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ISSN electronic version 2353 - 9119
Central and Eastern European Journal
of Management and Economics
Vol. 5, No. 2, 131-145, June 2017

CEEJME
Central and Eastern European Journal of Management and Economics

The interpretation of the notion of public interest in Polish public competition law according to the judgement of the Court of Competition and Consumer Protection of February 4, 2015 (XVII AmA 163/11)

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Abstract:

Aim: The notion of a public interest in administrative law science and in the administration science occupies the central position in the notion chart. Consequently, it is also the main notion of public protection of competition. The legislator has not decided to present a definition of "the public interest" in the Competition and Consumer Protection Law Act. As a result, interpretation of the concept is largely dependent on the judicature. The aim of the paper is to analyse the notion of a public interest and its interpretation both in science and in practice of law application.

Design / Research methods: The author's conclusions are based on analysing the public interest interpretation made by representatives of the doctrine and the judicature.

Conclusions / findings: In consequence, the author is of very good opinion on how the notion of a public interest in the public protection of competition evolves, adapting to the current social and market condition and to the development of the competition law science.

Originality / value of the article: Originality of the topic comes from the legal analysis of the controversial presentation of a correctly operating competition on the medicinal product sales market, unprecedented in the judicature, as a mechanism allowing patients to obtain health services in line with the current status of medical knowledge.

Keywords: public competition law, public interest, Court of Competition and Consumer Protection
JEL: K23

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doi: http://dx.doi.org/10.29015/ceejme.622

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1. The Notion of the Public Interest in Administrative Law

The notion of the public interest is applied when assessing objective facts from the perspective of benefits earned by an individual (personal interest) or the community (public interest) (Jakimowicz 2006: 116). As it is the case with the "public administration" notion, an unequivocal definition of the "public interest" seems very hard or even impossible to formulate. This is consequent upon the fact that the public interest reflects the values having positive impact on the good of the general public (Langrod 2003: 41). Naturally, due to the extensive scope of the public administration functions in modern states, the list of these values is non-exhaustive.[1] Similarly, the contents represented by particular values constantly evolve. In contemporary pluralistic societies, the issue of what is good for the general public and what poses a threat is often a subject of controversy (Niewiadomski 2015: 15; cf. Suwaj 2009: 42–43). It is, therefore, a concept lacking stability in time and space, but also impossible to be precisely defined in the process of law-making, being, in its nature, rather a political than legal issue (Łętowski 1990: 15). Therefore, the public interest seems rather to mirror the set of values perceived by the society as important and positive. Some of them can be found in legislation as mandatory laws representing the will of the society carried out by the legislator (the role of the political factor) (Zimmermann 2014: 26).[2] However, not all values forming the public interest are reflected in the legal provisions in force because: "The law in force is not always capable of describing what the public interest is or should be, even via unclear (vague) concepts. […] It is so, because the law is not always the right tool to define a model (substance) of the public interest" (Izdebski, Kulesza 2004: 97). Thus, in certain circumstances, it is necessary to update the scope of powers of public administration

[1] Varied contents and nature of the values forming the public interest is discussed in detail by Cieślak (2011: 56).
[2] According to H. Izdebski and M. Kulesza, the public interest is reflected, most importantly, in mandatory provisions of law. It is also a key concept for administrative law, superior to such concepts (being "concept tools") as "public subjective right", "administrative discretion" or "judicial administrative surveillance". In the authors' view, "they ['concept tools' – M. Raduła's remark] indeed are used to describe the relation between the position of an individual ('citizen') and activities of the public administration, aimed at ensuring public good (carried out 'in the public interest')" (Izdebski, Kulesza 2004: 97). Quite a different position is adopted by Z. Cieślak, describing the notion of the public good as a "concept tool" reflecting the presence of certain values and objectives in legal provisions in force (Cieślak 2011: 56).

bodies by granting them freedom to decide, i.e. administrative discretion (Jakimowicz 2006: 149–155).[3]

Acting in the public interest encompasses all activities of the public administration due to the nature of its key objective, namely the best interest of the general public, excluding any activity done for profit or serving an individual or a single interest group (Łętowski 1990: 15). All public administration activities are undertaken for the benefit of the general public. This, however, does not mean that public administration holds a peculiar monopoly on activities aimed at public good (Starościak 1977: 12). The same is done, for instance, by non-governmental organisations engaging in public welfare activities, i.e. the activities beneficial to the society in the area of the public tasks, as construed in the Public Welfare Activity and Volunteer Work Act of April 24, 2003 (consolidated text: Dz.U. [Journal of Laws] of 2014, item 1118, as amended).

The public interest is, to a large degree, shaped by political will and, thus, delivering objectives at political level of administration. This determining will or delivery of certain objectives at political level should be clearly distinguished from executive function of the administration, being a manifestation of application of law and not a creation of certain values within the prevailing legal system (Izdebski, Kulesza 2004: 97).

It seems that a portion of "values having positive effect on the public good/being good for the majority" is immutable. These are the values safeguarded by law enforcement bodies (in Polish: *dobra policyjne*), such as human life and health or public security (Kocowski 2009: 458). Other values – as already mentioned – continuously evolve due to volatile political or economic factors affecting our perception of what is good, proper or necessary for the entire society or at least the majority. ("What actually divides people, diversifies political views, allows for distinguishing between different doctrines and epochs is the question: 'What is in the public interest'": Izdebski, Kulesza 2004: 97; cf. Izdebski 2005: 219–233).

The public interest is a non-legal reference term rooted in legislation. The scholars of jurisprudence make use of the concept of general clause when a reference is made to a system of values or norms outside the legal system (Wronkowska 2014: 68; Wróblewski 1986: 349–351). Such a character of that notion makes the formulation of a single, objective definition of the public interest impossible. Hence, it should be assumed that the public interest undergoes continuous

[3] The issue of administrative discretion is discussed in greater detail by Iserzon (1968: 43–45) and Ura and Ura (2009: 32).

transformations (Ochendowski 2013: 27–28). It is conditional upon and reflects the political circumstances as well as – broadly understood – social and economic situation. The fact that the notion of "public interest" is a general clause implies the necessity of maintaining the proportionality principle, i.e. a "healthy" balance between the interests protected by broadly understood state, both in the course of law interpretation and application. An attempt to identify the notion of the public interest as a factor affecting the contents of legal and administrative relationship includes, first of all, identifying the addressee, i.e. an individual who benefits from the fact that certain – positive for him or her – values are present in the surrounding social reality. Although an individual is not directly interested in common good in the context of his or her own personal interest, yet, there are two reasons why individuals care for common good. Firstly, the concern about public good may stem from pro-community patriotic or altruistic attitude. Secondly, it may be an indirect consequence, e.g., of a situation when the public good has an impact on the personal good of an individual (Zimmermann 2014: 262).

Undoubtedly, the public interest has enormous impact on rights and obligations of an individual. The above statement should be admitted as true in the light of a wide range of possibilities to limit the rights of an individual out of concern for the public interest, and when an individual is being burdened with obligations conjugated with the pursuit of public interest goals. (Zimmermann 2014: 262). Mandatory vaccinations prescribed in the Act of December 5, 2008 on Preventing and Counterfighting Infections and Infectious Diseases in Humans (consolidated text: Dz.U. [Journal of Laws] of 2013, item 947, as amended) may serve as an example here.

The public interest has its roots in axiology of individual interest. It should be noted, though, that the public interest is not a sum of individual interests. Hence, the objectives achieved in pursuit of the public interest not always coincide with the objectives of individual interest and the other way round. Therefore, it is necessary to adopt special conflict of law principles, enabling adequate interpretation and application of law (Zimmermann 2014: 263).

The public interest cannot justify unlimited interference of public administration in the legal status of an individual. In other words, when pursuing public interest objectives, it is necessary to reflect upon respecting the interest of an individual. This view is reflected in Article 7 *in fine* of the Code of Administrative Procedure Act of June 16, 1960 (consolidated text: Dz.U. [Journal of Laws] of 2013, item 267, as amended), laying down the general administrative procedure principle, namely the principle requiring that legitimate interest of an individual also be

taken into account when examining public interest matters and making relevant decisions in this respect. The regulation is composed of terms of reference character. The reference to the value of accounting for the "social interest" is a general clause. Another element is the assessment reference "requiring assessment of legitimacy of the interest of the citizen concerned". In both cases, a public administration body performs an assessment. In the first case, the body compares an individual, specific case with the values forming the concept of the "social interest". In the other, a public administration body has to assess whether the interest of an individual is legitimate. Consequently, a public administration body should confront and balance – often contradictory – arguments: on the one hand, those weighing in favour of an administrative decision issued in the spirit of the social interest and on the other, those constituting reasonable and legitimate demands of an individual. The outcome of the process is the determination whether or not legitimate interest of an individual can be reconciled with the public interest (Borkowski 2011: 37; cf. Starościak 1966: 243; Matan 2010: 110–124; Borkowski 2010: 150).

At this point one must mention the diversification of the category of interest into factual interest and the legal interest being the interest protected by law. The so-called "group interest" existing in the legal system should also be mentioned here. The interest of a particular group of individuals or a social group may – but does not necessarily have to – collide with the individual one (yet, it is not impossible but quite common that the group interest is identical with the individual one). According to J. Zimmermann, a group interest is not an intermediate form between the public and the personal interest. It should be rather categorised as personal interest, "particularly because the substance thereof [of that interest – remark by M. Raduła] usually serves the purpose of achieving a specific personal benefit". The author also claims that it is necessary to find new legal solutions for defining the group interest as it inarguably originates from common good axiology (Zimmermann 2014: 263–264).

Worth emphasising is the role of local communities in this respect, namely the issue of local or regional interest. This interest, connected with local government entities, is a kind of public interest characteristic of a given community living in a certain area (this interest is limited to a territory of a local community). When there is a conflict of regional interest and the state interest, priority should be given always to the latter.[4] The conflict of local interest with individual interest

[4] According to J. Boć, the objectives of state and local administration are identical – it can be concluded, therefore, that the author excludes the possibility of conflict between state and local interest (cf. Boć 2013: 66).

is only apparently more difficult. The solutions stemming from the above deliberations on the relations between public and individual interest should be implemented here (after all, it is, in fact, a conflict between the public and individual interest) (Zimmermann 2014: 264). To facilitate interpretation of the public interest one may use the notion of public purpose[5] or public welfare[6] defined by the legislator.

At this point, it is necessary to mention the concept already referred to above, critical in the context of public interest – namely the concept of common good. Common good as a value should be interpreted as the state of affairs, actual or potential, "as they should be". Therefore, it is a matter of retaining it or making it happen. It is an activity carried out in a well-thought out direction and in compliance with the adopted axiology (Piechowiak 2012: 38).

Common good is a concept wider than the public interest, encompassing also the notion of public purpose or social interest (cf. Complak 2007: 49).[7] Hence, it should be assumed that the relevant components contained in the acts of Parliament provide more detailed explanations of the constitutional concept of public good (Boć 2004: 39). This concept should be interpreted in compliance with the social teaching of the Catholic Church, because it was the teaching of Pope John XXIII that served as a basis for incorporating this concept into the Polish Constitution of 1997. Hence, it seems appropriate to decode the common good from the perspective of personal good or individual interest. Social development should be the outcome of actions of free and responsible people, aware of social and economic processes (Banaszak 2012: 14–17, and the sources referenced there).

H. Izdebski and M. Kulesza point out that, despite including the notion of "public interest" in a category of unclear (vague) concepts, the boundaries of acceptable public administration

[5] Establishment or Expansion of a National Park or nature reserve is a public objective within the meaning of the Real Property Management Act of August 21, 1997 (consolidated text: Dz.U. [Journal of Laws] of 2015, item 1774, as amended): Article 7 clause 1 of the Nature Conservation Act of April 16, 2004 (consolidated text: Dz.U. [Journal of Laws] of 2015, item 1651, as amended).

[6] The following should be quoted here: "(…) public welfare obligation consists in obligating:
a) air carrier to provide air transport services, meeting the specific requirements as to the continuity, regularity, transport capacity and pricing, which would not be satisfied by the air carrier should the air carrier be driven only by the commercial interest,
b) airport operator to ensure functioning of the airport, meeting the specific requirements which would not be satisfied by the airport operator should the airport operator be driven only by the commercial interest or the interest stemming from its by-laws
– subject to the terms and conditions prescribed herein" (Article 2 clause 18 of the Aviation Law Act of July 3, 2002 (consolidated text: Dz.U. [Journal of Laws] of 2013, item 1393, as amended).

[7] A different view is presented by H. Izdebski and M. Kulesza who consider the common interest and common good equivalent, since both are the subject-matter of public administration actions (Izdebski, Kulesza: 96).

interference in individual interest remain clear.[8] Therefore, it should stem from – being at the same time the object of public activity – constructive clash of values (political, social and ethical factors) bringing about the ultimate result in the form of common good (Izdebski, Kulesza 2004: 97).

Consequently, it must be accepted that the "concept tool", which the public interest is (being the key element of the theory of administration, just like the notions of "administrative act" and "administrative discretion"), should be each and every time derived from substantive law in force: the public interest is the reflection of the existing legislation. It also defines the boundaries of acceptable interference of the public administration in social and economic area, and in the legal status of an individual.

2. The notion of the public interest in the public competition law

Competition protection granted in the Constitution[9] was further developed, as regards public law, in the Competition and Consumer Protection Act of February 16, 2007 (consolidated text: Dz.U. [Journal of Laws] of 2017, item 229; hereinafter: CCPA). The public interest as a justification of pro-competition interference of the public administration bodies has not been expressly defined by the legislator in any normative act. Therefore, interpretation of the term should be sought in judicature (Brzezińska-Rawa 2009: 29).

The provisions of CCPA safeguard the public interest in the form of competition. Hence, the common general good that deserves protection within the meaning of the Act is "competition" (Stawicki 2011: 32) – construed as market rivalry among business entities (Brzezińska-Rawa 2009: 11; Bernatt et al. 2007: 13; Kosikowski 1994: 9; Szydło 2010: 116). As already pointed out, the legislator has not defined clear boundaries of acceptable interference of the competition protection authorities (jurisdiction function). Therefore, there are no statutory indications as to when a breach of fair competition necessitates action of competent authorities, i.e. when a breach is deemed to infringe public interest and when its impact is limited to the sphere of private law. Another thing – vital from the perspective of the present discussion – is that the CCPA "does not expressly state

[8] J. Boć presents a different view: "To think that one can set the boundaries for the interference of administration is an illusion" (Boć 2004: 127).
[9] Competition protection as a good indirectly safeguarded under art. 76 of the Polish Constitution of April 2, 1997 (Dz.U. [Journal of Laws] no. 78, item 483, as amended).

whether the ultimate objective of the public interference aimed at protecting competition is the competition itself or should it serve to protect more broadly understood values (phenomena)" (Bernatt et al. 2014: 732).

It should be noted here that the CCPA does specify negative premises defining phenomena which, by virtue of its provisions, do not constitute an infringement of the public interest by disturbing properly functioning competition. What is meant here is the reference to so-called "common sense principles" (Article 8 of the CCPA), which – by their nature – are also classified as unclear concepts and should be also interpreted from the perspective of the public interest in the competition protection. The above may result in further narrowing or broadening of the boundaries of acceptable interference of public administration bodies in competition protection under public law (Bernatt et al. 2014: 734; Kohutek 2014: 55–56).

The public interest in the competition law plays a jurisdictional function, i.e. it lays down conditions for permitting interference of an anti-monopoly authority. Therefore, a breach of competition principles must be harmful to the common good (competition), if it is only harmful to a private interest, anti-monopoly authority is not permitted to interfere (an administrative procedure is not initiated at all and if already pending – it must be dismissed) (Bolecki 2013: 26–27).

If we assume that there is "one and the same" public interest in the legal system, the public interest in the competition protection law is also this very same interest. It is founded on the same values and governed by the same rules. Hence, it is still true to say that the public interest in the competition protection law is volatile and should be interpreted on a case by case basis (Bernatt et al. 2014: 736).

Current judicature in anti-monopoly cases as regards understanding of the notion of the public interest in the context of safeguarding properly functioning economy is almost unanimous. Until recently, there have been two dominating line of judicature, but presently one of them is prevailing, namely that postulating qualitative interpretation of the public interest in the area of competition protection. The other – focusing on quantitative approach – assumed anti-monopoly authority interference in the situations where a breach affected "a wider circle of market participants" (Miąsik, Skoczny 2014: 36). Currently dominating line of judicature leans towards the position that the actualization of the public interest takes place in the event of a breach of the "common good", "without specifying in advance the group of affected people". The above does not exclude a breach of individual interest, however such breach is not a *sine qua non* condition

for anti-monopoly interference of competent public authorities. It is very likely that infringements affecting a wide range of people will be considered a breach of the public interest. However, under the dominating qualitative approach to the understanding of the public interest notion, even a single case, individual breach may disturb properly functioning market competition and, thus, constitute an infringement of the public interest (different opinion: Banasiński, Piontek 2009: 18–19).

Worth noting is the fact that although anti-monopoly authorities have adopted qualitative approach, the elements of quantitative (subjective) understanding of the public interest in the competition law are still present. The above is connected with inconsistent approach to the function of the notion of public interest as a premise conditioning the acceptable interference of the anti-monopoly authorities.

As far as the evaluative and axiological function of the public interest notion in the competition law is concerned, its importance for identifying the objectives to be achieved through specific statutory provisions should be highlighted here – after all, an interference of anti-monopoly authorities should serve some purpose. Therefore, the ultimate direct aim is to ensure proper functioning of effective market competition. It should be strongly emphasised that the protection of competition "is not a goal in itself". The term "effective protection" may be differently interpreted, depending on the currently cherished values or expectations of the society. It should be also said that competition protection law serves more than just one purpose, although the dominating domestic legal literature often points to the economic aspect as dominating or fundamental. Yet, the majority of the Polish lawyers specialising in the issue supports the view that the underlying objective of the competition protection law is to ensure "the highest possible consumer welfare". In other words, the ultimate aim of competition protection (fundamental – based on substantive law – "public interest" of this protection) is to ensure consumer welfare, although mainly by preventing strategies of entrepreneurs not based on economic (allocation, production, dynamics and innovation) efficiency. The above is in opposition to the *total welfare* doctrine presented by the original Chicago school. In other words: it is, first of all, the matter of assessment whether the behaviour of entrepreneurs will adversely affect the situation of the consumers (Miąsik, Skoczny 2014: 38–39).

3. Interpretation of the Public Interest by the Court for Competition and Consumer Protection in its judgement of February 4, 2015 (file ref. no. XVII AmA 163/11)

By virtue of the judgement of February 4, 2015 (file ref. no. XVII AmA 163/11) the Regional Court in Warsaw, 17th Department – the Competition and Consumer Protection Court (SOKiK) repealed in whole the decision of the President of the Office of Competition and Consumer Protection (President of UOKiK) dated July 25, 2011 (file ref. no. DOK–6/2011). The President of UOKiK resolved in the said decision that the Polish Chamber of Physicians and Dentists (NIL) seated in Warsaw had breached the regulations prohibiting execution of agreements impeding competition, laid down in Article 6 clause 1 of the CCPA. The challenged practice of NIL was founded on the agreement allegedly impeding the competition on the Polish healthcare services market in the form of an agreement impeding competition on the Polish market of homoeopathic products sold only by prescription. Restrictions on possibility to prescribe these products by physicians and dentists were based on the opinion of the Supreme Medical Council (NRL), arguing that prescribing homoeopathic products is in conflict with medical ethics principles. President of UOKiK issued the decision stating that the access to the Polish sales markets of prescription therapeutic and homoeopathic products had been limited with respect to entrepreneurs selling these products, based on the above-mentioned opinion of NRL.

SOKiK resolved that the opinion of NRL did not infringe the provisions of the CCPA. In the justification of the judgement it was stated that the opinion concerned was not contrary to the public interest within the meaning of Article 1 clause 1 of the CCPA. In the opinion of SOKiK, the public interest understood as protection of properly functioning competition, "is not an objective in itself, but only a means to achieve certain desired state – the state is supposed to be positive for the majority of the society, majority of the consumers" – in this particular case – the patients. SOKiK emphasised that in the case concerned the outcome of the properly functioning competition on the Polish healthcare services market should be treating patients using methods and medicines which are consistent with current medical knowledge. The opinion of SOKiK was substantiated by Article 4 of the Act of December 5, 1996 on the Profession of a Physician and a Dentist (consolidated text: Dz.U. [Journal of Laws] of 2015, item 464, as amended), art. 6 clause 1 of the Act of November 6, 2008 on Patients' Rights and on the Commissioner for Patients' Rights (consolidated text: Dz.U. [Journal of Laws] of 2012, item 159, as amended) and Article 57 of the

Resolution of Extraordinary II General Medical Assembly, dated December 14, 1991 – the Code of Medical Ethics (as amended, consolidated text: NRL Bulletin 2004, No. 1 (81)). The regulations mentioned in the justification refer to the obligation to provide state-of-the-art healthcare services and to the related patients' right to receive a treatment which is in accord with that obligation. According to the state-of-the-art medical knowledge, homoeopathic products have no proven therapeutic effect. Consequently, pursuant to the judgement of SOKiK, the opinion of NRL considered as agreement among a group of entrepreneurs within the meaning of art. 4 clause 2 of the CCPA did not infringe the public interest, because in the case concerned it should be interpreted from the perspective of the good of consumers – the patients.

4. Conclusions

It seems that – despite some doubts as to legitimacy of such perception of public interest in the context of competition protection under public law – this view is by all means right (cf. Jurkowska-Gomułka 2015). Based on prior findings, it should be highlighted that the notion of the public interest as construed in the CCPA is relative, continuously evolves and adapts to individual markets both as a result of "market changes" and advancement of knowledge (Banasiński 2015: 141). Moreover, decoding of the values represented by the public interest in the competition law should be based on the rules of purposeful and systemic interpretation (Jurkowska-Gomułka 2013: 149). Also worth repeating, after J. Starościak, is the opinion that the correct exegesis of a legal text requires taking into account both the wording of the legal text and the purpose the regulation is to serve in the society (Duniewska 2013: 254). Therefore, it should be concluded that the discretion in interpreting the public interest, granted to the anti-monopoly authority, should be subject to court surveillance, and – ultimately – that in the matter analysed in the present paper, this mechanism has proven effective.

Bibliography

Banasiński C. (2015), Dyskrecjonalność w prawie antymonopolowym, Wolters Kluwer, Warszawa.

Banasiński C., Piontek E. (sed.) (2009), Ustawa o ochronie konkurencji i konsumentów. Komentarz, Lexis Nexis, Warszawa.

Banaszak B. (2012), Konstytucja Rzeczypospolitej Polskiej. Komentarz, C.H. Beck, Warszawa.

Bernatt M., Jurkowska A., Skoczny T. (2007), Ochrona konkurencji i konsumentów, Wydawnictwo Naukowe Wydziału Zarządzania, Warszawa.

Bernatt M., Jurkowska-Gomułka A., Skoczny T. (2014), Podstawy i zakres publicznoprawnej ochrony konkurencji, in: System Prawa Prywatnego. Tom 15. Prawo konkurencji, ed. Kępiński M., C.H. Beck, Warszawa, pp. 732 – 736.

Boć J. (2004), in: Prawo administracyjne, ed. Boć J., Kolonia Limited, Wrocław, p. 39.

Boć J. (2013), in: Nauka administracji, ed. Boć J., Kolonia Limited, Wrocław, p. 66.

Bolecki A. (2013), in: Prawo konkurencji, Lexis Nexis, eds. Bolecki A., Drozd S., Famirska S., Kozak M., Kulesza M., Madała A., Wardyński T., Warszawa, ps. 26 – 27.

Borkowski J. (2010), Postępowanie zwykłe. Przedmiot postępowania zwykłego, in: System Prawa Administracyjnego. Tom 9. Prawo procesowe administracyjne, eds. Adamiak B., Borkowski J., Skoczylas A., C.H. Beck, Warszawa, p. 150.

Borkowski J. (2011), Zasady postępowania administracyjnego oraz postępowania sądowoadministracyjnego, in: Postępowanie administracyjne i sądowoadministracyjne, eds. Adamiak B., Borkowski J., Lexis Nexis, Warszawa, p. 37.

Brzezińska-Rawa A. (2009), Zakaz nadużycia pozycji dominującej we wspólnotowym i polskim prawie antymonopolowym, TNOiK – Towarzystwo Naukowe Organizacji i Kierowania. "Dom Organizatora", Toruń.

Cieślak Z. (2011), Istota i zakres prawa administracyjnego, in: Prawo administracyjne, ed. Niewiadomski Z., Lexis Nexis, Warszawa, p. 56.

Complak K. (2007), Normy pierwszego rozdziału Konstytucji RP, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław

Duniewska Z., Wykładnia prawa administracyjnego (2013), in: Prawo Administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie, ed. Stahl M., Wolters Kluwer, Warszawa, p. 254.

Izdebski H. (2005), Administracja w systemie politycznym, in: Administracja publiczna, ed. Hausner J., Wydawnictwo Naukowe PWN, Warszawa, pp. 219 – 233.

Izdebski H., Kulesza M. (2004), Administracja publiczna. Zagadnienia ogólne, Liber, Warszawa.

Iserzon E. (1968), Prawo administracyjne. Podstawowe instytucje, Wydawnictwo Prawnicze, Warszawa.

Jakimowicz W. (2006), Wykładnia w prawie administracyjnym, Wolters Kluwer, Kraków.

Jurkowska-Gomułka A. (2013), Publiczne i prywatne egzekwowanie zakazów praktyk ograniczających konkurencję, Wydawnictwo Naukowe Wydziału Zarządzania Uniwersytetu Warszawskiego, Warszawa.

Jurkowska-Gomułka A. (2015), Znachor, czyli SOKiK o homeopatii, http://www.modzelewskapasnik.pl/pl/blog/36/26/znachor-czyli-sokik-o-homeopatii/ [12.04.2016].

Kosikowski C. (1994), in: Ochrona prawna konkurencji i zwalczanie praktyk monopolistycznych, eds. Kosikowski C., Ławicki T., Wydawnictwo Naukowe PWN, Warszawa, p. 9.

Kocowski T. (2009), Policja gospodarcza, in: Administracyjne prawo gospodarcze, eds. Borkowski A., Chełmoński A., Guziński M., Kiczka K., Kieres L., Kocowski T., Kolonia Limited, Wrocław, pp. 458.

Konstytucja RP z dnia 2 kwietnia 1997 r., Dz.U. nr 78, poz. 483 z późn. zm. (Constitution of the Republic of Poland of April 2, 1997, Dz.U. [Journal of Laws] no. 78, item 483, as amended)

Kohutek K. (2014), in: Ustawa o ochronie konkurencji i konsumentów, eds. Kohutek K., Sieradzka M., Wolters Kluwer, Warszawa, pp. 55 – 56.

Langrod J.S. (2003), Instytucja Prawa Administracyjnego. Zarys części ogólnej, Zakamycze, Kraków.

Łętowski J. (1990), Prawo administracyjne. Zagadnienia podstawowe, Państwowe Wydawnictwo Naukowe, Warszawa.

Matan A. (2010), in: Kodeks postępowania administracyjnego. Tom I. komentarz do art. 1–103, eds. Łaszczyca G., Martysz C., Matan A., Wolters Kluwer, Warszawa, pp. 110 – 124.

Miąsik D., Skoczny T. (2014), Komentarz, in: Ustawa o ochronie konkurencji i konsumentów, ed. Skoczny T., C.H. Beck, Warszawa, pp. 36 – 39.

Niewiadomski Z. (2015), Pojęcie administracji publicznej, in: System Prawa Administracyjnego. Tom I. Instytucje prawa administracyjnego, eds. Hauser R., Niewiadomski Z., Wróbel A., C.H. Beck, Warszawa, p. 15.

Ochendowski E. (2013), Prawo administracyjne. Część ogólna, TNOiK, Toruń.

Piechowiak M. (2012), Dobro wspólne jako fundament polskiego porządku konstytucyjnego, Trybunał Konstytucyjny, Warszawa.

Starościak J. (1966), in: Prawo administracyjne, ed. Starościak J., Państwowe Wydawnictwo Naukowe, Warszawa, p. 243.

Starościak J. (1977), Prawo administracyjne, Państwowe Wydawnictwo Naukowe, Warszawa.

Stawicki E. (2011), Komentarz, in: Ustawa o ochronie konkurencji i konsumentów, eds. Stawicki A., Stawicki E., Wolters Kluwer Polska, Warszawa, p. 32.

Szydło M. (2010), Nadużywanie pozycji dominującej w prawie konkurencji, Wolters Kluwer, Warszawa.

Suwaj P.J. (2009), Konflikt interesów w administracji publicznej, Wolters Kluwer, Warszawa.

Uchwała Nadzwyczajnego II Krajowego Zjazdu Lekarzy z 14 grudnia 1991 r. – Kodeks Etyki Lekarskiej z późn. zm., t.j. Biuletyn NRL z 2004 r., nr 1 (81). (Resolution of Extraordinary II General Medical Assembly, dated December 14, 1991 – the Code of Medical Ethics, as amended, consolidated text: NRL Bulletin 2004, No. 1 (81)).

Ura E., Ura E. (2009), Prawo administracyjne, Lexis Nexis, Warszawa.

Ustawa z dnia 16 czerwca 1960 r. – Kodeks postepowania administracyjnego, t.j. Dz.U. z 2013 r., poz. 26, z późn. zm. (Code of Administrative Procedure Act of June 16, 1960, consolidated text: Dz.U. [Journal of Laws] of 2013, item 267, as amended).

Ustawa z dnia 5 grudnia 1996 r. o zawodach lekarza i lekarza dentysty, t.j. Dz.U. z 2015 r., poz. 464 z późn. zm. (Act of December 5, 1996 on the Profession of a Physician and a Dentist (consolidated text: Dz.U. [Journal of Laws] of 2015, item 464, as amended).

Ustawa z dnia 21 sierpnia 1997 r. o gospodarce nieruchomościami, t.j. Dz.U. z 2015 r., poz. 1774 z późn. zm. (Real Property Management Act of August 21, 1997 (consolidated text: Dz.U. [Journal of Laws] of 2015, item 1774, as amended).

Ustawa z dnia 3 lipca 2002 r. – Prawo lotnicze, t.j. Dz.U. z 2013 r., poz. 1393 z późn. zm. (Aviation Law Act of July 3, 2002, consolidated text: Dz.U. [Journal of Laws] of 2013, item 1393, as amended).

Ustawa z dnia 24 kwietnia 2003 r. o działalności pożytku publicznego i o wolontariacie, t.j. Dz.U. z 2014 r., poz. 1118 z późn. zm. (Public Welfare Activity and Volunteer Work Act of April 24, 2003, consolidated text in Dz.U. [Journal of Laws] of 2014, item 1118, as amended)

Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody, t.j. Dz.U. z 2015 r., poz. 1651 z późn. zm. (Nature Conservation Act of April 16, 2004, consolidated text: Dz.U. [Journal of Laws] of 2015, item 1651, as amended).

Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, tekst jednolity: Dz.U. z 2017 r. poz. 229 (Competition and Consumer Protection Act of February 16, 2007 consolidated text: Dz.U. [Journal of Laws] of 2017, item 229).

Ustawa z dnia 6 listopada 2008 r. o prawach pacjenta i Rzeczniku Praw Pacjenta, t.j. Dz.U. z 2012 r., poz. 159 z późn. zm. (Act of November 6, 2008 on Patients' Rights and on the Commissioner for Patients' Rights, consolidated text: Dz.U. [Journal of Laws] of 2012, item 159, as amended)

Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi, t.j. Dz.U. z 2013 r., poz. 947 z późn. zm. (Act of December 5, 2008 on Preventing and Counterfighting Infections and Infectious Diseases in Humans, consolidated text: Dz.U. [Journal of Laws] of 2013, item 947, as amended)

Wronkowska S. (2014), Podstawowe pojęcia prawa i prawoznawstwa, Ars Boni et Aecqui, Poznań.

Wróblewski J. (1986), in: Teoria państwa i prawa, eds. Lang W., Wróblewski J., Zawadzki S., Państwowe Wydawnictwo Naukowe, Warszawa pp. 349 – 351.

Zimmermann J. (2014), Prawo administracyjne, Wolters Kluwer, Warszawa.

Judgements and decisions

Decision of the President of UOKiK of July, 25 2011, file ref. no. DOK–6/2011.

Judgement of the Regional Court in Warsaw, 17th Department – the Competition and Consumer Protection Court, of

February 4, 2015, file ref. no. XVII AmA 163/11.

Interpretacja pojęcia interesu publicznego w publicznym prawie konkurencji na kanwie wyroku Sądu Ochrony Konkurencji i Konsumentów z dnia 4 lutego 2015 r. (sygn. XVII AmA 163/11)

Streszczenie

Cel: Pojęcie interesu publicznego w nauce prawa administracyjnego oraz w nauce administracji zajmuje w siatce pojęciowej centralną pozycję. W konsekwencji jest także naczelnym pojęciem publicznoprawnej ochrony konkurencji. Prawodawca nie zdecydował się na zdefiniowanie „interesu publicznego" w ustawie o ochronie konkurencji i konsumentów. W efekcie interpretacja tego pojęcia w znacznej mierze zależy od orzecznictwa. Celem opracowania jest analiza prawna rozumienia pojęcia interesu publicznego zarówno w nauce, jak i w praktyce stosowania prawa.

Metody badawcze: Wnioski Autora zostały oparte o badania interpretacji interesu publicznego, dokonanej przez przedstawicieli doktryny oraz judykaturę.

Wnioski: W rezultacie, Autor pozytywnie ocenia ewoluowanie rozumienia pojęcia interesu publicznego w obszarze publicznoprawnej ochrony konkurencji, dostosowującego się do aktualnej sytuacji społecznej, rynkowej, a także rozwoju nauki prawa konkurencji.

Oryginalność publikacji: Za oryginalnością podjętego tematu przemawia analiza prawna kontrowersyjnego oraz dotychczas niespotykanego w orzecznictwie, ujęcia prawidłowo funkcjonującej konkurencji na rynku sprzedaży produktów leczniczych, jako mechanizmu umożliwiającego pacjentom uzyskiwanie świadczeń zdrowotnych zgodnych z aktualnym stanem wiedzy medycznej.

Słowa kluczowe: publiczne prawo konkurencji, interes publiczny, Sąd Ochrony Konkurencji i Konsumentów.
JEL: K23