

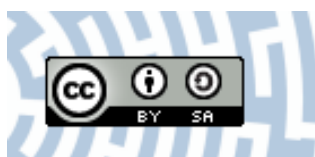


**You have downloaded a document from
RE-BUŚ
repository of the University of Silesia in Katowice**

Title: Increased and additional fees governed by the Geological and Mining Law as examples of administrative pecuniary penalties

Author: Gabriel Radecki

Citation style: Radecki Gabriel. (2021). Increased and additional fees governed by the Geological and Mining Law as examples of administrative pecuniary penalties. "Prawne Problemy Górnictwa i Ochrony Środowiska" Nr 2 (2021), s. 1-13, doi 10.31261/PPGOS.2021.02.07



Uznanie autorstwa - Na tych samych warunkach - Licencja ta pozwala na kopiowanie, zmienianie, rozprowadzanie, przedstawianie i wykonywanie utworu tak długo, jak tylko na utwory zależne będzie udzielana taka sama licencja.



Gabriel Radecki

 <https://orcid.org/0000-0003-1311-5635>

University of Silesia in Katowice

Poland

Increased and additional fees governed by the Geological and Mining Law as examples of administrative pecuniary penalties

Introduction

Section VII of the Act of 9 June 2011 Geological and Mining Law (hereafter: GML),¹ entitled “Fees”, encompasses fees that differ significantly, despite partial correspondence between their names.² On the one hand, there are fees which are a kind of public levies connected with the lawful activity, in particular activity carried out on the basis and within the limits of a concession. This concerns activity related to prospecting for or exploration of mineral deposits, prospecting for or exploration of an underground carbon dioxide storage complex, exploiting minerals from deposits, prospecting for or exploration of hydrocarbons deposits and exploiting hydrocarbons from deposits, underground tankless storage of substances, underground storage of waste, and underground storage of carbon dioxide. On the other hand, there is also the increased fee and additional fee, both of which are types of sanctions for illegal activity, espe-

¹ Journal of Laws of 2020, item 1064, as amended.

² Cf. more broadly G. Radecki, in: *Zrównoważony rozwój jako czynnik determinujący prawne podstawy zarządzania geologicznymi zasobami środowiska*. Ed. G. Dobrowolski. Katowice 2016, pp. 293–353 and the article intended to familiarize the English-speaking reader with the deliberations presented there – G. Radecki: *Fees governed by the Geological and Mining Law in the light of the principle of sustainable development*. “Roczniki Administracji i Prawa” 2020, no. 2, pp. 249–260.

cially in part concerning the concession requirement. Pursuant to Article 140(1) of the GML, an increased fee is applicable to an activity carried out without the required concession, whereas in line with Article 139(1) of the GML, an additional fee is charged for activity performed in flagrant violation of the conditions determined in the concession.³ Hence, they guarantee the effectiveness of the Geological and Mining Law or in general environmental protection law norms⁴ that provide for the requirement to have and comply with administrative decisions permitting the use of the environment and determining the rules and principles for the use thereof.⁵ As a result, they must be qualified as pecuniary administrative penalties, which are not public levies, but administrative financial sanctions, just like the sanctions listed in Article 175 of the GML, in Section X, entitled “Pecuniary penalties.”⁶

The latter fact justifies the deliberation on two general questions. Firstly, the increased and additional fees can and should be subject to evaluation from the point of view of functions served by administrative pecuniary penalties. It requires an analysis of subjects and severity of both fees and a destination of income derived from them, as the main criteria in that matter. Secondly, it is necessary to consider whether the fees fulfill some administrative penalties standards, especially in the light of regulation of the Section IVa of the Code of Administrative Proceedings.⁷

³ The subjects of the increased and additional fees are also activities pursued in flagrant violation of conditions provided for in approved geological works plan or the geological works plan subject to submission or without an approved geological works plan, or a geological works plan subject to submission respectively. However, the details within this scope must be omitted – Cf. e.g. G. Radecki, in: G. Dobrowolski, A. Lipiński, R. Mikosz, G. Radecki: *Gospodarowanie geologicznymi zasobami środowiska w świetle zasady zrównoważonego rozwoju. Zagadnienia prawne*. Katowice 2018, pp. 405–415 and the literature referenced there.

⁴ In the light of definition laid down in Article 3 point 31 of the Act of 27 April 2001 Environmental Protection Law, Journal of Laws of 2020, item 1219, as amended (hereafter: EPL), minerals are one of the elements of the environment.

⁵ A. Jaworowicz-Rudolf: *Oplaty podwyższone jako rodzaj sankcji administracyjnych za naruszenie zasad korzystania ze środowiska*. In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska*. Eds. K. Karpus, B. Rakoczy, M. Szalewska, Toruń 2014, pp. 57, 59 and G. Radecki: *Oplata podwyższona za naruszenie warunków wydobywania piasków i żwirów na własne potrzeby*. In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska*. Eds. K. Karpus, B. Rakoczy, M. Szalewska, Toruń 2014, p. 291.

⁶ K. Karpus, in: *Prawo geologiczne i górnicze. Komentarz LEX*. Ed. B. Rakoczy. Warszawa 2015, pp. 727–728.

⁷ Act of 14 June 1960, JoL of 2020 item 256, as amended, further referred to as the APC.

Functions of the fees

The pecuniary administrative penalties are measures of administrative liability that serve various functions.⁸ The most commonly acknowledged one is the preventive effect of these types of measures, which consists in the prevention of violations of the law, even though these measures are a penalty for already committed violations.⁹ Corresponding to these general goals are the educational and incentive functions, both of which are connected with shaping the right attitudes and behaviours of the entity subject to sanction, as well as the restitutive and compensatory function, which are, in turn, intended to restore the environment to the required state, or the redistributive function.¹⁰ It is dubious, however, that the imposition of the additional or increased fee shall yield the desired results in all the areas.

The additional and increased fees are sanctions, penalties for a violation of the law, and from this point of view, the fear of these sanctions may have a preventive or educational effect. The effect and the directives of the principle of legal certainty and dependability of application of the law require, however, a capability to determine torts sanctioned by the fees, that is, the possibility of a precise distinction between their scopes or subjects. In that connection, it must be underlined that the separate sanctioning of the absence of a concession and a flagrant violation thereof, as the concession determines the framework of an undertaking (as to the location, methods of proceeding, the scale of the undertaking, etc.), and so going beyond this framework can, at the same time, be considered as either of the two violations of the law.¹¹ It appears that in the cases where the perpetrators of the tort have a concession permitting them to conduct the activity that causes a violation, they should be liable to pay the additional fee and not the increased fee. This rule cannot be applied only in cases where there is no link between this activity and the rights resulting from the concession, for example, when the activity is undertaken in a different location than the mining area whose boundaries are specified in the concession.¹² Then it

⁸ Cf. More broadly G. Radecki, in: *Zrównoważony...*, pp. 345–352 and *Gospodarowanie...*, pp. 405–415.

⁹ See e.g. A. Lipiński, R. Mikosz: *Ustawa prawo geologiczne i górnicze. Komentarz*. Warszawa 2003, pp. 411–412.

¹⁰ A. Jaworowicz-Rudolf: *Funkcje...*, p. 222.

¹¹ A. Lipiński: *Z problematyki nielegalnego wydobywania kopaliny*. In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska*. Eds. K. Karpus, B. Rakoczy, M. Szalewska. Toruń 2014, pp. 264–365.

¹² Mining area is defined in Article 6(1) point 5 of the GML as the space within the boundaries of which an entrepreneur is entitled to extract minerals and execute underground tankless storage of substances, underground landfilling of waste, underground carbon dioxide storage and perform mining works necessary for the exercise of the concession.

cannot be claimed that the entrepreneurs, that is, those who – in the light of the definition laid down in Article 6(1) point 9 of the GML – were granted a concession, went beyond the mining area, which is considered to be an example of a flagrant violation of the concession.¹³ Flagrant violation is of a qualified nature and occurs when the perpetrator's actions are in clear contradiction to their rights.¹⁴ This contradiction can only be established when the perpetrator is in a possession of an act that is the source of such rights, especially a concession – otherwise, there are grounds to impose upon him the increased fee for the absence of such an act.

The increased fee is largely connected with the scope of the Geological and Mining Law. Sanctions for conducting activity without a concession can only be imposed when it is established that the activity in question does in fact require a concession, which in turn often requires a prior determination of whether this law is applicable to this activity in the first place. For example, not all instances where a mineral is separated from its deposit and extracted (or rather obtained) are extraction cases subject to the Geological and Mining Law.¹⁵ A mineral may be sourced in the course of making of pits or drilling of boreholes up to 30 metres deep in order to use the earth's heat, outside mining areas, to which the provisions of the Geological and Mining Law do not apply pursuant to Article 3 point 2 thereof. Minerals may furthermore be extracted, for example, in the course of construction works, including levelling works.¹⁶ If these actions were carried out in accordance with the decision permitting them, for example, in accordance with the building permit, it is indeed difficult to conclude that there are grounds for the imposition of the increased fee for extraction of minerals without the required concession. It appears that what may be useful for the purposes of classification of activity is the criterion of the actual intention of the entity conducting such activity.¹⁷ This intention follows from objective circumstances, and in particular the way in which the entity used or is going to use the mineral thus obtained.¹⁸

Another source of potential problems is differentiating between underground landfilling of waste or storage of substances and landfilling and storage of waste without the required decision, which is subject to sanctions provided for in the Environmental Protection Law. This will be the case, for instance, in situations where waste is disposed of by being placed in natural or already existing man-

¹³ See e.g. A. Lipiński: *Z problematyki...*, p. 265.

¹⁴ Cf. A. Lipiński, R. Mikosz: *Ustawa...*, pp. 406–407 and H. Schwarz: *Prawo geologiczne i górnictwo. Komentarz. tom II*. Wrocław 2016, pp. 303–304, 307.

¹⁵ A. Lipiński, R. Mikosz: *Ustawa...*, p. 14 and R. Mikosz, G. Radecki: *Leksykon opłat i kar pieniężnych związanych z korzystaniem ze środowiska*. Wrocław 2010, p. 111.

¹⁶ A. Lipiński: *Z problematyki...*, p. 267.

¹⁷ A. Lipiński, R. Mikosz: *Ustawa...*, p. 14 and R. Mikosz, G. Radecki: *Leksykon...*, p. 111.

¹⁸ G. Radecki: *Oplata...*, p. 295.

made dips in the land that may pass as voids in the rock mass, additionally covered with a layer of previously removed mass of soil or rocks.

In this context, it is legitimate to draw attention to the differences in the calculation and, as a result, in the severity of the sanctions, between the aforementioned increased and additional fees and their equivalents provided for in the Environmental Protection Law. Pursuant to Article 273(2) and 276(1) of the EPL, an administrative fee, like the additional fee, is applicable in the case of infringement or violation of the terms and conditions for the use of the environment, as set out in a decision, whereas the use of the environment without the required permit or another decision is subject to an increased fee (just like in the case of the Geological and Mining Law).

The increased fees governed by the Geological and Mining Law are higher. The rates of the fees, which can be called penalty rates, are multiplied standard rates, that is, the rates of fees for lawful activity, so their amount depends on the scale of activity having been carried out in flagrant violation of the law.¹⁹ Pursuant to Article 140(3) point 1 and 1a of the GML, increased fees for prospecting for and exploration of mineral deposits and underground carbon dioxide storage are set in amounts, based on the rate for each square kilometre of land area covered by these activities, which is almost hundred times the highest rate of the fee for prospecting and exploration carried out in line with a concession. The disproportion is particularly severe in the case of the lowest rates of the fees for activity consisting in prospecting and exploration of underground carbon dioxide storage complex – when it comes to lawful activity in that subject, the rates of fees are much lower than the highest rate.

Also pursuant to Article 140(3) points 3–6 of the GML, the increased fee rates are as follows: forty times the rate applicable to an entrepreneur having the concession to extract minerals from deposits or – in the case of underground storage of waste or carbon dioxide, or storage of substances – two hundred times the applicable rate. Meanwhile, in line with Article 292 of the EPL, the rate applicable to the release of gas or dust into the air, as well as to water abstraction or wastewater discharge into waters or to land without the required permit, is increased by “merely” 500%. Also, discarding waste into water, including groundwater, carries – pursuant to Article 293(5) of the EPL – an increased fee of a hundred times the unit rate of the fee for the deposit of waste at a landfill. The increased fees provided for in the Geological and Mining Law are therefore a particularly severe penalty for violations of the law and have a preventive effect by deterring potential perpetrators.

¹⁹ The amount of standard rates depends respectively on the amount of extracted minerals (Article 134(1) of the GML), stored substances, stored waste or carbon dioxide (Article 135(2–4) of the GML) or on the area covered by the concession for prospecting for or exploration (Article 133 (1) of the GML).

A far more lenient sanction is – in the light of Article 139(3) of the GML – the additional fee, set in principle at five times the rate for the activity carried out in line with the concession, which also happens to correspond to the increased fee rate provided for in Article 292 of the EPL.

The objective character of liability of the perpetrator makes the severity of the increased and additional fee even more prominent. Both sanctions may be imposed regardless of the reasons for the violation of the law, including the perpetrator's motives or their acting in good or bad faith. What is more, this kind of approach was also adopted in provisions concerning parties to proceedings in matters of additional and – most of all – increased fees. While Article 143(2) of the GML lays down the rule that the party in such proceedings is the violator of the law, in particular the entrepreneur or entity operating without the required concession, pursuant to Article 143(3) of the GML, in the event of an absence of this entity, the party to the proceedings is the owner of the property (the real estate) or another person having a legal title to the property on which the activity is conducted. As a result, the person in question may be subject to the increased fee that may be imposed upon them in connection with the activity carried out by another entity also when that person was not aware of this activity or suffered damage, for example, due to extraction of aggregate from their property, land devastation, etc. What follows is that this person incurs strict liability, which is in contradiction to the liability based on the concept of causative responsibility.²⁰ The property owner or person having a legal title to the property would, in the situation described above, be held liable not so much for their own actions, but for the absence of appropriate supervision over their property intended to prevent violations of the law caused by other entities. For this reason, if the violation of the law occurred without the knowledge and consent of that person, proceedings in matters of the increased or additional fee cannot lead to the imposition of either of these financial sanctions. Under Article 143(3) of the GML, the property owner or another person having a title to the property is a party to the proceedings and not an entity upon which the sanction is to be imposed. Since the increased and additional fee is imposed for the activity carried out without the required concession or in flagrant violation of the conditions determined in the concession, it is hard to agree that the fees shall be imposed on an entity that was not involved in the carrying out of this activity.

The character and scope of responsibility for the fees largely follow from Article 142(1) of the GML, which includes a reference to the appropriate application of relevant provisions of the act of 29 August 1997 – the Tax Ordinance²¹

²⁰ A. Lipiński: *Z problematyki zasady „zanieczyszczający płaci”*. In: *Prawo ochrony środowiska i prawo karne. Książka jubileuszowa z okazji 40-lecia pracy naukowej [Profesora Wojciecha Radeckiego]*. Wrocław 2008, p. 145.

²¹ JoL of 2020, item 1325, as amended.

concerning tax obligations and laid down in Section III of the Tax Ordinance.²² The reference in question equates the person or entity obligated to pay the fee with the taxpayer and makes their liability in this regard similar to fiscal liability. So the obligations to pay the additional and increased fees have a public law character, similar to obligations to pay taxes or other public levies to which the Tax Ordinance act applies. This is indicative of the fiscal dimension of the fees, which consists in safeguarding in the first place the interests of the beneficiary of a public levy through ensuring that the levy is paid. The provisions laid down in Section III of the Tax Ordinance do not particularly provide for a solution similar to the one provided for in Articles 316–321 of the EPL, making some reliefs in payments conditional on the achievement of a positive effect for the environment.²³

The fiscal character of the fees is also underlined by the fact that they play a redistributive function only to a small extent.²⁴ Namely, pursuant to Article 141(1) of the GML, the income from fees is in 60% the income of the municipality within the boundaries of which the activity is carried out, and the remaining 40%²⁵ is the income of the National Fund for Environmental Protection and Water Management, and only a portion of the income of the Fund must be allocated on specified goals. Article 401c (2) and (3) of the EPL stipulates that the Fund is obliged to allocate a part of the income to finance the needs of the mining industry as regards reducing the adverse environmental impact resulting from the extraction of minerals and liquidation of mining plans.

Standards of the fees

The increased and additional fees raise doubts which refer to each administrative sanction.²⁶ They are imposed not by the court by way of a judgment but by the administration authority by way of an administrative decision. As a result, such a situation can be estimated as being in contradiction to the right

²² Cf. more broadly G. Radecki, in: *Zrównoważony...*, pp. 329–339.

²³ Articles 316–321 of EPL establish a mechanism of reducing the financial sanctions due by funds allocated for implementation of measures intended to eliminate the causes of imposition of these sanctions.

²⁴ G. Radecki, in: *Zrównoważony...*, pp. 339–341 and in: *Gospodarowanie...*, pp. 352–355.

²⁵ In case of hydrocarbons the Fund obtains only 10% (article 141 (1) of the GML).

²⁶ See e.g. G. Radecki: *Postępowania administracyjne w przedmiocie opłat i kar związanych z korzystaniem ze środowiska (zagadnienia wybrane)*. In: *Aktualne problemy postępowania w administracji publicznej*. Ed. G. Krawiec. Sosnowiec 2013, pp. 68–73 and the literature referenced therein.

to court provided for in Article 45 (1) of the Constitution of the Republic of Poland of 2 April 1997.²⁷ Moreover, a decision imposing a sanction is issued in an administrative procedure, so under the provision of the Code of Administrative Proceeding or administrative law in general, thus depriving parties of the substantive and procedural guarantees relevant to criminal matters, for example, the right of defence including the use of a defence counsel. As already mentioned, the objective liability is detached from the perpetrator's guilt, so essential for liability of criminal type, and in consequence from the principle of presumption of innocence.

To soften the repressive nature of pecuniary administrative penalties, the legislator decided to introduce general rules of their imposition, inspired by some criminal law principles and intended to adjust the penalties to the democratic rule of law requirements. They are contained in the Section VIa of the APC, which entered into force on 1 June 2017²⁸ and encompasses Articles 189a–189k. The provisions govern matters as follows: conflict of rules relating to administrative penalties, the concept of a penalty, principle of more favourable provision for the party, grounds for the imposition of a penalty, force majeure, grounds for waiving penalties, prescription of the penalty, running of the limitation period for the imposition of a penalty, outstanding penalty, running of the limitation period for the enforcement of a penalty and granting relief in the enforcement of a penalty.

Unfortunately, this first general regulation on administrative penalties in the Polish legal system has only a subsidiary character of framework legislation. It raises the question of whether the provisions of the Section IVa of the APC apply to a particular sanction and, if so, to what an extent such provisions influence the legal status of the sanction.²⁹

It is beyond any doubt that the increased and additional fees – despite their names which do not indicate their repressive character – must be regarded as administrative pecuniary penalties according to the definition laid down in Article 189b of the APC. They are pecuniary sanctions specified by statute and imposed by the public administration authority by way of a decision as a result of an infringement of law consisting in a failure to comply with an obligation or in a breach of a prohibition imposed on a natural person, a legal person or an organisational unit not having the status of a legal person. However, it does

²⁷ Journal of Laws No. 78, item 483, as amended. Article 45 (10) states that everyone shall have the right to a fair and public hearing of their case, without undue delay, before a competent, impartial and independent court.

²⁸ The section was introduced by the act of 7 April 2017 amending the act – Code of Administrative Procedure and some other acts (Journal of Laws item 935).

²⁹ Cf. more broadly G. Radecki: *Stosowanie przepisów o administracyjnych karach pieniężnych do opłat podwyższonej i dodatkowej uregulowanych Prawem geologicznym i górnictwem*. „Roczniki Administracji i Prawa” 2020, no. 3, p. 167 *et seq.*

not mean that the provisions of Section IVa of the APC refer to these fees, at least in their entirety. Namely, Article 189a § 2 of the APC states that these provisions do not apply in the event separate regulations govern: the grounds of the calculation of an administrative pecuniary penalty, the waiving of or the issuing of instruction, limitation periods in relation to the imposition of a penalty, limitation periods in relation to the enforcement of a penalty, default interest on the penalty or the granting of relief with regard to the enforcement of a penalty. In case of increased and additional fees majority of the questions listed above are covered by provisions of the Geological and Mining Law or by provisions of Section III of the Tax Ordinance applied appropriately to the fees.³⁰

The Geological and Mining Law excludes the application of Article 189d of the APC, which indicates directives of imposing the administrative pecuniary penalties. The amount of the increased and additional fees is fixed and depends only on one factor, that is, a scale of activity carried out in violation of the law. As a result, when imposing the fees, the public administration authority cannot consider circumstances listed in Article 189d, for example, actions undertaken by the party on his or her initiative to avoid the effects of violation, the amount of gain, which the party achieved or of loss which the party avoided or personal aspects of the party on whom the penalty is to be imposed.

The principle of more favourable provision, established in Article 189c of the APC, does not refer to the fees, too.³¹ Pursuant to Articles 139 (4) and 140 (5) of the GML, the fees shall be determined using the rates applicable on the day of commencement of the procedure.

The provisions of Section III of the Tax Ordinance govern *inter alia* matters of limitation periods (of a tax obligation), including suspension and interruption of the period (Article 70 § 1–7), as well as questions of tax arrears (Article 51 *et seq.*) and granting of reliefs (Article 67a *et seq.*), which excludes the application of Articles 189g–189k of the APC. What is more, the provisions of the Tax Ordinance inspired the provisions of Section IVa of the APC in the matter in question.³²

The party on whom the fee is to be imposed can enjoy the right that follows from Article 189f of the APC, that is, the party shall not be sanctioned if the violation of law was caused by force majeure. However, the legislator omitted

³⁰ G. Radecki: *Stosowanie...*, pp. 173–177.

³¹ Article 189c of the APC states that if upon issuing a decision with regard to the administrative pecuniary penalty, a different statute is in force than at the time of infringement for which the sanction is to be imposed, the new statute shall apply, however the old statute shall be applied if it is more favourable for the party.

³² See e.g. A. Cebera, J.G. Filus, in: *Kodeks postępowania administracyjnego. Komentarz*. Ed. H. Knysiak-Siudyka. Warszawa 2019, p. 1310.

the other exclusions of liability provided by criminal law, particularly protective force, insanity, diminished sanity or ignorance of unlawfulness.³³

The public administration authority may, by way of a decision, based on Article 189f § 1 point 1 of the APC, waive the increased fee (and issue an instruction) if the gravity of infringement of the law was insignificant and the party ceased to infringe the law. It is, however, out of the question in case of the additional fee, because the fee is charged if the infringement was flagrant, so at least significant.

Both fees may be subjects of Article 189f § 1 point 2 of the APC. The provision states that by way of a decision, the public administration authority waives the administrative pecuniary penalty and issues an instruction only if a different competent public administration authority had previously imposed, by way of a decision which became legally binding, a pecuniary penalty on the party for the same conduct, or a penalty which became legally binding was pronounced with respect to the party for a petty offence or fiscal petty offence, or a sentence which became legally binding was pronounced with respect to the party for an offence or fiscal offence, provided that the previous sanction allowed to achieve the objectives for which the administrative pecuniary penalty was to be imposed. In this context, it must be noticed that an activity carried out without the required concession or in violation of the conditions determined in the concession constitutes a petty offence (Article 177 of the GML) or an offence – if the activity causes considerable damage to property or serious harm to the environment or even direct risk of such damage (Article 176 of the GML).

Conclusions

To recapitulate it, an impact of the provisions of Section IVa of APC on the legal status of the increased and additional fees is insufficient. Thus the fees do not contribute to the implementation of the standards of the administrative liability introduced in 2017. The fees concentrate on fiscal and repressive functions and do not play a redistributive role. Their rates are fixed, and the administrative authorities are not provided with the competence to consider such circumstances as the perpetrator's level of income, his attitude, and the consequences of violation of the law. As a result, the fees cannot be regarded as proportionate sanctions and raise doubts from the point of view of the principle of legal cer-

³³ Cf. W. Radecki: *Odpowiedzialność za przestępstwa, wykroczenia i delikty administracyjne w prawie polskim, czeskim i słowacki*. „Prokuratura i Prawo” 2017, no. 10, p. 39.

tainty. It is particularly difficult to distinguish the scopes and subjects of the fees in some cases, while differences in their amounts are groundlessly high.

Literature

- Zrównoważony rozwój jako czynnik determinujący prawne podstawy zarządzania geologicznymi zasobami środowiska.* Ed. G. Dobrowolski. Katowice 2016.
- Dobrowolski G., Lipiński A., Mikosz R., Radecki G.: *Gospodarowanie geologicznymi zasobami środowiska w świetle zasady zrównoważonego rozwoju. Zagadnienia prawne.* Katowice 2018.
- Dudziak S.: *Zasady wymiaru administracyjnych kar pieniężnych po nowelizacji Kodeksu postępowania administracyjnego.* „Samorząd Terytorialny” 2018, no. 6.
- Jaworowicz-Rudolf A.: *Oplaty podwyższone jako rodzaj sankcji administracyjnych za naruszenie zasad korzystania ze środowiska.* In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska.* Eds. K. Karpus, B. Rakoczy, M. Szalewska. Toruń 2014.
- Kodeks postępowania administracyjnego. Komentarz.* Ed. H. Knysiak-Studyka. Warszawa 2019.
- Lipiński A.: *Z problematyki zasady „zanieczyszczający płaci”.* In: *Prawo ochrony środowiska i prawo karne. Książka jubileuszowa z okazji 40-lecia pracy naukowej [Profesora Wojciecha Radeckiego].* Ed. H. Lisicka. Wrocław 2008.
- Lipiński A.: *Z problematyki nielegalnego wydobywania kopalín.* In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska.* Eds. K. Karpus, B. Rakoczy, M. Szalewska. Toruń 2014.
- Lipiński A., Mikosz R.: *Ustawa prawo geologiczne i górnicze. Komentarz.* Warszawa 2003.
- Mikosz R., Radecki G.: *Leksykon opłat i kar pieniężnych związanych z korzystaniem ze środowiska.* Wrocław 2010.
- Radecki G.: *Postępowania administracyjne w przedmiocie opłat i kar związanych z korzystaniem ze środowiska (zagadnienia wybrane).* In: *Aktualne problemy postępowań w administracji publicznej.* Ed. G. Krawiec. Sosnowiec 2013.
- Radecki G.: *Oplata podwyższona za naruszenie warunków wydobywania piasków i żwirów na własne potrzeby.* In: *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska.* Eds. K. Karpus, B. Rakoczy, M. Szalewska. Toruń 2014.
- Radecki G.: *Fees governed by the Geological and Mining Law in the light of the principle of sustainable development.* “Roczniki Administracji i Prawa” 2020, no. 2.
- Radecki G.: *Stosowanie przepisów o administracyjnych karach pieniężnych do opłat podwyższonej i dodatkowej uregulowanych Prawem geologicznym i górniczym.* „Roczniki Administracji i Prawa” 2020, no. 3.
- Radecki W.: *Odpowiedzialność za przestępstwa, wykroczenia i delikty administracyjne w prawie polskim, czeskim i słowacki.* „Prokuratura i Prawo” 2017, no. 10.
- Prawo geologiczne i górnicze. Komentarz LEX.* Ed. B. Rakoczy. Warszawa 2015.
- Schwarz H.: *Prawo geologiczne i górnicze. Komentarz. tom II.* Wrocław 2016.

Gabriel Radecki

Increased and additional fees governed by the Geological and Mining Law as examples of administrative pecuniary penalties

Summary

The increased and additional fees are administrative sanctions for violations of the provisions of the Act of 9 June 2011 Geological and Mining Law, especially in part concerning the concession requirements. The article discusses the functions which these sanctions play. In that range it analyses the subject and severity of the fees, trying to distinguish their scopes. It leads to the conclusion that the fees concentrate mainly on their repressive and fiscal functions. The second part of the article is devoted to standards of the fees in the light of the provisions Section IVa of the Code of Administrative Procedure, entitled "Administrative pecuniary penalties". The impact of these provisions on the fees' legal status is insufficient and does not guarantee the satisfactory protection of rights of entities.

Key words: increased fee, additional fee, administrative sanction, administrative pecuniary penalty

Gabriel Radecki

Opłaty podwyższona i dodatkowa regulowane Prawem geologicznym i górniczym jako przykład administracyjnych kar pieniężnych

Streszczenie

Opłaty podwyższona i dodatkowa są sankcjami administracyjnymi za naruszenia przepisów ustawy z dnia 9 czerwca 2011 r. Prawo geologiczne i górnicze, szczególnie w części dotyczącej wymogów łączących się z koncesjami. W artykule rozważono funkcje, jakie te sankcje pełnią. W tym zakresie przeanalizowano przedmiot i dolegliwość opłat, próbując rozdzielić ich zakresy zastosowania. Doprowadziło to do wniosku, że opłaty koncentrują się głównie na funkcjach represyjnej i fiskalnej. Druga część artykułu jest poświęcona standardom opłat w świetle przepisów Działu IVa Kodeksu postępowania administracyjnego, zatytułowanego „Administracyjne kary pieniężne”. Wpływ tych przepisów na prawny status opłat jest niewystarczający i nie gwarantuje właściwej ochrony praw jednostek.

Słowa kluczowe: opłata podwyższona, opłata dodatkowa, sankcja administracyjna, administracyjna kara pieniężna

Габриэль Радецкий

Повышенные оплаты и дополнительные сборы, регулируемые законом о геологическом и горном праве, как примеры административных денежных штрафов

Резюме

Повышенная оплата и дополнительные сборы являются административными санкциями за нарушения закона о геологическом и горном праве от 9 июня 2011 года, особенно в части, посвященной требованиям, связанным с концессиями. В статье рассматриваются функции этих санкций. В этой связи была проанализирована тема и обременительность сборов, сделана попытка разделить сферы их применения. Это позволило сделать вывод, что сборы в основном выполняют репрессивные и фискальные функции. Вторая часть статьи посвящена стандартам сборов в свете положений Раздела IVA Административно-процессуальный кодекса Раздела IVA, озаглавленного «Административные денежные штрафы». Влияние этих положений на правовой статус сборов является недостаточным и не гарантирует надлежащей защиты прав организаций.

Ключевые слова: Повышенная оплата, дополнительная плата, административная санкция, административный денежный штраф

Gabriel Radecki

Tasse maggiorate e addizionali regolate dalla legge geologica e mineraria come esempi di sanzioni amministrative pecuniarie

Sommario

Le tasse aumentate e supplementari sono sanzioni amministrative per la violazione delle disposizioni della legge del 9 giugno 2011. Legge geologica e mineraria, specialmente nella parte che riguarda i requisiti legati alle concessioni. Nell'articolo sono state considerate le funzioni che queste sanzioni svolgono. In questo campo, sono stati analizzati l'argomento e il grado di intensità della tassa, cercando di separare i loro ambiti di applicazione. Cio' ha portato alla conclusione che le tasse si concentrano principalmente su funzioni repressive e fiscali. La seconda parte dell'articolo è dedicata agli standard delle tasse alla luce delle disposizioni della Sezione IVa del Codice di procedura amministrativa intitolata "Sanzioni amministrative pecuniarie". L'impatto di queste disposizioni sullo stato giuridico delle tasse è insufficiente e non garantisce una protezione adeguata dei diritti individuali.

Parole chiave: tasse maggiorate, tasse addizionali, sanzione amministrativa, sanzione amministrativa pecuniaria