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Guarantee of proper performance of economic activity under concession – outline of main issues

Summary

The provisions of Art. 50 point 2 and Art. 52 para. 1 of the Act of 2 July 2004 on the freedom of economic activity refer to the “guarantee of proper performance of activity under concession” without determining, however, what such guarantee should really contain.

This paper is an attempt to establish the meaning of the above term and this will be made based on other acts regulating activities under concession. It will also determine whether the provision of a guarantee of proper performance of an activity under concession is identical with the satisfaction of the requirements needed to be fulfilled in order to obtain a concession.

Consequently, an analysis of the provisions of different acts regulating specific matters determining the conditions necessary to be met in order to conduct an economic activity has been made, including the provisions of other acts in which a concept of a “guarantee of proper performance of economic activity” has been used.

The above analysis allows to draw a conclusion that the granting of a guarantee of proper performance of activity under concession cannot be treated as satisfying the requirements of conducting economic activity, otherwise each entrepreneur satisfying the requirements of needed to conduct economic activity would be regarded as also giving a guarantee of proper performance. What is more, giving a guarantee of proper performance does not apply to activities under concession only. However, guarantees of proper performance in other types of economic activity are rare. Giving a guarantee of proper performance of activity under concession means guaranteeing that the activity will also be properly performed in the future. A characteristic feature of an activity conducted under concession is that the future is predicted based on the actual state of affairs ascertaining satisfaction of the requirements of proper performance of an economic activity.

Deliberations on a guarantee of proper performance of economic activity may be carried out in the context of a guarantee of proper performance of a given profession. This is done in the second part of the paper. However, it must be noted that not all elements identified in judicial decisions as those constituting a guarantee of proper performance of a profession, may be directly referred to when it comes to the performance of an economic activity. Professional ethic or the moral qualities of an entrepreneur may not constitute a premise indicating the absence of a guarantee of proper performance of a concession activity.

Keywords: guarantee, unspecified juridical notion, concession activity, prediction of a decision to obtain a concession, conditions of performance of economic activity under concession