

The assessment and selection of projects to be co-financed from EU funds for 2014–2020 is made within administrative procedure that is not regulated by the Act of 14 June 1960 – Code of Administrative Proceedings. The procedure is regulated by the provisions of the Act of 11 July 2014 on the Rules of Cohesion Policy Programmes funded within 2014–2020 Financial Framework. The provisions of the Act allows project assessment systems to be constructed without applying the rule of two-instance (stages) proceedings derived from Article 78 of the Constitution of the Republic of Poland.

The Minister of Development and Finance, who is responsible for the implementation of national operational programmes, has full discretion over the decision to establish a one-instance project assessment system. The provisions of the Act of 11 July 2014 do not introduce any conditions or limitations in this regard.

Given the scope of exception provided for in the Act and practices related to the application of the provisions of the Act, it should be noted that Article 55 thereof read in conjunction with Article 56(3) and Article 10(1) are not compliant with Article 78 read in conjunction with Article 31(3) of the Constitution of the Republic of Poland.

Any decisions regarding an appeal measure, namely a protest, are subject to judicial review by administrative courts. Within such review, compliance of the decisions with procedural norms is assessed. Lack of legal competence of the appeal body (which is at the time the first-instance body for the case) to consider the protest should result, as a rule, in the revocation of the decision. Administrative courts have a right to review the compliance of appeal bodies' instance competence with the Constitution in case of the judicial review of said administrative proceedings. The competence to consider protests, if delegated by the Minister of Development and Finance, arises from inter-institutional agreements entered into pursuant to the Act with different entities of the public sector. The agreements, which are of rank lower than laws (acts of parliament), may be directly reviewed by the court in terms of their compliance with the Constitution.