

## Table of contents

### ADMINISTRATIVE LAW AND PROCEDURE

1. Judgment of the Provincial Administrative Court in Warsaw of 21 October 2006 in Case VI SA/Wa2390/05  
Piotr Cybula, Ph.D., teaching assistant at University School of Physical Education in Cracow; teaching assistant at University of Economics in Katowice

**Failure to present the Province Marshal with a valid medical certificate and participation of a tour guide in a touristic event.**

#### Summary:

The commentary presents a critical appraisal of the standpoint of the Provincial Administrative Court in Warsaw that failure to present a written order stating the time and the place of tour guiding services and lack of the authorisation to act on behalf of the tour operator seem to be proving that the tour guide has not been commissioned to perform the tasks of the tour guide despite his or her participation in the event. Finding that the guide did not possess the documents listed in Article 30(3) of the Touristic Services Act does not absolve the court from establishing whether under the circumstances of the case it could have been assumed that the person performed the functions of the tour guide. The Court failed to notice that in practice the situations in which the tour guides are not provided with the documents of this kind not only are not rare, but - as it has been argued in the literature on the subject - they are "almost common".

2. Judgment of the Provincial Administrative Court in Cracow of 9 June 2010 in Case III SA/Kr 775/09

Dominika Tykwińska-Rutkowska, Ph.D., lecturer at University of Gdansk

**Refusal to issue the birth certificate of a still born child.**

#### Summary:

In the judgment under consideration the Court dismissed the claim brought under Article 151 of the act of 30 August 2002 on the Law on the Procedure before Administrative Courts (Journal of Laws No 153, item 1270 with amendments) stating that under Article 40(1)-(3) in conjunction with Article 39 of 29 September 1986 on the Law on Civil Status Records (Journal of Laws of 2004, No 161, item 1688 with amendments) that incorrectly issued birth notification by a body under notifying obligations renders it impossible to create a civil record - the birth certificate with the annotation on still birth.

3. Judgment of the National Appeal Chamber of 18 March 2009 in Case KIO/UZP 258/09

Małgorzata Sieradzka, Ph.D., teaching assistant at H. Chodkowska University of Management and Law, lawyer at K. Wawrzaszek-Kosmalska law office in Wrocław

**Documents confirming fulfilment of the requirements of participation in the award of contract under public procurement procedure.**

#### Summary:

Upon and as far as the contracting authority requires, the contractor is under obligation to establish, not later than on the date of placing the request to participate in the award of public contract procedure or placing the tenders, that the requirements conditioning the participation in the procedure have been met. Statements and documents confirming the fulfillment of such requirements are listed by the contracting authority in the notice on the award of the public contract, the technical specification, or the invitation to tender. Therefore, it is to be assumed that with the elapse of the tendering period the contracting authority cannot reinterpret without a good reason the specification requirements and, in particular, it cannot demand not previously required documents from some of the contractors as it is in a breach of the principles of equal treatment and fair competition.

4. Judgment of the Supreme Administrative Court of 6 August 2010 in Case I OSK 673/10

Paweł Dańczak, lecturer at University of Lodz

**Dean's decision on completion of a semester.**

#### Summary:

The judgment under consideration presents the standpoint of the Supreme Administrative Court as to the form suitable for the dean of the university department to determine the issue of completing a semester as well as necessary conditions to deliver such decision efficiently. The Author argues that under the applicable legal provisions and in the light of practical functioning of higher education institutions the opinion given in the judgment is not to be approved as it could affect negatively everyday activities of most of the universities and colleges.

5. Order of the Supreme Administrative Court of 28 July 2009 in Case I OZ 745/09  
Grzegorz Karcz, court clerk, the Provincial Administrative Court in Cracow

**Concept of "the course of the proceedings" under Article 243(1) of the Law on Procedure before Administrative Courts.**

**Summary:**

The commentary refers to the problem raised last year by the Case-law Office of the Supreme Administrative Court that concerns the risk attached to the possible violation of the right to court guaranteed to the parties in the case of dismissal the application for legal aid when the decision completing the administrative court proceedings has become final. Presenting the spectrum of legal opinions of the Supreme Administrative Court, the Author undertakes the effort to come up with the proper interpretation of the term "the course of the proceedings" used in Article 243(1) of the act of 30 August 2002 on the Law on Procedure before Administrative Courts and concludes that this provision does not provide for a particular time-limit to apply for legal aid but its wording forms a substantive requirement grounding the acceptance of such application which differs from requirements listed in Article 246 of the above-mentioned act.

6. Judgment of the Supreme Administrative Court of 30 July 2010 in Case II OSK 1053/10  
Agnieszka Królczyk, doctoral student at University of Slask

**Limits of "planning discretion of the local government".**

**Summary:**

The Author in her paper comments on the judgment concerning the crucial problem of so-called planning discretion of the local government. This issue is brought to attention not only for the reason of its major influence on the life of every citizen but also because of its relevant and practical influence on the right to property as a value protected by the Constitution. The reasoning given in the judgment under consideration allows for better understanding of the nature of the right to property and its potential restrictions by the local government.

## **CIVIL LAW AND PROCEDURE, COMMERCIAL LAW**

7. Resolution of the Supreme Court of 10 December 2009 in Case III CZP 107/09  
Małgorzata Balwicka-Szczyrba, teaching assistant at University of Gdansk

**Charges for illegal electricity consumption.**

**Summary:**

The commentary to the judgment of Supreme Court of 10 December 2009 considers the legal issue whether in order to establish liability for illegal electricity consumption described in Article 57(1) of the Energy Law it is necessary to prove damages on the part of the electricity provider or it suffices do establish the interference in the measurement system that makes it possible to forge measurements. The commentary analyses the content of the claim to pay the tariff price in connection with the illegal consumption of energy.

## **FINANCIAL LAW**

8. Judgment of the Supreme Administrative Court of 15 April 2009 in Case II FSK 60/08  
Jarosław Olesiak, lecturer at University of Lodz

Łukasz Pajor, lecturer at University of Lodz

**Third parties' liability for tax arrears interest and declaration of bankruptcy of a taxpayer.**

**Summary:**

The case-law on the bankruptcy and reorganisation law has recently dealt with the issues concerning the material scope of third parties' liability for interest on tax arrears. The standpoint of the judiciary that Article 33(1) of the Bankruptcy Law of 1934 (which now can be also referred to Article 92(1) of the present Bankruptcy and Reorganisation Law of 2003) is allegedly *lex specialis* in relation to Article 107(2) of Tax Law is to be questioned in the light of the wording of these provisions.

9. Judgment of the Provincial Administrative Court in Warsaw of 25 June 2010 in Case III SA/Wa 111/10  
Edyta Urbańska, doctoral student at University of Gdansk

**Contemporary issues of tax case-law.**

**Summary:**

The commentary to the judgment deals with the legal question that stems from the practice of donating commodities belonging to the enterprise for promotional purposes and, therefore, consideration whether the VAT tax applies to free deliveries undertaken with the view to expand business activity. The judgment involves a direct analysis of the right to reduce the tax due by the amount of the tax calculated when purchasing the commodities subsequently used for advertising and promotional purposes by means of their free-of-charge donation, assuming that such donation is not a taxable act which, nevertheless, *per se* does not exclude the right to tax deduction.

**CRIMINAL LAW AND PROCEDURE**

10. Judgment of Supreme Court of 27 August 2008 in Case II KK 56/08

Paweł Petasz, Ph.D., teaching assistant at University of Gdansk

**Emergence of the *closest person* status pending judicial proceedings on offences prosecuted on request when committed against the closest persons.****Summary:**

The commentary deals with the issue of emergence of the "closest person" status in the course of the court proceedings on offences prosecuted on request when committed against the closest persons, in which the request brought by the aggrieved party identifies the perpetrator and initiates criminal proceedings. The commentary approves the opinion given by the Supreme Court that finding in the course of the trial that the perpetrator has become the closest person to the aggrieved party necessitates asking the aggrieved party to declare whether she or he requests prosecution under the pain of discontinuation of the proceedings.

11. Resolution of the Supreme Court of 27 January 2010 in Case II KO 117/09

Piotr Rogoziński, Ph.D., teaching assistant at University of Gdansk

**Right to defence under legal aid scheme.****Summary;**

The Supreme Court expresses the opinion that since the defendant has chosen a different purpose of non-necessary nature to spend the means in his possession sufficient to pay for the defence counsel, the lack of sufficient means cannot serve as a ground for the appointment of a counsel under the legal aid scheme. The Commentator in general supports this view, provided, however, that the defendant was aware of existing or upcoming need for legal aid and the decision to appoint a lawyer under the legal aid scheme should not depend on the legal action to be taken in the proceedings and the time-limit for its completion.

12. Resolution of the Supreme Court of 25 May 2010 in Case I KZP 5/101

Wojciech Zalewski, Ph.D., teaching assistant at University of Gdansk

**On limitation period of communist crimes.****Summary:**

Dealing with the communist past in Poland is a difficult process due to many reasons. Several of them are brought forward in the commentary to the resolution of the Supreme Court of 25 May 2010. The limitation period of prosecution of offences committed by communist regime officers is the main issue under consideration in the commentary. The Author approves the opinion of the Supreme Court given in the judgment and expands its reasoning with, among others, the conclusions stemming from the evolution of the definition of "communist crimes".

13. Resolution the Supreme Court (the Chamber of seven judges) of 30 September 2010 in Case I KZP 10/10

Małgorzata Manikowska, doctoral student at University of Gdansk

**Exercising rights of a minor as an aggrieved party in the criminal proceedings – Article 98 of the Family and Care Code in conjunction with Article 51(2) in conjunction with Article 59 of the Criminal Procedure Code****Summary:**

The Author in her commentary approves the standpoint of the Supreme Court on the necessity of application of the provisions of the Family and Care Code and the Civil Code in order to exercise the rights of an aggrieved minor. The rules of Article 51(2) of the Criminal Procedure Code and Article 98(2)(2) and 98(3) of the Family and Care Code exclude the rights of the parent of the aggrieved minor to exercise his or her rights in the

proceedings instituted under the private bill of indictment against the other parent enjoying parental rights. The commentary emphasises the possible role of the Ombudsman for Children as a body capable of exercising such rights in the subsequent stages of the criminal proceedings.

14. Order of the Supreme Court of 25 May 2010 in Case I KZP 4/10

Tomasz Snarski, lecturer at the University of Gdansk

**Continuous minor offence and minor offence by omission. Inadmissibility of bringing apparent legal questions before the Supreme Court.**

**Summary:**

The commentary approves the Supreme Court's interpretation of Article 98(1)(1) and (6) of the Act of 13 October 1998 on Social Security System. The Author presents the differences between so-called continuous minor offences and minor offences by omission and analyses in great detail rules for establishing the moment of committing a minor offence by omission. To end with, the commentary refers to the catalogue of requirements enabling the Supreme Court to determine a legal issue requiring fundamental interpretation of legislation. The Author emphasises that a legal question forming the part of a legal issue requiring fundamental interpretation of legislation brought before the Supreme Court cannot be of an apparent nature.

## **LABOUR LAW**

15. Resolution of the Supreme Court of 18 March 2010 in Case II PZP 1/10

Piotr Prusinowski, Ph.D., University of Warmia and Mazury

**Recurrence of the right to retirement and disability allowance.**

**Summary:**

In the resolution of 18 March 2010 in Case II PZP 1/10 the Supreme Court states that the employee cannot acquire the right to another retirement and disability allowance and the right to the supplementary allowance. The former opinion is not correct. The Court does not take into consideration that the right to this benefit can stem from alternative legal grounds to which Article 92<sup>1</sup>(2) does not apply. The latter conclusion is to be approved but, however, for a reason different to the reason given by the Court. Since the employee maintains the right to subsequent allowances, there is no need for the Court to rely on the concept of a supplementary allowance.

16. Judgment of the Supreme Court of 9 July 2008 in Case I PK 315/2007

Oliwia Likierska, legal trainee in Gdansk

**Calculation of overtime premium for work exceeding established working hours of a part-time employee.**

**Summary:**

In the judgment under consideration the Supreme Court states that if parties to the employment contract concluded with a part-time employee do not indicate working hours limit entitling to overtime premium, the right to the premium arises after performing eight-hour work. The commentary disapproves the standpoint of the Supreme Court and argues against it, relying not only on linguistic interpretation but also on teleological interpretation and the principles of the European Union law and stating that the entitlement to the premium is triggered with the first hour exceeding the fixed working hours, even if the working hours have been established below standard hours.

## **EUROPEAN LAW**

17. Judgment of the Court of Justice of 6 October 2009 in Joined Cases C-501/06 P, C-513/06 P, C-515/06 P i C-519/06 P

Konrad Kohutek, Ph.D., teaching assistant at Andrzej Frycz Modrzewski Academy in Cracow

**Structural and effective understanding of aims and nature of competition law; discrepancies in the case-law of the European Union Courts.**

**Summary:**

The commentary focuses on the key competition policy issues, i.e. the aims of competition law and determination of the nature of competition, and its analysis is made in the light of decisions of the European Union Courts dealing with the practices of agreements intended to limit parallel trade. Discrepancies between the opinions of the Court of First Instance (presenting modern approach focused on the end consumer market effects) and of the Court of Justice (presenting traditional "pro-structural" and "pro-integrative" approach to

axiology and competition policy) are given particular attention. The interpretation of the term of agreements intended to restrict competition is also presented in the commentary.