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I. Case-law review

Summary:
The European Court of Human Rights case-law against Poland lies at the heart of the Author's publication. The Court in its judgments points to the spheres in which the State actions are inappropriate, whereas the State's task, when executing the judgments, is to remove such irregularities regardless of the fact if they consider malpractice, necessity to issue a new legal act, or amendments to an existing legal act. In 2008, the Court decided in 141 judgments in cases against Poland with 129 rulings stating infringement of the European Convention of Human Rights and only 9 rulings stating no breach of the Convention, while 1 case was terminated with a settlement. In particular, the judgments considered violations of the right to personal liberty and safety (Article 5 of the Convention), the right to fair trial (Article 6 of the Convention), and breaches of the right to privacy and private life (Article 8 of the Convention).

II. Commentaries

ADMINISTRATIVE LAW AND PROCEDURE

Summary:
The judgment under consideration deals with the issue of alteration in the content of delegation of legislative powers and the issue of the scope of *res judicata* in the proceedings before administrative courts. The Author of the commentary supports the standpoint of the Administrative Court as to the opinion that alteration in the content of delegation of legislative powers can have diversified influence on the binding force of a non-statutory normative act adopted on its basis and opposes to the standpoint of the Administrative Court as to the opinion that *res judicata* in the proceedings before administrative courts produces general, *erga omnes* effect.

Summary:
The resolution of the Supreme Court under consideration summarizes and determines at the same time the judicial and doctrinal dispute as to the meaning of farmland cultivation in the context of Article 26 of the Act on Hunting Law. The Supreme Court supports an expansive reading of this notion joining it with the land on which such cultivation is being carried out. What is important, the Court found that there was no need to distinguish human activity as a separate condition for recognizing cultivation as farmland cultivation under Article 46 of the Act on Hunting Law. This reasoning cannot be approved in the light of the fact that it is precisely human involvement due to which the legislator finds damages in farmland cultivations to be hunting damages.

Summary:
The resolution of the Supreme Administrative Court deals with the binding force of enforceable rulings of administrative courts under Articles 170 and 171 of the Act on the Procedure before Administrative Courts in the case of dismissing an action against an administrative decision. Under the Code of Administrative Procedure, it is possible to bring a motion to have every final administrative decision declared null and void with the view to

its aggravated legal defects. According to Article 157 (3) of the Code of Administrative Procedure, it is possible to refuse to commence proceedings for formal reasons; the question whether a preceding judgment dismissing an action can be considered as such a formal reason is not to be answered with the application of grammatical analysis. However, according to the resolution, administrative authorities are under obligation to conduct an initial assessment of the grounds of administrative courts' rulings in the context of the reason for declaring a decision null and void referred to in the motion.

5. Judgment of the Provincial Administrative Court in Olsztyn of 24 September 2008 in Case II SAB/Ol 24/08
Piotr Brzozowski, "Civitas at Ius" Law Office, Miłomłyn
Commencement of administrative proceedings on request

Summary:
Not every individual motion results in the initiation of administrative proceedings. A request as such is not decisive for an individual legal interest in cases which clearly are not administrative cases. Accordingly, not every petition can initiate the proceedings as not every petition considers an administrative case. Moreover, in a situation when it is apparent from the provisions of substantive law that particular proceedings can be only initiated *ex officio* not even a petition of the party to such proceedings will lead to its commencement. In such a situation the request of the party to the proceedings will not cause commencement of the proceedings on such a request but it will only produce a signal for a competent authority to initiate the proceedings *ex officio*.

6. Judgment of the Supreme Administrative Court of 2 February 2009 in Case II OSK 62/08
Krzysztof Gruszecki, legal counsel, Inowrocław
Validity of decisions issued in breach of provisions considering environmental protection

Summary:
In the commentary, the Author supports the standpoint of the Court as to the grounds for declaring an administrative decision null and void under Article 156 of the Code of Administrative Procedure in connection with Article 11 of the Act of 27 April 2001 on Environmental Protection Law (O.J. 2008, No 25, item 150 with amendments). Certain procedural aspects are brought forward such as necessity to include both substantive and procedural solutions into the category of provisions concerning the protection of the environment as well as the fact that only substantial legal flaws covering a broader list of law infringements than manifest infringements can serve as grounds for stating that a decision is null and void.

7. Judgment of the Provincial Administrative Court in Warsaw of 29 July 2008 in Case VII SA/Wa 516/08
Magdalena Laskowska, teaching assistant at University of Gdańsk
Repealing under Article 155 of the Code of Administrative Procedure decision ordering demolition of an unauthorized construction

Summary:
In the judgment under consideration the Provincial Administrative Court in Warsaw reinforced the previous case-law that the decision ordering to demolish a construction erected without a legally required building permit (issued under Article 48 of the Act of 7 July 1994 on Construction Law) cannot be repealed under Article 155 of the Code of Administrative Procedure on the grounds of "due interest of the parties". In her commentary, the Author disagrees with this view stating that it is outdated in the present state of law, i.e. after the amendments of 27 March 2003 to Construction Law have entered into force. The Author points to the situations in which at present it is admissible to repeal a decision ordering demolition. Referring to the case-law of the Constitutional Court, she brings forward the postulate to apply Article 155 of the Code also to decisions issued before the aforementioned amendments entered into force.

CIVIL LAW AND PROCEDURE, COMMERCIAL LAW

8. Resolution of the Supreme Court of 7 October 2008 in Case III CZP 89/08
Małgorzata Balwicka-Szczyrba, Ph.D., lecturer at University of Gdańsk
Acquiring predial servitude by usucaption on behalf an enterprise

Summary:
The commentary under consideration deals with rules governing acquisition by usucaption of a predial servitude, the content of which amounts to a "newly-created" transmission easement, until the moment of amending the Civil Code in this respect following the Act of 30 May 2008. In the first place, the commentary analyses the

problem of establishing the "dominant land", lying at the heart of predial servitudes, with reference to the factual and legal situation of transmitting entrepreneurs. The commentary also refers to using the transmission easement to facts that had taken place before the amendments to the Civil Code entered into force, i.e. from before 3 March 2008.

9. Resolution of the Supreme Court of 27 March 2008 in Case III CZP 7/08
Joanna Bodio, Ph.D., lecturer at Maria Curie-Skłodowska University of Lublin
Lack of supplementation of formal defects in an appeal and possibility of its rejection.

Summary:
The commentary under consideration deals with several issues. The first issue considered determination of the nature of the proceedings in the disturbance of possession case; it's a property rights case. The second issue required determination of the role performed by stating the litigation value in the appeal proceedings. The third issue concerned the fact that fulfilling the formal requirement of an appeal by stating the litigation value in the disturbance of possession case is the kind of a formal requirement unfulfillment of which causes inability to proceed with the appeal, while the lack of its supplementation causes the rejection of the appeal.

FINANCE LAW

10. Resolution of the Provincial Administrative Court in Warsaw of 21 April 2009 in Case II FPS 9/08
Mariusz Popławski, Ph.D., lecturer at University of Gdańsk
Failure to bring appeal together with a motion to reinstitute time-limit

Summary:
The solution expressed in the resolution under consideration is to be assessed positively in terms of the aim to be achieved when applying it into practice (i.e. protection of accessibility of remedying procedure). However, appropriateness of the framework of the accepted solution raises serious doubts. According to the Author of the commentary to the resolution, in the case of bringing the motion to reinstitute the time-limit to appeal without executing this action simultaneously the taxpayer should be summoned under Article 169 of Tax Law to remove formal defects of his or her appeal. It can be thus assumed that as such a motion to reinstitute the time-limit for bringing an appeal amounts to simultaneous performance of bringing an appeal (i.e. completing the action mentioned in Article 162(2) of Tax Law).

CRIMINAL LAW AND PROCEDURE

11. Judgment of the Appeal Court in Wrocław of 10 July 2008 in Case II AKa 155/08
Wojciech Jasiński, Ph.D., lecturer at University of Wrocław
Time-limit for bringing the motion to have redress for damage declared by court

Summary:
The commentary deals with judicially and doctrinally controversial issue of the time-limit for bringing the motion to have redress for the damage declared by the court in a situation when the aggrieved party has not been heard during the main hearing. The Author opposes to the standpoint of the Appeal Court in Wrocław stating that the time-limit does not elapse at the moment when the first reading of the aggrieved party's statement is finished as the motion can be brought until the trial court's deliberation is to be conducted.

12. Judgment of the Supreme Court of 7 October 2009 in Case IV KK 174/09
Jacek Potulski, Ph.D., lecturer at University of Gdańsk
Prohibition of favouritism in exchange for remuneration

Summary:
The author presents the views of the Supreme Court considering the interpretation of Article 230 of the Criminal Court. The commentary approves the standpoint of the Supreme Court stating that liability for the offence under Article 230(1) of the Criminal Court applies also to a person claiming to have influence in a public entity in possession of public funds, undertaking to intercede in settling of a matter in exchange for a material or personal benefit or a promise thereof. The Author comments on varied doctrinal opinions in this respect, presenting also legislative justification for the interpretation model approved by the Supreme Court.

13. Order of the Supreme Court of 12 March 2009 in Case WZ 15/09

Piotr Rogoziński, Ph.D., lecturer at University of Gdańsk
Aims of applying detention on remand

Summary:
The commentary deals with severity of punishment the accused is facing as a condition of applying detention on remand. The commentary considers benefits and flaws of two competing standpoints in terms of interpretation of the aforementioned condition, which are the abstract risk giving rise to the presumption that delivering a severe sentence might be necessary and anticipation of a severe sentence in a particular case. While supporting the doctrine of the abstract risk giving rise to the presumption of delivering a severe sentence which has been approved by the Supreme Court, it is stated that the circumstances to be established in the reasons of the decision applying detention on remand should have been stated in greater detail.

14. Judgment of the Appeal Court in Katowice of 15 January 2009 in Case II AKa 321/08
Wojciech Zalewski, Ph.D., lecturer at University of Gdańsk
Doubts as to cumulative legal qualification of an offence (Article 11 of the Criminal Code).

Summary:
Cumulative legal qualification approved as the grounds for solving the issue of overlapping statutory provisions in Polish criminal law has been causing theoretical and practical problems for many years, which is exemplified by the judgment under consideration. In the context of the present ruling, the Author conducts a short analysis of fundamental flaws of the present legal framework under Article 11 of the Criminal Code and considers the chances for amending the Code including the return of, known in the Code of 1932 authored by J. Makarewicz, the notion of an eliminating overlap.

15. Resolution of the Supreme Court of 28 October 2009 in Case I KZP 20/09
Tomasz Snarski, teaching assistant at University of Gdańsk
Compensation and satisfaction for Soviet persecution

Summary:
The commentary approves the Supreme Court interpretation of the provisions of the Act of 23 February 1991 on declaring nullity of rulings issued against individuals persecuted for acting for the independence of the Polish State (O.J. 1991, No 34, Item 149 with amendments). The Author stresses unfairness of rendering compensation or satisfaction for acting for the independence potentially conditional on carrying out such activity only within the present or former Polish borders. In the resolution under consideration, vast reference to the case-law of the Constitutional Court is worth mentioning.

LABOUR LAW

16. Judgment of the Supreme Court of 8 April 2009 in Case II PK 270/08
Arkadiusz Sobczyk, Ph.D., Jagiellonian University
Remuneration for work overtime and additional employment at the identical employer

Summary:
The judgment under consideration deals with a factual situation of a person who has undertaken, being in autonomous charge, duties extending beyond the subject-matter of the employment contract binding him or her. The Supreme Court has stated beyond any doubt that such a factual situation amounts to performing work overtime. The commentator points to a potential alternative interpretation arguing that the parties are bound by more than one autonomous employment relationship.

17. Judgment of the Provincial Administrative Court of 28 October 2009 in Case II SA/Wa 16/09
Ewa Podgórska-Rakiel, doctoral student at University of Gdańsk
Data protection with reference to trade-union membership

Summary:
The commentary to the judgment of the Provincial Administrative Court in Warsaw of 28 October 2009 (II SA/Wa 16/09) focuses, in the context of so far established case-law of the Supreme Court, on showing discrepancies in the generally justified conclusion of the Administrative Court. For long, Article $30(2^1)$ of the Act of 23 May 1991 on trade unions has been the source of doubts in the labour law doctrine and case-law of the Supreme Court. The judgment of the Provincial Administrative Court refers to the mode of establishing the

personal scope of individuals entitled to representation on the part of the in-house trade-union organization in individual labour-law cases in terms of legality of so-called "names' list" requirement under the Act on personal data protection.

MISCELLANEOUS

18. Judgment of the Constitutional Court of 30 September 2008 in Case K 44/07
Magdalena Glanc, doctoral student at University of Gdansk
»No« for option of shooting down a passenger aircraft hijacked by terrorists

Summary:
The commentary considers the judgment of the Constitutional Court in which the Court established that Article 122a of the Act of 2 July 2002 on Aviation Law is contrary to the Constitution of the Republic of Poland. The aforementioned provision gave the State competence to shoot down a passenger aircraft hijacked by terrorists. The Author of the commentary approves and expands the problem analysis conducted by the Constitutional Court and argues that such a regulation would pose risk to the principle of trust citizens maintain in the State and law created by that State, and, what is more, it could lead to transformation of the "war with terrorism" into a total war.