Table of contents

ADMINISTRATIVE LAW AND PROCEDURE

Summary:
Legal nature of the resolution of the municipal council giving priority to purchase flats or other premises to their tenants or lessors gives rise to different opinions in both the case-law and the administrative law doctrine. According to certain views such acts are individual acts, while in other opinions they are acts adopting generally binding provisions of law. These opinions do not take into consideration the fact that legal nature of the resolutions depends on the manner of regulation of municipal affaires enacted by the municipal council.

Summary:
The judgment under consideration refers to the interpretation of the legal definition of "green areas" under the Environmental Protection Act. The definition includes two cumulative requirements that have to be met: location of green areas within the boundaries of villages of high-density housing or within the boundaries of towns or cities and their aesthetic, recreational or protective functions. This definition does not cover the element of "public accessibility" of the area, which has been declared decisive by the Administrative Court. The influence of the greenery as such is not limited to the registered plot of land or property.

Summary:
The Supreme Court resolution under consideration is of high practical relevance. In its resolution the Supreme Court refers to the protection of trade secrets in the investigation proceedings before the President of the Office of Competition and Consumer Protection. However, in the commented decision the Supreme Court also refers to the time of deciding by the President on the motion that was brought in the course of the investigation. The Supreme Court has explicitly confirmed not only the right of the party to the proceedings, but also the right of other entities which do not enjoy the status of the party to protection of trade secrets provided under Article 69(1) of the Competition and Consumer Protection Act. The resolution of the Supreme Court allows to assume that under Article 69(1) of the Competition and Consumer Protection Act the possibility to restrict the right to consult the evidence concerns not only the proceedings on the merits but the investigation proceedings as well. However, taking into consideration the nature of the investigation proceedings, it must be concluded that the above-mentioned right does not materialise until the phase of the proceedings on the merits when the injunction restricting the right to consult the evidence is issued.

Summary:
On 9 June 2010 the Supreme Administrative Court stated in its judgment that the obligation to carry out public consultation under Article 35 of the Local Government Act referred only to a "fraction" of issues regulated in the statute of the municipal ancillary unit, namely to the issue of institutional structure and competences of its bodies. However, the commentary argues that the analysis of the relevant legal provisions proves to the contrary. The municipal council is under obligation to consult the local community in every case of enactment or

amendment of the statute of the municipal ancillary unit and, therefore, also in other cases than the one envisaged under Article 35(3)(3) of the Act.

5. Judgment of the Provincial Administrative Court in Warsaw of 17 December 2010 in Case I SA/Wa 1521/10
Dominika Tykwińska-Rutkowska, Ph.D., lecturer at the University of Gdansk
Refusal to grant one-off childbirth allowance to adoptive parents.

Summary:
The commentary under consideration concerns the judgment of the Provincial Administrative Court in Warsaw of 17 December 2010 in Case I SA/Wa 1521/10. In the judgment, the Court repealed on the basis of Article 145(1)(1)(a) of the Procedure before Administrative Courts Act of 30 August 2002 (O.J. 2002, No 153, item 1270 with amendments) the questioned decision and the decision of the mayor of W. of [...] February 2010 refusing to grant one-off childbirth allowance to adoptive parents, stating that the said decision is not to be enforced.

6. Judgment of the Supreme Court of 5 February 2010 in Case III CSK 120/09
Karol Sirocki, legal trainee, lawyer at Zabrocki & Kajetanowicz Radcowie Prawni Law Office
"Distinctive character" as an element of the definition of "trademark" assessed in the court proceedings on the infringement of the exclusive right to a trademark.

Summary:
The Supreme Court in the commented judgment states that although the criterion of "distinctive character" is not listed among the conditions of trademark infringement, the assessment of this characteristic is performed in the course of the analysis whether there has been a risk of confusion due to the use of the disputed trademark to certain products. In the opinion of the Author this standpoint is to be approved of only partially. The court, when considering whether the exclusive right to a trademark has been infringed, does analyse distinctiveness of the trademark, but this analysis is performed within the assessment of basic statutory requirements rendering the trademark possible to register. The above-mentioned interpretation is relevant to the extent that it does not devoid the possible wrongdoer of the broader defence in the case of the infringement action under Article 296(2)(1) and (3) of the Intellectual Property Rights Act, i.e. when the risk of confusion is not subjected to court assessment.

CIVIL LAW AND PROCEDURE, COMMERCIAL LAW

7. Resolution of the Supreme Court of 21 July 2010 in Case III CZP 23/10
Marcin Borkowski, Ph.D., legal counsel at Grynhoff Woźny Wspólnicy law office
Expiry of the board member mandate in the limited liability company.

Summary:
In the resolution under consideration the Supreme Court confirms that the limited liability company can appoint a board member for undefined period of time. The expiry of the mandate of the board member appointed for the undefined term of office as a rule takes place on the date of the stakeholders' meeting approving the financial statement for the first complete business year of the board member's term of office (Article 202(1) of the Commercial Companies Code). The rule that the mandate of the management board member expires on the date of the stakeholders' meeting approving the financial statement for the first complete business year can be excluded in the articles of association.

8. The judgment of the Supreme Court of 15 June 2010 in Case II CNP 8/10
Anita Lutkiewicz-Rucińska, lecturer at the University of Gdansk
Extraordinary meeting of the limited liability company stakeholders called by the management board upon the request of minority stakeholders.

Summary:
The interpretation of Article 236(1) of the Commercial Companies Code given by the Supreme Court in the judgment under consideration, under which the management board is under obligation to grant the request of the minority stakeholders and call the meeting without any inquiry into the reasons for the request and the planned agenda of the meeting, cannot be approved of. The systemic and functional interpretation of Articles 236(1) and

237(1) of the Commercial Companies Code weights against the interpretation given by the Court. It is to be assumed that that the request of the stakeholders brought under Article 236(1) of the Commercial Companies Code can and should be decided by the management board not only in terms of formal, but also in terms of substantive requirements. If the request meets the formal requirements, it should be granted when the extraordinary meeting of stakeholders is reasonable under the circumstances, having taken the company interests into consideration. Reasonableness of the stakeholders' request cannot be assumed directly from the provisions of law or the articles of association.

9. Resolution of the Supreme Court of 17 June 2010 in Case III CZP 41/10
Marcin Kozłowski, Gdansk
Motion for partition of common possession, partition of estate, and termination of common property.

Summary:
In its resolution of 17 June 2010 the Supreme Court, explaining the notion of acts in law in the meaning of Article 527(1) of the Civil Code, stated that the creditor can include in the *Actio Pauliana* not only debtor's "acts in law" in the technical meaning of this term, but also all procedural actions undertaken by the debtor in the court proceedings (in order to cause effects in substantive law) approved in the constitutive decision of the court. The Supreme Courts states that the time-limit under Article 534 of the Civil Code starts to run on the day when the court decision becomes final.

FINANCIAL LAW

10. Judgment of the Provincial Administrative Court in Wroclaw of 21 December 2010 in Case I SA/Wr 639/10
Krzysztof Lasiński-Sulecki, Ph. D., lecturer at Nicolaus Copernicus University of Torun
Wojciech Morawski, Ph. D., lecturer at Nicolaus Copernicus University of Torun
Taxation of income acquired from transferring the ownership of a flat under the annuity agreement.

Summary:
The commentary refers to controversies concerning imposition of the personal income tax on the annuity agreement. The Authors approve of the Court's opinion that the annuity agreement is not a source of income referred to in Article 10(1)(8) of the Personal Income Tax Act. The Authors agree with the Court that it is not possible to value for taxation purposes the obligations towards the annuitant. However, the Authors disagree with the opinion that the annuity agreement is gratuitous and they emphasise the terminological inconsistency within the tax legislation.

11. Judgment of the Provincial Administrative Court of 14 October 2010 in Case III SA/Po 675/10
Przemysław Panfil, Ph.D., lecturer at the University of Gdansk
Imposition of real property tax on fuel dispensers, pumps and tanks.

Summary:
The main feature of the fuel tank located in the petrol station and its dispenser and pump systems is distribution of fuel at the point of retail sale. This fact means that the above-mentioned elements are in both physical and functional connection creating a functional and usable unit that is to be recognised as a construction under the Local Taxes and Charges Act. Therefore, the real property tax is to be charged on the fuel tank and the connected dispenser and pump systems.

CRIMINAL LAW AND PROCEDURE

12. Resolution of the Supreme Court of 27 January 2011 in Case I KZP 23/10
Wojciech Zalewski, Ph.D., lecturer at the University of Gdansk
Controversies around accuracy of legal qualification in the detention on remand proceedings.

Summary:
In the judgment under consideration the Supreme Court considers the important issue of the trial court obligation to assess the accuracy of the legal qualification given by the public prosecutor with reference to the criminal charge attributed to the suspect in the detention on remand motion. The Author of the commentary attempts to assess practical consequences of the Supreme Court resolution under consideration in the context of historical experiences and the reflections stemming from the analysis of the European Convention of Human Rights and

the resultant case-law of the Court in Strasburg. The Author, approving of the formal side of the commented judgment, points to its possible counterproductivity.

13. Order of the Appeal Court in Bialystok of 20 January 2011 in Case II AKz 13/11
Bartłomiej Gadecki, assessor at District Prosecutor Office in Lidzbark Warminski
Correction of erroneously applied legal basis of extraordinary mitigation of punishment.

Summary:
The Author disapproves of the opinion of the Appeal Court in Bialystok expressed in its order of 20 January 2011 in which the Court states that erroneously applied legal basis of the extraordinary mitigation of punishment is an obvious writing mistake that can be corrected under Article 105(1) of the Criminal Procedure Code. It is to be noted that under Article 105(1) of the Criminal Procedure Code corrections can be made only with reference to mistakes that are evident (i.e. noticeable "at first sight") and do not concern the merits of the judgment. Such mistakes cannot include the extraordinary mitigation of the punishment ordered under Article 60(6)(1) instead of Article 60(6)(2) of the Criminal Code.

14. Order of the Supreme Court of 30 September 2010 in Case I KZP 16/10
Tomasz Kanty, doctoral student at the University of Gdansk, solicitor
Board member of a single-member state-owned company and public functions.

Summary:
The commentary concerns the notion of "person performing public functions". Originally the Criminal Code did not contain its definition but due to numerous doubts concerning its substance brought up in both legal theory and practice the legal definition of the term was introduced into the Criminal Code (Article 115(19) of the Code) in 2003. However, the definition remains the subject of many doubts and the case-law of the Supreme Court reveals the tendency towards its broad interpretation aiming at covering possibly the largest group of individuals. This is caused by vagueness of the notions of "managing of public resources" and "public activity" which are the elements *definiens* of Article 115(19) of the Criminal Code.

15. Resolution of the Supreme Court of 27 January 2011 in Case I KZP 24/10
Tomasz Snarski, teaching assistant at the University of Gdansk
Notes on possession in criminal law.

Summary:
The commentary approves of the merits of the Supreme Court interpretation of the notion of possession as a characteristic feature of the offence punishable under Article 62 of the Drug Addiction Prevention Act while disagreeing with the reasoning given in the judgment. The Author points to insufficient reference on the part of the Supreme Court to the criminal legal doctrine on the issue of possession. Moreover, it is to be emphasised that the reasoning supporting the resolution is devoid of the analysis of the notion of possession in the context of other features of offences punishable under the Drug Addiction Prevention Act, including the offence of drugs storing.

LABOUR LAW

16. Judgment of the Supreme Court of 24 August 2010 in Case I UK 64/10
Piotr Lechosław Kamiński, doctoral student at the University of Gdansk
Criteria and assessment of inability to work in connection with entitlement to disability pension.

Summary:
In the commentary under consideration the Supreme Court rightly presents the view that the medical opinion cannot be an intrinsic ground for legal assessment establishing inability to work. Nevertheless, "other requirements" additional to the medical opinion can raise doubts. The doubts arise both in terms of their scope and the body that is to perform professional verification of the factual economic element of the inability to work. Thus, an attempt has been undertaken to analyse the economic element of the inability to work on the basis of the above-mentioned aspects.

17. Judgment of the Supreme Court of 27 May 2009 in Case II PK 300/08
Ariel Przybyłowicz, doctoral student at the University of Wroclaw
Consequences of delayed payment of compensation under non-competition clause.

Summary:
The standpoint of the Supreme Court expressed in the judgment of 27 May 2009 (II PK 300/08) is generally to be approved of. A conclusion to the contrary would result in substantial detriment of the situation of the former employees bound by the non-competition clause as it would cause uncertainty as to termination of the prohibition of competition when the employer does not fulfil the obligation to pay compensation or, in particular, when the payment is substantially delayed. However, certain doubts may be caused by the ancillary issues mentioned by the Court in the commented judgment.

VARIA

18. Judgment of the European Court of Human Rights of 29 March 2011 in Case Potomska and Potomski v. Poland, 33949/05 ECHR 2011

Piotr Lewandowski, Ph.D., lecturer at Eugeniusz Kwiatkowski College of Administration and Business in Gdynia

Exercising the right to the protection of property in the light of the European Court of Human Rights standards.

Summary:
The merits of the Court judgment under consideration belong to a vast group of cases concerning application of Article 1 of Protocol 1 to the European Convention of Human Rights (ECHR). The most important conclusion of the judgment amounts to imposition on the authorities positive obligations regarding the protection of property, which goes beyond the traditional understanding of this obligation as a duty not to interfere in the property rights. The judgment under consideration is also in line with the earlier case-law of the Tribunal on the interpretation of the rule governing deprivation of property.

19. Judgment of the Court of Justice of the European Union of 15 March 2011 in Case C-29/10

Arkadiusz Wowerka, Ph.D., LL.M., lecturer at the University of Gdansk

Connecting criterion of the country in which the employee habitually carries out his work when the work is carried out in more than one Member State.

Summary:
In the commentary under consideration the Author refers to the judgment of the Court of Justice of the European Union of 15 March 2011 in Case-29/10 in which the Court gives interpretation on the connecting criterion of the country in which the employee habitually carries out his work under Article 6(2)(a) of Rome Convention on the law applicable to contractual obligations in situations when the work is carried out in more than one Member State. The Author agrees with the standpoint of the Tribunal that the place in which the employee habitually carries out his work in the meaning of the above-mentioned Article is the place in which or from which the employee carries out the majority of his working activities, having taken account of all the factors which characterise the activity of the employee.