

THE COMPETENCE OF THE MUNICIPAL AUTHORITIES TO CURTAIL RETAIL SALES OF ALCOHOLIC BEVERAGES UNDER POLISH LAW

KOMPETENCIA OBECNEJ SPRÁVY OBMEDZIŤ MALOOBCHODNÝ PREDAJ ALKOHOLICKÝCH NÁPOJOV PODĽA POĽSKÉHO PRÁVA

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ABSTRACT

Alcoholic beverages are sensitive products; their excessive consumption may cause consequences that are dangerous for the lives and health of citizens. For this reason, the Polish legislator has introduced rationing of business activity within the retail sales of alcoholic beverages in the form of the necessity to obtain a permit. In this context, the author of this article draws attention to the issue of the admissibility to sell alcohol via the Internet. Furthermore, the legislator gives competence to the authorities, constituting the municipalities to enact local legislation, aimed at reducing the availability of alcoholic beverages.

ABSTRAKT

Alkoholické nápoje sú citlivými tovarmi; ich nadmerná konzumácia môže spôsobiť následky, ktoré sú nebezpečné pre život a zdravie občanov. Z toho dôvodu. Poľský zákonodarca predstavil racionalizáciu podnikateľských aktivít v rámci maloobchodného predaja alkoholických nápojov vo forme nevyhnutnosti na získanie povolenia. V tomto kontexte autor tohto príspevku upriamuje pozornosť na záležitosti prípustnosti predaja alkoholických nápojov cez internet. Okrem toho, zákonodarca dáva kompetencie verejnej správe umožňujúc obciam prijať miestnu legislatívu zameranú na obmedzene prístupnosti alkoholických nápojov.

I. INTRODUCTION

Alcohols belong to a specific group called sensitive goods, since their excessive or improper use can cause life and health-threatening consequences. For this reason, many countries have introduced restrictions on the freedom of establishment, wholesale and retail sale of alcoholic beverages. The analysis shall deal with the competence of the municipal authorities on the introduction of restrictions on freedom of economic activity in the retail sales of alcoholic beverages under Polish law. The article aims to answer the question of consistency of regulation and the adequacy of the competence granted to the municipality from the perspective of the entrusted public tasks.

The restrictions introduced by the legislation of EU countries, constituting a restriction on freedom of establishment and free movement of goods must meet the requirements under art. 52 and 36 of the Treaty on the Functioning of the European Union¹. As a basis for the imposition of restrictions, you can specify the protection of life and health of citizens. The case law of the Court of Justice of the European Union clearly indicates that restrictions on the sale of

¹ O.J.2004.90.864/2.

alcoholic beverages are accepted as a positive influence on health and public order (eg. The judgment in Heinonen case²).

Polish legislator indicates the value and purpose of the limitation (*ratio iuris*):

- the title of the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism /USCA/³,
- preamble - "citizens' lives in sobriety is a prerequisite for moral and material good of the Nation",
- specific provisions: art. 1 paragraphs 1-3 art. 5, Art. 7 USCA have also purpose of limiting the availability of alcohol (e.g. art. 2 paragraph 1 point 4, Article 12 paragraph 4 of USCA.), and its consumption (e.g. art. 1, paragraph 1, Art. 2 paragraph 1 point 1 art. 10 of USCA).

Responsibilities for the implementation of the stated objectives and values were imposed on the various administrative bodies. The obligations imposed on the municipal authorities that have a duty to take action to reduce alcohol consumption, changes in the structure of their consumption, initiate and support projects aimed at changing habits in the way of consuming these drinks, activities for sobriety at work place (Article 1 USCA) shall be the only subject of the elaboration.

WHO points out in its report that „in general, the number of alcohol outlets is related to the level of alcohol related harm, which is strongest when there are major changes in the numbers or types of such outlets. An increased density of alcohol outlets is associated with reduced social capital⁴”. The number of alcohol outlets is related to the level of alcohol-related harm, which is strongest when there are major changes in the number or type of such outlets. A greater density of alcohol outlets is associated with higher alcohol consumption among young people⁵.

The legislator grants each organizing body of municipalities different competences, which introduce specific limitations in terms of economic activity, consisting in retail sales of alcoholic beverages. These include the power to issue local law⁶, containing norms of general and abstract nature in the form of a resolution legislative body of the municipal council. These resolutions include: 1. Recommendations for the number of points of sale of alcoholic beverages. 2. Determine the principles of the location of selling points. 3. The introduction of prohibition of the sale and consumption of alcoholic beverages at certain locations. Whereas the executive body of municipalities, namely commune administrator (the mayor) has the authority to issue and withdraw licenses entitling it to conduct business, involving the retail sales of alcoholic beverages. Taking such a decision the municipal council and commune administrator must take the principles arising from Article. 6 paragraph. 1 of the Act of 2 July 2004 freedom of economic activity and art. 22⁷ of the Polish Constitution into account. According

² Judgment of 15 June 1999. Case C 394/97 Heinonen, Rec. P. I 3599, paragraph 29, and TS judgment of 28 September 2006. Case C 434/04, <http://curia.europa.eu>.

³ Dz.U.2016, poz.487 uniform text, further usca.

⁴ Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol-related harm, 2009, http://www.euro.who.int/__data/assets/pdf_file/0020/43319/E92823.pdf, THEALL KP et al. Social capital and the neighborhood alcohol environment. *Health & Place*, 2009, 15(1):323–332.

⁵ Her M et al. Privatizing alcohol sales and alcohol consumption: evidence and implications. *Addiction*, 1999, 94(8):1125–1139.

⁶ Local law is the source of law: generally applicable, and therefore a measure of normative nature, standards containing general and abstract; local, i.e.. applicable in territory of the bodies which established it; of a lower standing; established on the basis of and within the limits set; requiring announcement. Judgment Provincial Administrative Court in Poznan 2011-06-30. http://www.orzeczenia.com.pl/orzeczenie/87hoq/wsa,IV-SA-Po-431-11,wyrob_rozlew_i_obrot_alkoholami_skargi_na_uchwaly_rady_gminy_w_przedmiocie_art_a_ustawy/4/

⁷ O.J. of 2010. No. 220, item. 1447, as amended. According to which undertaking, running and closing a business is free for everyone on equal rights with conditions specified by law.

to the art. 22 of the Constitution introducing restrictions on freedom of economic activity is permitted by law, just because of the significant public interest.

At the same time, in particular municipal council is obligated to provide conditions that allow people to be healthy and, in particular, to take measures to reduce health inequalities. Competence of the municipal council indicated above enable the realization of the basic values of local government, including in particular the dignity of human remains in conjunction with the principle of subsidiarity⁸. The municipality has in this regard a certain independence in carrying out its basic mission of meeting the needs of residents.

II. AUTHORIZATION TO RUN AN ECONOMIC ACTIVITY ON RETAIL SALES OF ALCOHOLIC BEVERAGES

Making an economic activity of retail sales of alcoholic beverages is subjected to regulation⁹. Regulation is a sphere of business administration, the essence of which is to limit the freedom of entrepreneurs in the name of a broadly defined socio-economic interest¹⁰. Regulation can take many forms, one of them is a permit. The entrepreneur that wants to start regulated business activity must obtain a prior administrative authorization. The authorization may be temporary (for the specified time of max. 4 years) or for a single sale. Such authorization is the responsibility of municipalities. The application shall be submitted to commune administrator (mayor), with jurisdiction over the location of the point of sale of alcoholic beverages. Settling matters for issuing the above mentioned permit is subjected to co-operation. Before issuing a permit the authorizing authority shall seek the opinion of the Municipal Commission for Solving Alcohol Problems on compliance of the location of the point of sale with the resolution of the municipal council, in which resolution the municipal council determines where in a concerned municipality points of sale of alcoholic beverages may be. The permit, as a rule, is the act of a related administrative nature. This means that the administrative authority to which the request is made, after checking whether the applicant fulfils all the conditions for doing business identified in the Act, may refuse to grant the permit. Management authority issues two types of permits: a permit to sell alcoholic beverages for consumption at the point of sale (for restaurants, bars, pubs, beer gardens) and a permit to sell alcoholic beverages for consumption off-site sales (for stores). An entrepreneur running a shop that sells alcohol cannot simultaneously obtain a license to sell alcoholic beverages for consumption at the point of sale, or in the premises. The situation is somewhat different when the number of permits for the planned sale of alcohol a particular type resulting from the resolution of the municipal council, is smaller than the number of applications submitted. Then the competent authority of a municipality executive is obliged to keep one administrative procedure involving all entrepreneurs that have submitted the relevant application¹¹. It cannot issue a permit if it would lead to transgressing the points of sale of alcoholic beverages established by the municipal council or be incompatible with certain rules of the municipal council of the location of places selling alcohol. In such a case, the decision authorizing the sale of alcoholic beverages is a decision of limited scope of administrative discretion¹². The criteria, which can be the basis for decision are determined by an authority in a particular case, taking into account first and foremost the purpose of the Act and the determination of the municipal council in a resolution

⁸ I. LIPOWICZ, Prawne problemy samorządu z perspektywy 25-lecia jego funkcjonowania-ujęcie aksjologiczne [in] *Prawne problemy samorządu z perspektywy 25-lecia jego funkcjonowania*, B. JAWORSKA-DEBSKA, R. BUDZISZ, Warszawa 2016, s. 11.

⁹ More I. SKRZYDŁO-NIŻNIK, G. ZALAS, *Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi*. Komentarz, doktryna, orzecznictwo, Kraków 2002.

¹⁰ A. CHEŁMOŃSKI, T. KOCOWSKI, (IN:) J. BOĆ (red.) *Prawo administracyjne*, Warszawa 2004, p. 364.

¹¹ Ruling of the Supreme Administrative Court in Warsaw of 6 June 2012. II GSK 575/11, WWW.nsa.gov.pl.

¹² Ruling of the Supreme Administrative Court in Warsaw 5 judges of the Supreme Administrative Court of 18 September 1995. VI SA 10/95. WWW.nsa.gov.pl.

on the location and the number of points of sale, which will be discussed below. The authorizing authority is required to control the entrepreneur, whether in the course of an operation it complies with the terms of sale of alcoholic beverages. In the event of non-compliance the authorizing authority is obliged to revoke the permit. Analyzing the law of other countries we can point out that in Austria there is no requirement of a license to sell alcohol. The only restriction on trade is a prohibition on the sale of alcohol to minors and person under the influence of alcohol. However, in the Belgian legislation requires a license to sell alcohol. The legislator also introduces restrictions on the places where they can be points of selling alcohol (at automatic drink dispensers, in hospitals, schools) and local authorities can introduce restrictions in opening hours of selling alcohol. In the United Kingdom, to the sale of alcohol we must have a permit from the authorities. Moreover, the law limits the places where alcohol can be engaged in the sale and opening hours. In Sweden alcoholic beverages > 3.5% can only be sold by the alcohol monopoly¹³.

Sale of alcohol via the Internet

The afore mentioned authorization does not cover the sale of alcoholic beverages on the Internet, since such sales in the under Polish law is prohibited. It is justified by the following considerations. For the entrepreneur that obtained a permit to sell alcoholic beverages weigh resulting from the act responsibilities. One of these duties, referred to in Article. 15 paragraph 1 Act on USCA is to operate in a strictly defined point of sale. Art. 96 USCA⁶ specifies the alcohol sales points:

- 1) shop industries with the sale of alcoholic beverages;
- 2) separate stands - in self-service retail outlets with a sales area of more than 200 m²;
- 3) other self-service facilities and other outlets in which the retailer conducts direct sales of alcoholic beverages.

Among them there are no Internet sales, because the selling distance takes place outside the place of business of the trader, on which authorization has been granted. Secondly, with sales via the Internet it is not possible to fulfil the remaining obligations of alcohol sellers. An entrepreneur cannot sell alcohol to people under the age of 18. Through the Internet it is not possible to verify the age of the recipient by the vendor purchases. It is not verified also by the messenger delivering the shipment, because they do not know that the package that is being delivered into the hands of potential minor may contain alcoholic beverages. Thirdly, it is not allowed to sell alcohol to intoxicated persons, which cannot be checked in case of online sales. Presenting alcohols on the Internet and the ability to purchase them also through the Internet, which is beyond the point sales disclosed in the permit is a violation of the conditions of conducting business activity.

As shown by the case law of the Supreme Administrative Court, "the legislature enacting provisions of the Act on education in sobriety was aimed as a rule limiting the availability of alcohol, and not introducing the overall availability of these products. Whereas the potential admission of sales in online stores, would lead directly to the extension of availability of alcoholic beverages"¹⁴. In the verdict of 14 April 2011, the Supreme Administrative Court stated: "If the legislature had not foreseen the legal possibilities for the sale of alcohol through the Internet, then based on the Act on education in sobriety and counteracting alcoholism would not allow it, the primary goal is education in sobriety, including the prevention of alcoholism. For the prevention of alcoholism cannot be considered such an interpretation of art. 18 above. Act, which would extend listed enumerative in the catalogue of permits to sell alcohol¹⁵. This

¹³ <http://www.bag.admin.ch/themen/drogen/00039/10172/12019/index.html?lang=en>, http://eurocare.org/resources/database_of_alcohol_regulations (15.08.2016).

¹⁴ Judgment 2013-10-23 of the Provincial Administrative Court (wojewódzki sąd administracyjny-wsa) in Wrocław, Ref. III SA / Wr 519/13, WWW.nsa.gov.pl.

¹⁵ Sygn. akt 431/10, WWW.nsa.gov.pl.

means that in case of stating by the authorizing authority, that the concerned trader has been selling alcohol via the Internet, the authority is obliged to withdraw authorization of this entrepreneur, due to failure to comply with the conditions of alcohol sales.

III. THE RESOLUTION OF THE MUNICIPAL COUNCIL WHICH SPECIFIES THE NUMBER OF SELLING POINTS

The municipal council is obliged to issue an act of local law, which determines the number of selling points of beverages containing more than 4.5% alcohol (except beers), intended for consumption outside the point of sale as well as the at point of sale. Introducing restrictions of business opportunities, by identifying a specific number alcohol selling points in a given municipality it should meet the objectives of the Act. This number should therefore be neither too large so as not to cause excessive alcohol consumption, nor too low so reduction in economic activity was not excessive, contrary to the principle of proportionality¹⁶.

The resolutions of the municipal council issued in the discussed subject are taken into account when issuing permits for sale of alcoholic beverages, binding both the entrepreneur as well as the public authorities¹⁷.

The Act does not specify the procedure in a situation where the number of applications for permits to sell alcohol is greater than the number of points of sale resulting from the resolution of the municipal council. In this case, the body, in order to search for the objective truth in the context of administrative approval, must implement non-statutory criteria. The very criterion can be indicated in the units of measurement, the distance in relation to the areas where the sale of alcohol is prohibited (areas of schools and other establishments, educational institutions, care facilities, dormitories, work establishments, places of staff catering, buildings occupied by military and internal affairs organs, areas of barracks, as well as accommodation of transitional military units) and determined in the units of measure of the relative positions of the existing selling points and their position with respect to the proposed selling points.

Another criterion might be the arrangement of selling points for alcoholic beverages in different parts of the city or town, including the average number of residents per one point, so that sales points are evenly distributed¹⁸.

IV. COMMUNE COUNCIL RESOLUTION ESTABLISHING THE PRINCIPLES FOR THE LOCATION OF SELLING AND SERVING POINTS OF ALCOHOLIC BEVERAGES

The municipal council are obliged to specify in its resolution the principles of the location of selling and serving alcoholic beverages. As part of the authorization contained in Article. 12 paragraph. 2 USCA. the municipal council should establish the requirement to maintain a certain distance of points of sale¹⁹ (shop, restaurant, pub) from some other objects of a spe-

¹⁶ More I. SKRZYDŁO-NIŻNIK, Alkohol a granice upoważnienia ustawowego. Problemy praktyki związane z uchwalaniem i stosowaniem przepisów gminnym wydawanych na podstawie ustawy z dnia 26 października 1982 r. o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi, „Casus” 1996, nr 1.

¹⁷ Judgment of the Supreme Administrative Court in Warsaw dated 18 September 2014. II GSK 1159/13, WWW.nsa.gov.pl.

¹⁸ Judgment of the Supreme Administrative Court in Warsaw dated 18 September 2014. II GSK 1159/13, WWW.nsa.gov.pl.

¹⁹ Judgment of SAC of 06.05.1994 r., SA / Gd 2824/93, CBOS; the judgment of the Administrative Court in Gorzów Wielkopolski. dated 10 September 2010, II SA / Go 549/10, CBOS), as well as representatives of the doctrine (I. Skrzydło-Niżnik [in] the Act on Upbringing in Sobriety and Counteracting Alcoholism. Commentary. Lex. , thesis 7 to Article 12).

cial character, such as a school, a kindergarten, place of religious cult²⁰. Furthermore, they may introduce restrictions on the distance from the object of religious worship.

Currently, the legislature does not introduce in the Act a minimum distance of the point sales for alcoholic beverages. Therefore the power to set them received individual municipalities in the area, which is located the point sales for alcoholic beverages. This causes a wide disparity in the rules for the location of points of sale for alcoholic beverages in individual municipalities. Distances, established in resolutions of community councils, are sometimes disputed as too restrictive or too liberal.

It is necessary to balance the values, on the one hand, freedom of economic activity, on the other protection of life, health and sobriety, especially life in sobriety is a fundamental value protected by introduced restrictions. The responsibility of the municipality is to indicate in a resolution of the municipal council the required distance between objects protected and the selling point alcohol and precisely specify the way to measure it. The distance should be adequate to pursue "the need to reduce the alcohol availability." This requirement is evaluative in nature, it is related with the provisions of the municipal program of prevention and alcohol problems²¹, determined separately for each municipality. The municipal council having regard to the specific characteristics of the municipality's responsibility to determine this distance. Measuring distances is carried out by selecting a "string of communication." According to case law this term should be understood by the term of the distance that must be made from the exit of the area of the selling point alcohol to the entrance to the protected object, without encountering any obstacles or risking a violation of the law (the Regional Administrative Court in Rzeszów, in the judgment of November 23, 2010 r. ref. No. II SA / Rz 858/10). As the Provincial Administrative Court has pointed out the phrase "Rules applicable to public sales of alcohol" in Article. 12 USCA does not give power to specify any types of places, their appearance or construction conditions. Similarly the municipal council has no jurisdiction to establish the ban on selling alcohol at certain times. As an example of an illegal extension of the scope of the resolution of the municipal council issued pursuant to art. 12 usca. the resolution No. XVIII / 82/08 of the Municipal Council can be specified, which constituted "service stations may be open throughout the year without restriction, provided that the sale of alcoholic beverages may be carried out on all days of the week in the period from 1 May to 31 October, from 6.00 am to 24.00, and in the remaining period of the year from 6.00 am to 22.00"²².

V. THE PROHIBITION OF SELLING, DELIVERY, CONSUMPTION AND BRINGING ALCOHOLIC BEVERAGES

Article 14 paragraph. 6 of the Act on Upbringing in Sobriety and Counteracting Alcoholism in relation to the art. 18 paragraph. 2 Section 15 of the Act of 8 March 1990 on Local Government²³ gives municipal council the power to ban (permanent or temporary) sales, administration, consumption as well as bringing alcoholic beverages in places, objects or in certain areas the municipality if it is justified by their character, e.g.. are of particular importance religious, cultural, educational, social or serve a specific educational role, not only in relation

²⁰ The obligation of public authorities to provide "no alcohol zone" around the houses of worship may be inferred from Article. 8 paragraph. 3 Concordat, in which State ensured the "inviolability" to places designated by the competent ecclesiastical authority to worship and burial (cf.. The Supreme Administrative Court order of 06.02.2009, II GSK 710/08, OSP 2010/3/29).

²¹ Judgement of the Provincial Administrative Court in Poznań of 30 June 2011.

²² Supervisory decision of the Silesian province governor of 3 August 2012 NPII.4131.1.304.12.

²³ O.J. of 2013.594 consolidated text, as amended.

to children and young people²⁴. This kind of competence is associated with local government authorities granted independence, enshrined in the Constitution in art. 165. As it is stated unambiguously by the Supreme Administrative Court in its judgment of 10 January 1995²⁵ determining the opening hours of these places is a general act which must be expressed by the municipal council in the form of a generally applicable law. It is for other, not mentioned in the Act, places, objects or areas of the municipality which, due to the specific nature and welfare of the local community, require. The restriction applies to the sale of alcoholic beverages for consumption at the site, as well as for consumption outside the point of sale. Sometimes municipalities go beyond statutory jurisdiction, introducing too far-reaching prohibitions. For example, the Municipal Council Pszczew in § 1 of Resolution No. XXI.118.2012²⁶ banned the consumption of alcohols outside the selling point at resorts located in the commune Pszczew, lakes Szarcz and Chłop and in the area of Pszczewski Landscape Park, at less than 400m from the border of a lake.

Additional prohibitions under the Act on education in sobriety and counteracting alcoholism, according to the case law of administrative courts, are to serve only as a protection of specific sites from the threat of alcohol, and not as a means of liberation of the municipality from the obligation to work actively to ensure public order. A repetitive disorderly conduct and/or public peace²⁷ at this location cannot therefore become the basis for introducing the ban.

VI. THE RESOLUTION OF THE MUNICIPAL COUNCIL ESTABLISHING THE OPENING DAYS AND HOURS OF RETAIL OUTLETS, GASTRONOMIC ESTABLISHMENTS AND CONSUMER SERVICES ESTABLISHMENTS

The municipal council can in a resolution, being an act of local law, determine the time of opening commercial establishments (days and hours of opening and closing retail outlets, gastronomic establishments and consumer services establishments), pursuant to art. XII, § 1 of the Law of 26 June 1974. - Regulations introducing the Labour Code²⁸. The resolution is of a general nature, it includes all entities in a given municipality. In contrast to the other of the abovementioned resolutions it is optional, i.e. municipality may, but does not have to, regulate this issue. It cannot at the same time violate the principle of equality, by varying the time allowed on open hours depending on their location or type. The Act does not specify the circumstances or the mode of passing these provisions, which leads to numerous cases of using the expanding interpretation, i.e. to adopt resolutions that go beyond the purpose of statutory regulation²⁹. The legislator does not state the purpose of the introduction clearly of this competence, which undoubtedly is of a character that restricts freedom of economic activity. The legitimacy of maintaining the very competence of the municipal council in a free economy market is debatable, for it is included in the Act, entitled "Regulations introducing the Labour Code," which would indicate that it relates to the issues of labour law, regulates the rights and obligations of employers and employees. Infringement of certain requirements under the resolution of the municipal council is a misdemeanour. Offense can be committed by anyone who violates the statutory opening and closing times. It is a formal offense that can be committed

²⁴ Supervisory decision governor of Lubuskie on 2 July 2012. No. NK-I.4131.219.2012.MGrz, OJ. Lubuskie province's 2012.1371.

²⁵ Ref. act SA / Kr 2564/94, ONSA 1996 No. 1, item 28.

²⁶ O.J. Lubuskie province's 2012.1371.

²⁷ Judgment of the Provincial Administrative Court in Wrocław of 19 December 2011., Ref. III SA / Wr 568/11, judgment of the Supreme Administrative Court of 9 December 1999., ref. Act II SA 1709/99, WWW.nsa.gov.pl.

²⁸ O.J. No 24, item 142 as amended.

²⁹ B. DOLNICKI, J. P. TARNO, The problem of determining the opening hours of retail outlets [in] Local government in Poland and the judicial review of administration. Warszawa 2012, Lex.

both intentionally as well as unintentionally³⁰. The withdrawal of a license to sell alcoholic beverages cannot be the sanction for failure to comply with this resolution. So the question about the legitimacy of this competence arises. The municipal council has no power to regulate labour matters of entrepreneurs conducting economic activities in the field of selling alcoholic beverages. If the competence of the municipal council to determine the opening hours for alcohol sales served the purposes to maintain order and security in a given area then the relevant provision of the Act on education in sobriety should be introduced and not in the Act provisions introducing the Labour Code.

VII. SUMMARY

The resolutions of the municipal council on the number of selling points of alcoholic beverages and the principles of the location of these points shall be subordinated to the objective of the Act³¹. The specificity of regulation of economic activity for the sale of alcoholic beverages is manifested, among others, in limiting the availability of alcohol and the creation of conditions motivating to limit alcohol consumption by the municipal authority for the implementation of the objectives of the Act, i.e., among others, it obtained the power to determine the number of outlets and the principles of their location in relation to the sites protected. A list of these sites is determined both by the law as well as the authority itself. Conducting business is possible only in strictly designated place, which excludes internet sales. Otherwise, the power to determine the number of outlets and the principles of their location would be pointless and illusory. Allowing online sales would deprive municipalities of effective control of the number alcohol selling points as well as hinder the realization of the basic objective - limiting access to alcohols, because Internet sales does not have territorial restrictions. Competence to withdraw the authorization as a result of failure to comply with the terms of sale by an operator of the online sales is therefore justified

To summarize regulations limiting the freedom of economic activity seem in this regard as the most reasonable, necessary and proportionate to the objectives through which limitations are to be realized. The method of implementing these competences by each municipal council is a separate issue; sometimes exceeding the scope of the statutory authorization. Same jurisdiction should be evaluated to issue a permit on the retail sale of alcoholic beverages granted to the executive body of the municipality. To be inconsistent facultative jurisdiction should be considered, resulting from the Act of the regulations implementing the Labour Code, concerning the possibility of determining the hours and work days of the selling points of alcoholic beverages. *De lege ferenda* this provision should be omitted or "moved" to the Act on education in sobriety, but its purpose should be changed e.g. to maintain order in a given location or limit the availability of alcohol.

KLÚČOVÉ SLOVÁ

alkohol, citlivé tovary, maloobchodný predaj, obmedzenia slobody usadenia sa

KEYWORDS

alcohol, sensitive goods, retail sale, restrictions on the freedom of establishment

³⁰ W. KOTOWSKI, B. KURZEPA, Commentary to art. VII of the Act - Regulations introducing the Labour Code, Lex

³¹ The Supreme Administrative Court in its judgment of 23 January 1996. Ref. Act II SA 2792/95, Glosa, 1996 number 11, p. 30.

BIBLIOGRAPHY

1. CHEŁMOŃSKI A., T. KOCOWSKI, (IN:) J. BOĆ (red.) Prawo administracyjne, Warszawa 2004.
2. DOLNICKI B., TARNO J. P., The problem of determining the opening hours of retail outlets [in] Local government in Poland and the judicial review of administration. Warszawa 2012, Lex.
3. Evidence for the effectiveness and cost-effectiveness of interventions to reduce alcohol-related harm, 2009, http://www.euro.who.int/__data/assets/pdf_file/0020/43319/E92823.pdf
4. Her M et al. Privatizing alcohol sales and alcohol consumption: evidence and implications. *Addiction*, 1999, 94(8):1125–1139.
5. <http://www.bag.admin.ch/themen/drogen/00039/10172/12019/index.html?lang=en>, http://eurocare.org/resources/database_of_alcohol_regulations (15.08.2016).
6. Judgement of the Provincial Administrative Court in Poznań of 30 June 2011, WWW.nsa.gov.pl..
7. Judgment of the Court of Justice of the European Union of 28 September 2006. Case C 434/04, <http://curia.europa.eu>.
8. Judgment of Provincial Administrative Court in Poznan 2011-06-30. http://www.orzeczenia.com.pl/orzeczenie/87hoq/wsa,IV-SA-Po-431-11,wyrob_rozlew_i_obrot_alkoholami_skargi_na_uchwaly_rady_gminy_w_przedmiocie_art_a_ustawy/4/
9. Judgment of the Provincial Administrative Court in Wrocław of 23 October 2013, Ref. III SA / Wr 519/13, WWW.nsa.gov.pl.
10. Judgment of the Provincial Administrative Court in Wrocław of 19 December 2011., Ref. III SA / Wr 568/11, WWW.nsa.gov.pl.
11. Judgment of the Supreme Administrative Court in Warsaw of 18 September 2014. II GSK 1159/13, WWW.nsa.gov.pl.
12. Judgment of the Supreme Administrative Court of 06.05.1994 r., SA / Gd 2824/93, CBOS; the judgment of the Administrative Court in Gorzow Wielkopolski of 10 September 2010, II SA / Go 549/10, CBOS), WWW.nsa.gov.pl.,
13. Judgment of the Supreme Administrative Court of 10 January 1995, Ref. act SA / Kr 2564/94, ONSA 1996 No. 1, item 28.
14. Judgment of the Supreme Administrative Court of 23 January 1996. Ref. Act II SA 2792/95, Glosa, 1996 number 11, p. 30.
15. Judgment of the Supreme Administrative Court of 9 December 1999., ref. Act II SA 1709/99, WWW.nsa.gov.pl.
16. Judgment of the Court of Justice of the European Union of 15 June 1999. Case C 394/97 Heinonen, Rec. P. I 3599, paragraph 29,
17. Judgment, the Supreme Administrative Court of 14 April 2011, Sygn. akt 431/10, WWW.nsa.gov.pl.
18. KOTOWSKI W., KURZEPA B., Commentary to art. VII of the Act - Regulations introducing the Labour Code, Lex
19. LIPOWICZ I., Prawne problemy samorządu z perspektywy 25-lecia jego funkcjonowania-ujęcie aksjologiczne [in] Prawne problemy samorządu z perspektywy 25-lecia jego funkcjonowania, B. JAWORSKA-DEBSKA, R. BUDZISZ, Warszawa 2016.
20. Order of the Supreme Administrative Court of 06 February 2009, II GSK 710/08, OSP 2010/3/29).
21. Ruling of the Supreme Administrative Court in Warsaw 5 judges of the Supreme Administrative Court of 18 September 1995. VI SA 10/95. WWW.nsa.gov.pl.

22. Ruling of the Supreme Administrative Court in Warsaw of 6 June 2012. II GSK 575/11, WWW.nsa.gov.pl.
23. SKRZYDŁO-NIŻNIK I., ZALAS G., Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Komentarz, doktryna, orzecznictwo, Kraków 2002.
24. SKRZYDŁO-NIŻNIK I. [in] the Act on Upbringing in Sobriety and Counteracting Alcoholism. Commentary. Lex. , thesis 7 to Article 12).
25. SKRZYDŁO-NIŻNIK I., Alkohol a granice upoważnienia ustawowego. Problemy praktyki związane z uchwalaniem i stosowaniem przepisów gminnym wydawanych na podstawie ustawy z dnia 26 października 1982 r. o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi, „Casus” 1996, nr 1.
26. Supervisory decision governor of Lubuskie on 2 July 2012. No. NK-I.4131.219.2012.MGrz, OJ. Lubuskie province's 2012.1371.
27. Supervisory decision of the Silesian province governor of 3 August 2012 NPII.4131.1.304.12.
28. THEALL KP et al. Social capital and the neighborhood alcohol environment. *Health & Place*, 2009, 15(1):323–332.

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