

CONSUMPTION AND SALE OF ALCOHOLIC BEVERAGES: SELECTED LEGAL AND HEALTH-RELATED ISSUES

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1. INTRODUCTION

The main aim of the article is to establish selected legal, social and health-related aspects connected with the presently binding Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism¹ (hereinafter: AUSCA). The research also covered, to some extent, the negative effects of alcoholic beverages consumption and abuse² for consumers and the whole system of public health in Poland.

The considerations presented in the article justify a thesis that the Act on upbringing in sobriety and counteracting alcoholism needs amending, which is also confirmed in numerous scientific publications as well as the reports of organisations for the prevention of alcoholism. The article also presents the opinion that this legal act is ineffective in preventing alcohol abuse.

2. SOCIAL AND HEALTH-RELATED ASPECTS OF THE CONSUMPTION OF ALCOHOLIC BEVERAGES

Alcohol (ethanol or ethyl alcohol) is an ingredient of beer, wine and spirits, which may be addictive. The harmful effects of the consumption of alcoholic drinks have been well documented in recent years. In small amounts, alcohol is a stimulant

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¹ Ustawa z dnia 26 października 1982 r. o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi (uniform text: Journal of Laws [Dz.U.] of 2016, item 487, as amended).

² An alcoholic beverage is a consumer product containing ethyl alcohol of agricultural origin in 0.5% ABV solution, Article 46(1) AUSCA.

producing euphoria and talkativeness. The consumption of a bigger amount causes drowsiness, breathing problems (consisting in shortness of breath, shallow breathing and breathlessness), coma and even death.³ Apart from heavy intoxication resulting from drinking big amounts of alcohol, it has an impact on every human organ depending on blood alcohol concentration in a given time unit. After being swallowed, alcohol is quickly absorbed into the bloodstream (20% through the stomach, 80% through the small intestine), which can be observed already 5 to 10 minutes after the consumption and reaches the highest level after 30 to 90 minutes when it passes to all organs.⁴ 90% of ethanol undergoes the process of detoxification in the liver (however, it concerns a given amount per hour), where it is metabolised into water and carbon dioxide;⁵ the remainder is exhaled (through lungs), excreted in urine (through kidneys) and in the process of perspiration.⁶

In the process of metabolism, alcohol is converted into toxic intermediates, inter alia acetaldehyde, which is more toxic than ethanol and passes in the organism in the bloodstream until excretion.⁷ Apart from immediate effects, i.e. those occurring in the short time (referred to as the drunkenness), the consumption of alcohol results in many long-term health problems.⁸ Alcohol affects the following body organs and systems: cardiovascular and immune systems, muscular and skeletal systems, brain and nervous system, breasts (women), eyes, blood pressure, intestines, liver, lungs, kidneys, pancreas and digestion of sugars, mouth and pharynx, psychological health, skin, reproductive system and foetus development.⁹

Some research suggests that moderate consumption of alcohol (up to one drink a day) reduces the risk of heart diseases,¹⁰ however, it has not been established so far what the “one standard drink” means, especially as every country uses its own definition of “safe” drinking.¹¹ People consuming alcohol regularly rarely limit the

³ *Alcohol – the body and health effects. A brief overview*, Health Promotion Agency, Alcohol Advisory Council of New Zealand, <http://www.hpa.org.nz/sites/default/files/documents/HealthEffects.pdf> [accessed on 28.06.2017].

⁴ R.H. Lohr, *Acute alcohol intoxication and alcohol withdrawal*, [in:] R.M. Wachter, L. Goldman, H. Hollander (eds.), *Hospital medicine* (2nd ed.), Philadelphia: Lippincott Williams & Wilkins, 2005.

⁵ *Ibid.*

⁶ M.A. Schuckit, *Alcohol-related disorders*, [in:] B.J. Sadock, V.A. Sadock (eds.), *Kaplan and Sadock's comprehensive textbook of psychiatry* (7th ed.), Philadelphia: Lippincott Williams & Wilkins, 2005.

⁷ P. Anderson, L. Møller, G. Galea, *Alcohol in the European Union. Consumption, harm and policy approaches*, World Health Organization, 2012, http://www.euro.who.int/__data/assets/pdf_file/0003/160680/e96457.pdf [accessed on 25.06.2017].

⁸ *Alcohol drug facts*, NSW Government, https://www.google.pl/?gws_rd=ssl#q=Alcohol+drug+facts+nsw+government [accessed on 24.06.2017].

⁹ *Alcohol – the body...* [accessed on 27.06.2017]; J. Rehm, D. Baliunas, G.L. Borges, K. Graham, H. Irving, T. Kehoe, et al., *The relation between different dimensions of alcohol consumption and burden of disease: An overview*. *Addiction*, 105(5), 2010, pp. 817–843. S. Andréasson, T. Chikritzhs, F. Dangardt, H. Holder, T. Naimi, T. Stockwell, *Evidence about health effects of “moderate” alcohol consumption: reasons for scepticism and public health implications*, http://iogt.se/wp-content/uploads/Alkoholrapp-2014_ENG-s%C3%A4rtryck.pdf [accessed on 26.06.2017].

¹⁰ S. Andréasson et al., *Evidence about health effects...*

¹¹ *Alcohol: balancing risks and benefits*, <https://www.hsph.harvard.edu/nutritionsource/alcohol-full-story/> [accessed on 22.06.2017].

consumption to one drink a day, and the borderline between moderate drinking and a problem (addiction) is often hard to notice and leads to chronic and heavy alcohol consumption. The seeming healthy effects of drinking alcohol in small amounts are only supported by observations and not reliable medical research with the use of randomisation and double-blind trials,¹² which confirm a diverse effect. Ethanol is a toxic compound for microorganisms, used for disinfecting in many branches of industry and laboratories, also harmful to human cells.¹³

Long-term consumption of alcohol contributes to anaemia and immunodeficiency, which is related to higher exposure to bacterial or viral infections and more frequent morbidity of such diseases as tuberculosis, pneumonia and meningitis.¹⁴ As far as the spinal system is concerned, it contributes to osteoporosis because it reduces the absorption of calcium and, as a result, bone formation, as well as to death of bone tissue¹⁵ and arthritis¹⁶. It may cause congestive cardiomyopathy, which weakens the functioning of heart, arrhythmia and high blood pressure, especially among men.¹⁷ Moreover, alcohol reduces absorption of vitamins, minerals and many other nutrients from food and contributes to inappropriate functioning of intestines.¹⁸

Long-term effects of excessive consumption of alcohol contribute to serious liver diseases such as hepatitis, cirrhosis and cancer.¹⁹ 10 to 35% alcoholics suffer from alcoholic hepatitis and 5 to 15% from cirrhosis.²⁰ According to the National Cancer Institute, drinking alcohol contributes to some specific types of cancer.²¹ And the International Agency for Research on Cancer (IARC) placed ethanol and alcoholic beverages on the list of human carcinogens.²² Cancer related to drinking alcohol concerns such human body parts as: mouth cavity, pharynx, larynx, oesophagus, liver, large intestine and female breasts.²³ The increased risk of breast cancer occurs even as a result of moderate consumption of alcohol and is proportional to this consumption. According to the findings of epidemiological research, every 10 grams of alcohol a day (i.e. less than one standard drink in most countries) increases the risk of breast cancer by 7 to 10%.²⁴ The mechanisms of molecular and biochemical

¹² S. Andréasson, et al., *Evidence about health...*

¹³ <https://www.theguardian.com/science/2011/mar/07/safe-level-alcohol-consumption> [accessed on 22.06.2017].

¹⁴ *Alcohol – the body...* [accessed on 28.06.2017].

¹⁵ C.T. Derk, R.J. De Horatius, *Osteonecrosis*, [in:] W.J. Koopman, L.W. Moreland (eds.), *Arthritis and allied conditions: A textbook of rheumatology* (15th ed.), Philadelphia: Lippincott Williams & Wilkins, 2005.

¹⁶ M.I. Fingerhood, *Alcoholism and associated problems*, [in:] N.H. Fiebach, L.R. Barker, J.R. Burton, P.D. Zieve (eds.), *Principles of ambulatory medicine* (7th ed.), Philadelphia: Lippincott Williams & Wilkins, 2007.

¹⁷ R.A. Kloner, S.H. Rezkalla, *Substance abuse and the heart*, [in:] *Textbook of cardiovascular medicine* (3rd ed.), Philadelphia: Lippincott Williams & Wilkins, 2007.

¹⁸ J. Rehm et al., *The relation between...*, pp. 817–843.

¹⁹ *Alcohol – the body...* [accessed on 21.06.2017].

²⁰ *Ibid.*

²¹ <https://www.cancer.gov/about-cancer/causes-prevention/risk/alcohol/alcohol-fact-sheet> [accessed on 28.06.2017].

²² J. Rehm et al., *The relation between...*, pp. 817–843.

²³ *Ibid.*

²⁴ *Ibid.*

induction of cancer caused by ethanol are not fully recognised but they may include polymorphism of genes responsible for ethanol metabolism (dehydrogenase and cytochrome P450), increased level of oestrogen, changes in folate metabolism and poor DNA repair.²⁵ In case of large intestine cancer, genotoxicity of acetaldehyde, the above-mentioned product of ethanol metabolism, plays an essential role.²⁶ It is worth emphasising that alcohol consumption builds a synergistic relationship with smoking, increasing the risk of head and neck cancer.²⁷

Here, it is hard not to ask a question whether, in Poland, a definitely Catholic country,²⁸ worshippers have not forgotten the words from the Bible describing the negative effects of drinking alcohol: "Who has woe? Who has sorrow? Who has strife? Who has complaints? Who has needless bruises? Who has bloodshot eyes? Those who linger over wine, who go to sample bowls of mixed wine. Do not gaze at wine when it is red, when it sparkles in the cup, when it goes down smoothly! In the end it bites like a snake and poisons like a viper. Your eyes will see strange sights, and your mind will imagine confusing things. You will be like one sleeping on the high seas, lying on top of the rigging. 'They hit me,' you will say, 'but I'm not hurt! They beat me, but I don't feel it! When will I wake up so I can find another drink?'"²⁹

3. AIM OF THE ACT ON UPBRINGING IN SOBRIETY AND COUNTERACTING ALCOHOLISM

In the Preamble to the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism, the legislator *expressis verbis* states that the citizens' life in sobriety is an indispensable condition of the moral and financial welfare of the Nation. Thus, the legislator indicates *ratio legis* of the legal solution introduced.³⁰ In other words, the provisions of the AUSCA are preceded by a ceremonious introduction, called Preamble, which is not an obligatory element of every normative act but one only used in a situation when the legislator wants to clearly determine the aims of legal regulations.³¹ Therefore, there is no doubt that the content of the Preamble lays down guidelines concerning the interpretation of particular Articles of the analysed Act and has binding power for its interpretation, but first of all, it

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Measuring the health risks and benefits of alcohol*, <https://pubs.niaaa.nih.gov/publications/10report/chap01a.pdf> [accessed on 26.06.2017].

²⁸ <http://www.pope2016.com/polska/o-kraju/news,452566,kosciol-w-polsce-w-liczbach.html> [accessed on 28.06.2017].

²⁹ *Księga Przypowieści Salomona* 23, 29–35 [The Wisdom of Solomon, 23, 29–35], [in:] *Pismo Święte Starego i Nowego Testamentu* [Holy Bible, the Old and New Testament], Towarzystwo Biblijne w Polsce, Warsaw 2004, pp. 724–725.

³⁰ Judgement of the Voivodeship Administrative Court in Lublin: Wyrok WSA w Lublinie z dnia 6 grudnia 2016 r., III SA/Lu 757/16, <http://orzeczenia.nsa.gov.pl/doc/FA9CDA58B5> [accessed on 20.06.2017].

³¹ Supreme Administrative Court judgement: Wyrok NSA z dnia 21 grudnia 2016 r., I GSK 336/15, <http://orzeczenia.nsa.gov.pl/doc/DC0ACFE6DC> [accessed on 22.06.2017].

explains the aim and “spirit” of the Act.³² It is worth pointing out that, as is indicated in the literature, the Preamble of the AUSCA has a normative character with respect to the part determining the aims, which the public administration bodies should strive to meet in the area that is subject to the Act, i.e. in the meaning of an axiological element, decoded norms of the remaining part of the Act.³³

In accordance with Article 1 AUSCA, state administration bodies and local self-government units are obliged to undertake activities aimed at limiting the consumption of alcoholic beverages and changing the structure of their consumption, initiating and supporting initiatives to change drinking habits, acting for sobriety at the workplace, preventing alcohol abuse and eliminating its consequences as well as supporting social organisations and businesses’ activities in this area.³⁴ Moreover, the above-mentioned bodies should also support the establishment and development of social organisations that aim to promote sobriety and abstinence, influence people abusing alcohol and assist their families as well as they should ensure conditions conducive to these organisations’ activities, inter alia, cooperating with the Catholic Church and other Churches and religious organisations in the field of upbringing in sobriety and counteracting alcoholism.³⁵ The opinion that the legislator’s intention unambiguously is to limit access to alcohol and “profile” social strategy so that it would make it possible to efficiently combat alcoholism and teach planned and conscious use of alcoholic drinks by the society is quite well known in jurisprudence.³⁶ The stand is commonly approved of in case law, where it is emphasised that the legislator indicates that the aim of AUSCA is, inter alia, to limit access to alcohol and motivate citizens to refrain from its consumption³⁷ and, in addition, to ensure safety, orderliness and public order,³⁸ the violation of which is directly connected with alcohol consumption, such as violence, hooliganism, crime, domestic problems, social exclusion, problems at the workplace or drink driving.

³² I. Nowak, A. Nowak, *Zakaz palenia wyrobów tytoniowych – wybrane aspekty prawne i społeczne* [Ban on smoking tobacco products: selected legal and social issues], Humanities and Social Sciences No. 1, 2016, and the literature referred to therein.

³³ I. Skrzydło-Niżnik, G. Zalas, *Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Komentarz* [Act on upbringing in sobriety and counteracting alcoholism. Commentary], 2012, Lex/el; judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski: wyrok WSA w Gorzowie Wielkopolskim z dnia 3 kwietnia 2014 r., II SA/Go 148/14, <http://orzeczenia.nsa.gov.pl/doc/4A35FD49A4> [accessed on 24.06.2017].

³⁴ R. Pruszkowski, *Obowiązki jednostek samorządu terytorialnego w zakresie przeciwdziałania alkoholizmowi* [Responsibilities of local government units in counteracting alcoholism], *Finanse Komunalne* No. 2, 2002, pp. 50–54.

³⁵ Article 1(2) to (3) AUSCA.

³⁶ A. Kubik, *Sprzedaż alkoholu przez Internet* [Online sale of alcohol], *Przegląd Ustawodawstwa Gospodarczego* No. 3, 2015, pp. 2–8.

³⁷ Judgement of the Voivodeship Administrative Court in Wrocław: Wyrok WSA we Wrocławiu z dnia 12 marca 2015 r., III SA/Wr 826/14, <http://orzeczenia.nsa.gov.pl/doc/792F4982C8> [accessed on 27.06.2017].

³⁸ Judgement of the Voivodeship Administrative Court in Wrocław: Wyrok WSA we Wrocławiu z dnia 19 grudnia 2011 r., III SA/Wr 568/11, <http://orzeczenia.nsa.gov.pl/doc/371EC0C063> [accessed on 21.06.2017].

4. LICENCE TO SELL ALCOHOLIC BEVERAGES VERSUS FREEDOM TO CONDUCT A BUSINESS

The Constitutional Tribunal repeatedly indicated that the freedom to conduct a business is not absolute in nature and may be subject to limitations in accordance with Article 22 of the Constitution of the Republic of Poland,³⁹ which stipulates that limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons.⁴⁰ In other words, the sale of alcoholic beverages cannot be treated in the same way as other common business activities in the light of the protection of health and public morality, and public safety.⁴¹

Limitation of the freedom of economic activity in the area of alcoholic beverages sale, inter alia, laid down in Article 18(1) AUSCA, should be assessed through the prism of the special aim of the Act, included in the Preamble: the recognition of the citizens' life in sobriety as an indispensable condition for the moral and financial welfare of the Nation.⁴² The above unambiguously means that combating pathological social phenomena, such as alcoholism, is the superior objective of the Act, which cannot be treated as relative to the interests of business entities involved in selling alcoholic beverages.⁴³ Moreover, trade in alcoholic beverages cannot be perceived as ordinary business activity in the light of the necessity of health and public morality protection as well as public safety.⁴⁴ The Constitutional Tribunal, in the judgement of 24 November 1998, presents the same stand and states that values related to the protection of health, the welfare of the family, public order and the citizens' safety are reflected in a series of provisions of the Constitution of the Republic of Poland, because of which the legislator based the system of alcohol sale on the principle of controlled distribution and introduced legal instruments limiting its excessive consumption.⁴⁵

The sale of alcoholic beverages for consumption off and at the point of sale may be done based on a licence granted by a rural commune mayor (town mayor or city president),⁴⁶ i.e. the licensing body having jurisdiction over the area where the

³⁹ Ustawa z dnia 2 kwietnia 1997 r. [Act of 2 April 1997: the Constitution of the Republic of Poland], Journal of Laws [Dz.U.] of 1997, No. 78, item 483, as amended; hereinafter: the Constitution of the Republic of Poland.

⁴⁰ Constitutional Tribunal judgement: Wyrok TK z dnia 26 kwietnia 1999 r., 33/98, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19990860963&min=1> [accessed on 27.06.2017].

⁴¹ Constitutional Tribunal judgement: Wyrok TK z dnia 5 kwietnia 2011 r., P 26/09, <http://ipo.trybunal.gov.pl/ipo/Sprawa?cid=2&dokument=6464&sprawa=5222> [accessed on 28.06.2017].

⁴² Judgement of the Voivodeship Administrative Court in Łódź: Wyrok WSA w Łodzi z dnia 24 listopada 2014 r., III SA/Łd 855/14, <http://orzeczenia.nsa.gov.pl/doc/BDB25ECC95> [accessed on 20.06.2017].

⁴³ Judgement of the Voivodeship Administrative Court in Warsaw: Wyrok WSA w Warszawie z dnia 13 czerwca 2011 r., VI SA/Wa 79/11, <http://orzeczenia.nsa.gov.pl/doc/8B48B55285> [accessed on 26.06.2017].

⁴⁴ Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 18 października 2011 r., III SA/Kr 1344/10, <http://orzeczenia.nsa.gov.pl/doc/A2AA7BCEC1> [accessed on 25.06.2017].

⁴⁵ Constitutional Tribunal judgement: Wyrok TK z dnia 24 listopada 1998 r., K 22/98, Lex/el.

⁴⁶ In accordance with Article 18² AUSCA, income from the issue of permits based on Article 18 or Article 18¹ and income from fees referred to in Article 11¹ shall be used to implement:

point of sale is located.⁴⁷ The decision is a partially binding administrative act based on limited discretion of an administrative body because the conditions of issuing such an act are laid down in legal acts and if an applicant meets the statutory requirements, a licence must be granted.⁴⁸

The licensing body issues a separate administrative decision (a permit) based on a business' application for selling each of the following alcoholic beverages types:

- a) containing up to 4.5% of alcohol and beer;
- b) containing over 4.5% up to 18% of alcohol (except beer);
- c) containing over 18% of alcohol.

A rural commune mayor (town mayor/city president) issues a permit for a fixed period of at least four years in case of on-licence and for two years in case of off-licence sale,⁴⁹ after receiving a positive opinion of the commune committee for solving alcoholism problems on the compatibility of the point of sale placement with the resolutions of the commune council,⁵⁰ which are referred to in Article 12(1) and (2) AUSCA. It should be highlighted that the role of the commune committee for solving alcoholism problems is limited to adjudicating on compatibility or incompatibility of the point of sale placement with the commune resolutions concerning the issue because the commune council resolutions are binding for the committee and it cannot verify their compliance with law.⁵¹ However, it is worth mentioning that the

- 1) commune programmes of preventing and solving problems of alcoholism and Commune Programmes referred to in Article 10(2) Act of 29 July 2005 on preventing drug addiction;
- 2) tasks of daily support units referred to in the provisions concerning support for families and systems of substitute care within a commune programme of preventing and solving problems of alcoholism and Commune Programmes referred to in Article 10(2) Act of 29 July 2005 on preventing drug addiction;

and cannot be allocated for other purposes. As the Constitutional Tribunal rightly holds, strict conjunction of spending with the sources of their funding certainly serves disciplining commune bodies in the course of licensing companies to sell alcoholic beverages and, as a result, implementing aims determined by the legislator; and awareness that the income from the issue of licences may only be used for the implementation of commune programmes of preventing and solving alcoholism problems should be conducive to carefulness and prudence in issuing licences – Constitutional Tribunal judgement of 24 November 1998, K 22/98, Lex/el; also see, information by the Supreme Audit Office of 25 March 2013, no. 27/2013/P/12/165/LPO on use and assignment by voivodeship and commune self-governments of revenues from granted licences for sale of alcoholic beverages], https://www.nik.gov.pl/szukaj/?event=&formname=wyszukiwarka-mini&fraz=27%2F2013%2FP%2F12%2F165%2FLPO&typ%5B%5D=wszystkie&sort=mix_date_modyfikacji&sort_order=0 [accessed on 28.10.2017].

⁴⁷ Article 18(1) AUSCA.

⁴⁸ Judgement of the Voivodeship Administrative Court in Białystok: Wyrok WSA w Białymstoku z dnia 15 kwietnia 2015 r., I SA/Bk 19/15, Legalis No. 1258682; W. Czerwiński, *Postępowanie administracyjne w sprawie zezwolenia na sprzedaż alkoholu – analiza rozbieżności i propozycje zmian* [Administrative procedure in case of permit for alcohol sale – analysis of discrepancies and proposals of changes], *Radca Prawny Zeszyty Naukowe* No. 2, 2016, pp. 81–99.

⁴⁹ Article 18(9) AUSCA.

⁵⁰ For more, see D. Lebowa, W. Maciejko, *Gminna komisja rozwiązywania problemów alkoholowych* [Commune committee for solving alcohol-related problems], Wyd. LexisNexis, Warsaw 2011, *passim*.

⁵¹ Decision of the Local Government Appeal Court in Gdańsk: Postanowienie SKO w Gdańsku z dnia 30 kwietnia 2012 r., 5113/11, Lex/el.

commune committee for solving alcoholism problems, when issuing its opinion, must express its opinion on the very essence of the matter, i.e. assess whether the point of sale placement meets the requirements laid down in the commune council resolution, because it is the sole competence of the committee to assess the compatibility of the point of sale placement with the commune council resolution.⁵²

A commune mayor (town mayor/city president) issuing a decision concerning a permit for alcohol sale must take into consideration, apart from the provisions of AUSCA, the resolutions of other bodies of local self-government issued based on Article 12(1), (2), (3) and (4) AUSCA concerning the number of points of sale of alcoholic beverages containing over 4.5% of alcohol (except beer), rules of their placement and form of sale because a commune council resolutions concerning this matter are bylaws binding for both a business and a public authority body.⁵³ It is inadmissible to apply additional criteria that would result in the exclusion of businesses meeting basic requirements and obtaining licences by businesses that do not meet those basic requirements.⁵⁴

A licensing body or, based on its authorisation, municipal police or members of a commune committee for solving alcoholism problems check whether the rules and conditions of the licence are complied with.⁵⁵ It should be pointed out that the legislator, empowering a commune legislative body to adopt resolutions on a commune programme of preventing and solving alcoholism problems,⁵⁶ did not stipulate that regulations concerning supervision of alcoholic beverages sale should be one of its elements, because AUSCA clearly authorises a commune executive body to perform that task.⁵⁷ It is obvious that the competence norm cannot be presumed and constructed via law interpretation; it must be clearly determined in statute and it is necessary to remember that in case of administrative bodies, not the principle that "what is not prohibited is allowed" is applicable but the principle "only what has explicit legal grounds is allowed".⁵⁸

The statutory supervisory entitlement of the members of a commune committee for solving alcoholism problems is laid down in Article 18 AUSCA. However, this empowerment is not addressed to a commune legislative body and does not concern

⁵² Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 8 czerwca 2011 r., III SA/Kr 368/11, <http://orzeczenia.nsa.gov.pl/doc/2E8916B86D> [accessed on 25.06.2017].

⁵³ Judgements of the Supreme Administrative Court: Wyroki NSA z dnia 18 września 2014 r., II GSK 1158-1159/13, <http://orzeczenia.nsa.gov.pl/doc/BF557E292A>; <http://orzeczenia.nsa.gov.pl/doc/620C183EFC> [accessed on 28.06.2017].

⁵⁴ Judgement of the Supreme Administrative Court: Wyrok NSA z dnia 24 lipca 2013 r., II GSK 605/12, <http://orzeczenia.nsa.gov.pl/doc/32EFA9B7EA> [accessed on 27.06.2017].

⁵⁵ Article 18(9) AUSCA.

⁵⁶ K. Grobicka-Madej, *Gminny Program Profilaktyki i Rozwiązywania Problemów Alkoholowych – możliwość pozyskania dodatkowych środków finansowych dla gmin* [Commune Programme of Prevention and Solving of Alcohol-Related Problems – possibilities of obtaining additional financial resources for the communes], *Przegląd Podatków Lokalnych i Finansów Samorządowych* No. 11, 2015, pp. 29–33.

⁵⁷ Declaratory act of the Opolskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Opolskiego z dnia 7 kwietnia 2011 r., NK.III.4131.1.53.2011.KK, Lex/el.

⁵⁸ Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 24 października 2013 r., III SA/Kr 407/13, Legalis No. 794596.

the institution of public order in a point of sale of alcoholic beverages and the closest surrounding area.⁵⁹ It should be emphasised that, in Article 18(8) AUSCA, the legislator regulated a licensing body's entitlements to supervise the compliance with the rules and conditions of a permit, which means that the legislator granted the same entitlements to a commune committee for solving alcoholism problems but based on the authorisation given by a licensing body. This means that the provision referred to above indicates two independent entities entitled to supervise, i.e. a licensing body (mayor) and a commune committee for solving alcoholism problems.⁶⁰

5. COMMUNE COUNCIL RESOLUTIONS DETERMINING THE NUMBER OF POINTS OF SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AND RULES CONCERNING THEIR PLACEMENT

In accordance with Article 12(1) AUSCA, a commune council adopts a resolution determining the number of on- and off-licence points of sale of alcoholic beverages containing more than 4.5% of alcohol (except beer). Moreover, a commune council adopts a resolution determining the placement of those points of sale of alcoholic beverages.⁶¹ It is worth noting that the legislator regulated a commune council's two different statutory entitlements in the Act, i.e. Article 12(1) AUSCA lays down the competence to adopt a resolution concerning the number of on- and off-licence points of sale of alcoholic beverages containing above 4.5% of alcohol (except beer), and Article 12(2) AUSCA lays down another entitlement to adopt a resolution concerning the placement of points of sale in the commune.⁶² Thus, it seems that a commune council's resolutions adopted in accordance with the entitlement laid down in Article 12(1) and (2) AUSCA, which are bylaws⁶³ determining the number of points of sale and their placement, should be subordinate to the aims of statute, i.e. they should limit availability of alcohol and create conditions motivating to refrain from its consumption.⁶⁴

⁵⁹ Judgement of the Voivodeship Administrative Court in Lublin: Wyrok WSA w Lublinie z dnia 15 listopada 2005 r., III SA/Lu 532/05, <http://orzeczenia.nsa.gov.pl/doc/CE94D2CAF7> [accessed on 23.06.2017].

⁶⁰ Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 8 lipca 2010 r., III SA/Kr 84/10, <http://orzeczenia.nsa.gov.pl/doc/71AB8CC6D6> [accessed on 21.06.2017].

⁶¹ Article 12(2) AUSCA.

⁶² R. Sawuła, *Stosowanie ustawy o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Wybrane problemy* [Application of the Act on upbringing in sobriety and counteracting alcoholism. Selected issues], Samorząd Terytorialny No. 10, 1993, pp. 31–37; judgement of the Voivodeship Administrative Court in Kraków: wyrok WSA w Krakowie z dnia 11 marca 2016 r., III SA/Kr 1557/15, <http://orzeczenia.nsa.gov.pl/doc/90689729B5> [accessed on 20.06.2017].

⁶³ A bylaw is any legal act laying down norms binding locally (i.e. not applicable to an individually specified entity but a certain category of potential addressees) and abstract in nature, issued by a statutory administrative body – declaratory act of the Lubelskie Voivode: rozstrzygnięcie nadzorcze Wojewody Lubelskiego z dnia 8 kwietnia 2013 r., PN-II.4131.127.2013, Lex/el.

⁶⁴ Declaratory act of the Podkarpackie Voivode: Rozstrzygnięcie nadzorcze Wojewody Podkarpackiego z dnia 22 czerwca 2016 r., P-II.4131.2.92.2016, Lex/el.

In accordance with the provision of Article 40(1) Act of 8 March 1990 on commune self-governments,⁶⁵ based on statutory authorisation, a commune is entitled to enact bylaws binding in the area of the commune. The provision empowers a commune council to enact executive bylaws, which aim to exercise the entitlement laid down in special statute, in the scope and within the limits determined taking into consideration the specificity and needs of a given commune. Therefore, a commune (or town) council has no power to determine legal grounds for its action independently, i.e. without grounds laid down in a statutory norm.⁶⁶ For example, Article 12(1) AUSCA in conjunction with successive provisions of this Act does not stipulate a possibility of determining the number of points of sale of alcoholic beverages in particular parts of a commune, including particular subsidiary units of a commune, and every resolution of a commune council concerning this should be classified as a groundless action, i.e. significantly violating law, which results in the necessity of recognising it as invalid.⁶⁷ Moreover, a commune council resolutions, adopted based on the above-mentioned authorisation, cannot include a repetition of the normative content of the Act because, infringing the rules of legislative technique, they constitute, first of all, "a local legislator's" entry into the sphere of competence reserved exclusively to the national legislator (the creator of commonly binding law), which can result in the addressees' wrong conviction that the commonly binding laws transposed to the local area are only bylaws, which are binding solely in the area under the local legislator's jurisdiction.⁶⁸

The number of the points of sale and consumption of alcoholic beverages and their placement should be adjusted to the need of limiting availability of alcohol determined in a commune programme of preventing and solving alcoholism problems.⁶⁹ This is the only criterion that can influence the determination of the number of permits to sell alcohol and applies only to the total number of points of sale in the whole area of a commune (or a town) and not its particular parts.⁷⁰ A similar stand, which we approve of, was expressed in the rulings of public administration bodies, which indicate that Article 12(4) AUSCA introduces a significant limitation on a commune council's discretion to decide in this field,

⁶⁵ Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym (uniform text: Journal of Laws [Dz.U.] of 2017, item 1875, as amended).

⁶⁶ Judgement of the Voivodeship Administrative Court in Łódź: Wyrok WSA w Łodzi z dnia 11 stycznia 2017 r., I SA/Łd 910/16, <http://orzeczenia.nsa.gov.pl/doc/540EA2FC5B> [accessed on 25.06.2017].

⁶⁷ Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 11 marca 2016 r., III SA/Kr 1557/15, <http://orzeczenia.nsa.gov.pl/doc/90689729B5> [accessed on 26.06.2017].

⁶⁸ Judgement of the Voivodeship Administrative Court in Szczecin: Wyrok WSA w Szczecinie z dnia 12 stycznia 2012 r., II SA/Sz 1135/11, <http://orzeczenia.nsa.gov.pl/doc/A311A8AC69> [accessed on 26.06.2017]; declaratory act of the Lubelskie Voivode: rozstrzygnięcie nadzorcze Wojewody Lubelskiego z dnia 8 kwietnia 2013 r., PN-II.4131.127.2013, Lex/el.

⁶⁹ Article 12(4) AUSCA; M. Mincer-Jaśkowska, *Glosa do wyroku NSA z dnia 3 stycznia 1995 r.*, SA/Kr 2937/94 [Gloss on the Supreme Administrative Court judgement of 3 January 1995, SA/Kr 2937/94], *Orzecznictwo Sądów Polskich* No. 2, 1996, p. 25 ff.

⁷⁰ Judgement of the Voivodeship Administrative Court in Kraków: Wyrok WSA w Krakowie z dnia 11 marca 2016 r., III SA/Kr 1557/15, <http://orzeczenia.nsa.gov.pl/doc/90689729B5> [accessed on 20.06.2017].

stipulating that placement of points of sale of alcohol should be adjusted to the need to limit availability of alcohol determined in a commune programme of preventing and solving alcoholism problems.⁷¹ Therefore, the legislator's stand expressed in this provision is also for the limitation of availability of alcohol and not for a total ban on its sale because the provisions of AUSCA authorise a commune body⁷² solely to take actions aimed at limiting the sale of alcoholic beverages but do not give power to introduce prohibition.⁷³

The number of points of sale determined cannot be too big in order to avoid a situation making the statutory assumptions aimed at limiting the consumption of alcohol fictitious. At the same time, it cannot be too small in order to avoid the creation of alcohol sale monopoly.⁷⁴ According to the Kraków Voivode declaratory act of 19 December 1996, which still maintains validity, abolishing the determined number of the points of sale of alcoholic beverages and introducing an unlimited number of such points of sale, first of all, results in easier availability of alcohol and this unavoidably leads to the increase in the consumption of alcoholic beverages.⁷⁵ However, determining the "nil" number of points of sale of alcoholic beverages by a commune council is inadmissible.⁷⁶

The provision of Article 12(2) AUSCA empowers a commune council only to determine the rules of on- and off-licence points of sale placement in the area of a commune, which should be understood as their location in the area, especially in relation to protected places such as schools, kindergartens, other educational and childcare institutions, places of religious worship, etc.⁷⁷ Thus, the empowerment to determine "the rules of place location", laid down in Article 12(2) AUSCA, must be subject to strict linguistic interpretation, so that the addressees of an act have no problems with the interpretation of the determined law.⁷⁸ It must be remembered,

⁷¹ Declaratory act of the Kujawsko-Pomorskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Kujawsko-Pomorskiego z dnia 7 kwietnia 2008 r., WNK/DW.IV.BP.0911-11/08, Lex/el.

⁷² R. Budzisz, B. Jaworska-Dębska, K. Właźlak, *Rola samorządu terytorialnego w zakresie wychowania w trzeźwości i przeciwdziałania alkoholizmowi* [Role of local self-governments in education in sobriety and counteracting alcoholism], *Studia Prawno-Ekonomiczne* No. 79, 2009, p. 53 ff.

⁷³ Declaratory act of the Lubelskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Lubelskiego z dnia 19 lipca 2011 r., NK-II.4131.261.2011, Lex/el.

⁷⁴ B. Jaworska-Dębska, *Glosa do wyroku NSA z dnia 8 listopada 1993 r., II SA 1967/93* [Gloss on the Supreme Administrative Court judgement of 8 November 1993, II SA 1967/93], *Samorząd Terytorialny* No. 3, 1996, pp. 74–77; R. Skwarło, *Ustalenie liczby punktów sprzedaży napojów alkoholowych na terenie gminy/miasta* [Determining the number of points of sale of alcoholic beverages in the area of the commune/town], Lex/el.

⁷⁵ Declaratory act of Kraków Voivode: Rozstrzygnięcie nadzorcze Wojewody Krakowskiego z dnia 16 grudnia 1996 r., ON.III-0903-12-46/96, Lex/el.

⁷⁶ Supreme Administrative Court judgement: Wyrok NSA z dnia 21 maja 1997 r., SA/Rz 145/97, <http://orzeczenia.nsa.gov.pl/doc/8B03CFC291> [accessed on 22.06.2017]; judgement of the Voivodeship Administrative Court in Rzeszów: wyrok WSA w Rzeszowie z dnia 2 kwietnia 2009 r., II SA/Rz 160/09, <http://orzeczenia.nsa.gov.pl/doc/E999B7F89E> [accessed on 28.06.2017].

⁷⁷ Judgement of the Voivodeship Administrative Court in Szczecin: Wyrok WSA w Szczecinie z dnia 12 stycznia 2012 r., II SA/Sz 1135/11, <http://orzeczenia.nsa.gov.pl/doc/A311A8AC69> [accessed on 27.06.2017].

⁷⁸ Declaratory act of the Lubelskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Lubelskiego z dnia 2 kwietnia 2015 r., PN-II.4131.143.2015, *Legalis* No. 1206349; judgement

however, that the aim of determining the rules of on- and off-licence points of sale location is only the special protection of some places and facilities against risks posed by alcohol.⁷⁹

The doctrine, public administration bodies' decisions and the judiciary express a uniform stand in the above-discussed issue and indicate that the empowerment laid down in Article 12(2) AUSCA does not give competence to introduce a ban on sale of alcoholic beverages but only to determine the rules of placement of the points of sale.⁸⁰ It should be added that the concept of the rules of placement of points of sale of alcoholic beverages in the commune area does not contain the determination of hours of sale.⁸¹ Moreover, the empowerment laid down in Article 12(2) AUSCA does not cover a commune council's competence to determine the conditions of sale in on- and off-licence points of sale and the requirement for building such points.⁸²

The legislator's empowerment under Article 12(2) AUSCA properly instituted by a commune council should be done by means of determination of the distance between the points of sale and protected places with the use of an unambiguous measure of a "metre" used in the Polish system of units.⁸³ For example, the determined by a commune council distance of five metres from protected places and facilities, i.e. kindergartens, schools, special educational and childcare institutions, youth volunteer work associations (*ochotnicze hufce pracy*), churches, chapels and houses of prayer, means close, direct neighbourhood of those facilities,⁸⁴ which is obviously in conflict with the necessity of meeting an obligation to limit availability of alcohol, especially in relation to minors, because the distance does not limit the availability of alcohol in any way and does not create conditions motivating to refrain from its consumption.⁸⁵

of the Voivodeship Administrative Court in Gorzów Wielkopolski: wyrok WSA w Gorzowie Wielkopolskim z dnia 3 września 2014 r., II SA/Go 554/14, <http://orzeczenia.nsa.gov.pl/doc/89C7B2425E> [accessed on 19.06.2017].

⁷⁹ Judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski: Wyrok WSA w Gorzowie Wielkopolskim z dnia 12 stycznia 2017 r., II SA/Go 967/16, <http://orzeczenia.nsa.gov.pl/doc/4F79113AB4> [accessed on 28.06.2017]; judgement of the Voivodeship Administrative Court in Kraków: wyrok WSA w Krakowie z dnia 24 września 2013 r., III SA/Kr 96/13, <http://orzeczenia.nsa.gov.pl/doc/534B5A341F> [accessed on 21.06.2017].

⁸⁰ Declaratory act of the Lubelskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Lubelskiego z dnia 8 kwietnia 2013 r., PN-II.4131.127.2013, Lex/el.

⁸¹ Judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski: Wyrok WSA w Gorzowie Wielkopolskim z dnia 26 października 2016 r., II SA/Go 689/16, <http://orzeczenia.nsa.gov.pl/doc/6666185949> [accessed on 25.06.2017].

⁸² Judgement of the Voivodeship Administrative Court in Szczecin: Wyrok WSA w Szczecinie z dnia 12 stycznia 2012 r., II SA/Sz 1135/11, <http://orzeczenia.nsa.gov.pl/doc/A311A8AC69> [accessed on 24.06.2017]; judgement of the Voivodeship Administrative Court in Kraków: wyrok WSA w Krakowie z dnia 24 września 2013 r., III SA/Kr 96/13, <http://orzeczenia.nsa.gov.pl/doc/534B5A341F> [accessed on 20.06.2017].

⁸³ Declaratory act of the Łódzkie Voivode: Rozstrzygnięcie nadzorcze Wojewody Łódzkiego z dnia 14 stycznia 2014 r., PNK-I.4131.1340.2013, Lex/el.

⁸⁴ J. Wilk, *Glosa do wyroku WSA z dnia 19 grudnia 2011 r., III SA/Wr 568/11* [Gloss on the judgment of the Voivodeship Administrative Court in Wrocław of 19 December 2011, III SA/Wr 568/11], Lex/el.

⁸⁵ Judgement of the Voivodeship Administrative Court in Wrocław: Wyrok WSA we Wrocławiu z dnia 12 marca 2015 r., III SA/Wr 826/14, <http://orzeczenia.nsa.gov.pl/doc/792F4982C8> [accessed on 22.06.2017].

This is reflected in case law, where it is stated that “while adopting resolutions concerning location of points of sale of alcoholic beverages, a commune council should take into account precise determination of the points of placement from the geometrical perspective, between which the measurement of the distance between the points of sale and protected places is to be made. Imprecise determination of the rule (the method) of measurement determines relativity of the obtained results of measurements checking whether a point of sale is located in conformity with the rules concerning its location or not”.⁸⁶ Thus, “even the determination of just the distance between the points of sale and places protected without precise determination of the method of measurement of the distance (from which point to which point) constitutes a risk of inappropriate fulfilment of aims laid down in Articles 1 and 2 AUSCA, constitutes a risk of unequal treatment of entities applying for a permit. (...) The role of a commune body enacting law is in such a situation to determine not only the distance between the points of sale of alcoholic beverages but also the method of this measurement: from which point to which point and along what line”.⁸⁷

In the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism, the legislator does not grant headmasters of schools and educational and childcare institutions or heads of religious worship facilities any competence whatsoever to determine the rules of placing points of sale of alcoholic beverages in the commune area.⁸⁸ In other words, a commune council cannot delegate its statutory competence to determine the distance between the points of sale to other unauthorised entities.⁸⁹

Summing up the above considerations, it is necessary to notice that a commune council resolution adopted based on Article 12(2) AUSCA cannot indicate facilities where a point of sale can be located because it would enter the area of bans, which is laid down in Article 14(1) to (5) AUSCA, in accordance with which the legislator determined places where sale and consumption of alcoholic beverages is prohibited (the protected places). The catalogue of such places is a closed one, which means that based on Article 12(2) AUSCA, a commune council cannot extend it.⁹⁰ Although, as Article 14(6) AUSCA stipulates, a commune council may introduce a temporary or permanent ban on the sale, consumption and bringing in alcoholic beverages to some places, facilities or areas of a commune that are not listed, however, the determination of those places and areas cannot be arbitrary because it is required that their special

⁸⁶ Supreme Administrative Court judgement: Wyrok NSA z dnia 10 maja 2012 r., II GSK 497/11, <http://orzeczenia.nsa.gov.pl/doc/F58C11ACC4> [accessed on 27.06.2017].

⁸⁷ Judgement of the Voivodeship Administrative Court in Łódź: Wyrok WSA w Łodzi z dnia 11 stycznia 2017 r., III SA/Łd 910/16, <http://orzeczenia.nsa.gov.pl/doc/5A51376257> [accessed on 27.06.2017].

⁸⁸ Declaratory act of the Małopolskie Voivode: Rozstrzygnięcie nadzorcze Wojewody Małopolskiego z dnia 2 lutego 2017 r., WN-II.4131.1.5.2017, Lex/el.

⁸⁹ Judgement of the Voivodeship Administrative Court in Kielce: Wyrok WSA w Kielcach z dnia 18 sierpnia 2016 r., II SA/Ke 450/16, <http://orzeczenia.nsa.gov.pl/doc/A4FFB626F4> [accessed on 23.06.2017].

⁹⁰ Judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski: Wyrok WSA w Gorzowie Wielkopolskim z dnia 12 stycznia 2017 r., II SA/Go 967/16, <http://orzeczenia.nsa.gov.pl/doc/4F79113AB4> [accessed on 28.06.2017].

nature should be determined, with the use of particular names (individual or group ones) making it possible to differentiate them from other similar places, facilities or areas.⁹¹ In other words, commonly binding statutory bans laid down in Article 14(1) to (5) AUSCA may be supplemented by local bans introduced by communes in their areas. Thus, this special nature should be unambiguously and unquestionably determined in the context of aims resulting from the content of Articles 1, 2 and 14 AUSCA.⁹² The same stand results from case law, according to which “based on Article 14(1) AUSCA, a commonly binding (*ex lege*) ban on selling, serving and consuming alcoholic beverages was introduced in relation to strictly determined categories of places, facilities and areas, which were enumerated in statute with the use of linguistic forms that allow their differentiation from remaining public places, facilities and areas. In this situation, the wording of Article 14(6) AUSCA indicates that the empowerment of a commune council to introduce appropriate bans is not to serve generalisation but enlargement of the scope of the existing bans onto other places, facilities or areas that are not included in Article 14(1) AUSCA, and only to the extent that is justified because of their nature. Commune bylaws enacted based on Article 14(6) AUSCA in order to determine places, facilities or areas of a commune subject to a temporary or permanent ban on selling, serving, consuming or bringing in alcoholic beverages cannot use phrases playing the semantic role of the common names and general ones at the same time (e.g. streets, squares, green areas, sports facilities, recreational facilities, shops, playgrounds, apartment block interiors, staircases, cemeteries), which are names of all designated objects of the type without a possibility of individualising them and taking into consideration their nature. The bylaws enacted based on Article 14(6) AUSCA, in order to determine places, facilities, points or areas other than enumerated in Article 14(1) to (5) of the Act, which are additionally subject to a (temporary or permanent) ban on selling, serving, consuming or bringing in alcoholic beverages, should use such linguistic phrases that play the semantic roles of individual or group names of specific places, facilities or areas and make it possible to individualise and differentiate them (also because of their nature) from other public places, facilities or areas of the same type in the area of a commune”.⁹³

⁹¹ Supreme Administrative Court judgement: Wyrok NSA z dnia 14 grudnia 2006 r., II GSK 236/06, <http://orzeczenia.nsa.gov.pl/doc/B7844486DA> [accessed on 27.06.2017].

⁹² Judgement of the Voivodeship Administrative Court in Szczecin: Wyrok WSA w Szczecinie z dnia 16 czerwca 2016 r., II SA/Sz 426/16, <http://orzeczenia.nsa.gov.pl/doc/397080D08A> [accessed on 27.06.2017].

⁹³ Supreme Court judgement: Wyrok SN z dnia 17 kwietnia 1997 r., III RN 11/97, <http://www.sn.pl/sites/orzecznictwo/Orzeczenia1/III%20RN%2011-97.pdf> [accessed on 27.06.2017]; judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski: wyrok WSA w Gorzowie Wielkopolskim z dnia 15 czerwca 2016 r., II SA/Go 367/16, <http://orzeczenia.nsa.gov.pl/doc/5F2090F34B> [accessed on 27.06.2017]; judgement of the Voivodeship Administrative Court in Gdańsk: wyrok WSA w Gdańsku z dnia 13 maja 2004 r., II SA/Gd 3499/01, <http://orzeczenia.nsa.gov.pl/doc/A9A69D0D45> [accessed on 25.06.2017].

6. CONCLUSIONS

According to the World Health Organisation, alcohol is the third biggest risk factor for the health of human population. Over 200 types of diseases and injuries are connected with its consumption.⁹⁴ Europe is the continent where the consumption of alcohol per capita is the highest in the world.⁹⁵ Over 80% of adult inhabitants of the Republic of Poland consume alcohol⁹⁶ and, unfortunately, this shows a rising tendency. In 2015, according to the Central Statistical Office of Poland, the consumption of 100% alcohol per capita reached 9.4 l (excluding illegally and informally produced alcohol).⁹⁷ However, it must be emphasised that “an attempt to extrapolate the findings of epidemiological research to the population of Poland in the age between 18 and 64 gives a number of 3 million people who suffer from various psychical or behavioural disorders resulting from the consumption of alcohol. Over 0.6 million people within this group are addicted to alcohol”.⁹⁸

The legislator, having in mind the negative consequences of alcohol abuse and the need to prevent this social pathology, focusing not only on prevention activities,⁹⁹ already in the Preamble to Act on upbringing in sobriety and counteracting alcoholism, indicated the main aim and the subject of protection as well as the leading directive for the interpretation of this legal act, stating that the citizens' life in sobriety is an indispensable condition of moral and financial welfare of the Nation.¹⁰⁰ However, *prima vista*, the Act on upbringing in sobriety and counteracting alcoholism, passed over 35 years ago, does not currently constitute a legal act representing an idea covering the entirety and requires urgent amendment.¹⁰¹ *In fine*, let us make some comments *de lege ferenda*.

First of all, the legislator should substitute the term “public administration bodies” for the term “government administration bodies and self-government units”

⁹⁴ World Health Organisation, <http://www.who.int/mediacentre/factsheets/fs349/en/index.html>.

⁹⁵ *Postawy wobec alkoholu. Raport 2006-2007* [Attitudes towards alcohol. Report for 2006–2007], <http://www.parpa.pl/index.php/alkohol-w-europie/najnowsze-dokumenty-eu> [accessed on 28.06.2017].

⁹⁶ *Sprawozdanie z wykonania ustawy z dnia 26 października 1982 r. o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi w okresie od dnia 1 stycznia 2015 r. do dnia 31 grudnia 2015 r.* [Report on the implementation of the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism in the period 1 January 2015–31 December 2015], <https://bip.kprm.gov.pl/kpr/bip-rady-ministrow/informacje-i-sprawozda/4093,informacje.html> [accessed on 28.06.2017].

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ For more, see D. Fleszer, *Reglamentacja działalności gospodarczej w zakresie sprzedaży detalicznej alkoholu* [Restriction of business activities in retail alcohol sale], *Przegląd Prawa Handlowego* No. 6, 2015, p. 43 ff.

¹⁰⁰ Judgement of the Voivodeship Administrative Court in Lublin: Wyrok WSA w Lublin z dnia 24 września 2013 r., III SA/Lu 335/13, <http://orzeczenia.nsa.gov.pl/doc/DAA4F83BF5> [accessed on 28.06.2017].

¹⁰¹ B. Jaworska-Dębska, *Rozwój cywilizacyjny w Polsce przełomu XX i XXI w. a sytuacja prawna osób uzależnionych od alkoholu* [Civilisation development in Poland at the turn of the 20th and 21st centuries vs. legal situation of persons addicted to alcohol], [in:] P.J. Suwaj, J. Zimmermann (eds.), *Wpływ przemian cywilizacyjnych na prawo administracyjne i administrację publiczną* [Impact of civilisation changes on the administrative law and public administration], 2013, Lex/el.

used in Article 1(1) AUSCA, in accordance with the dictionary-based meaning under Article 5 §2(3) of the Act of 14 June 1960: Code of Administrative Procedure.¹⁰²

Secondly, the legislator, granting specific competences to commune bodies in Article 12(1) to (2) AUSCA, aimed only to limit the sale of alcoholic beverages. Thus, the provisions of the Act on upbringing in sobriety and counteracting alcoholism empower a commune body only to undertake actions aimed at limiting the sale of alcoholic beverages, however, they do not give power to introduce prohibition in a commune area.¹⁰³ As it is rightly emphasised in the literature, the Act lacks norms that are purely prohibitive in nature¹⁰⁴ and focuses only on regulations strictly controlling distribution, including limiting consumption and supervision as well as the elimination of the negative health-related and social consequences.¹⁰⁵ What is important, the aims expressed in the Act concerning excessive availability of alcohol,¹⁰⁶ especially to youth,¹⁰⁷ are not only political appeals but are binding legal norms.¹⁰⁸

Thirdly, it is necessary to implement systematic and efficient institution of the provisions of the Act on upbringing in sobriety and counteracting alcoholism, inter alia, by better legal education of entities involved, e.g. the police, municipal police, and trade inspection. It is obvious that "it is hard to speak about consistent policy in the field of alcohol if bans are not complied with".¹⁰⁹

¹⁰² Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (uniform text: Journal of Laws [Dz.U.] of 2017, item 1257, as amended).

¹⁰³ Supreme Administrative Court judgement: Wyrok NSA z dnia 21 maja 1997 r., SA/Rz 145/97, <http://orzeczenia.nsa.gov.pl/doc/8B03CFC291> [accessed on 28.06.2017]; judgement of the Voivodeship Administrative Court in Rzeszów: wyrok WSA w Rzeszowie z dnia 2 kwietnia 2009 r., II SA/Rz 160/09, <http://orzeczenia.nsa.gov.pl/doc/E999B7F89E> [accessed on 28.06.2017].

¹⁰⁴ B. Jaworska-Dębska, *Spór wokół modelu polskiej regulacji alkoholowej – zagadnienia administracyjnoprawne* [Dispute over the Polish model of the alcohol regulation – administrative law issues], Wyd. UL, Łódź 1995, p. 36.

¹⁰⁵ M. Koszowski, *Tak zwana polska prohibicja w odniesieniu do przeciwdziałania uzależnieniu od wyrobów alkoholowych i tytoniowych* [The so-called Polish prohibition with reference to counteracting addiction to alcoholic and tobacco products], [in:] A. Błaś (ed.), *Antywartości w prawie administracyjnym* [Anti-values in the administrative law], 2016, Lex/el.

¹⁰⁶ Availability of off-licence where one can buy alcohol in Poland is very high – in 2015, there were 336,476 valid permits of which 125,737 were issued by communes, including 90,665 off-licence and 35,072 in-licence (gastronomic) points of sale. In other words, in 2015, there was one point of sale for 274 people, and there was one point of sale of alcoholic beverages containing above 18% of alcohol for 374 people. However, what is worth mentioning, the World Health Organisation advises that the rate should be 1,000 people for one point of sale. See, W.S. Zgliczyński, *Alkohol w Polsce* [Alcohol in Poland], Biuro Analiz Sejmowych No. 11, 2016, p. 2; Sprawozdanie z wykonania... [Report on the implementation...], pp. 51–52.

¹⁰⁷ E. Bieńkowska, L. Mazowiecka, *Prawa ofiar przestępstw* [Rights of crime victims], 2009, Lex/el.

¹⁰⁸ R. Sawuła, *Administracyjnoprawne środki ograniczenia dostępności do alkoholu. Uwagi na tle nowelizacji ustawy o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi* [Administrative law measures of limiting access to alcohol. Comments in the light of amendment of the Act on upbringing in sobriety and counteracting alcoholism], Samorząd Terytorialny No. 3, 1997, pp. 47–60; Supreme Administrative Court judgement: wyrok NSA z dnia 3 stycznia 1995 r., SA/KR 2937/94, Orzecznictwo Sądów Polskich No. 2, 1996, p. 25.

¹⁰⁹ J. Osiecka, *Reklama alkoholu w Polsce i w wybranych krajach europejskich* [Advertising of alcohol in Poland and selected European states], Informacja BSE No. 515, http://biurosej.gov.pl/teksty_pdf_97/i-515.pdf [accessed on 28.06.2017]; D. Fleszer, *Zakaz sprzedaży, podawania i spożywania napojów alkoholowych na gruncie orzecznictwa sądowoadministracyjnego* [Ban on sale,

Fourthly, it is necessary to introduce an absolute ban on advertising, promotion, sponsorship, etc. of alcoholic beverages (including beer) because it is in irremovable conflict with the protection of human interests such as health, which should be protected in accordance with Article 68(1) of the Constitution of the Republic of Poland.¹¹⁰ Unfortunately, corporations producing alcohol aim to develop undesired pro-alcoholic behaviour, disposing young people towards a positive attitude to alcohol from the youngest age.¹¹¹ As K. Liczmańska proved in her empirical research, special offers substantially influence people's decisions concerning the choice of vodka brand in a shop because the chosen brands ideally match those that were on special offer.¹¹² Therefore, perhaps it is high time we stopped companies circumventing restrictions concerning advertising, promotion and sponsorship of alcoholic beverages, which is their key to success,¹¹³ in the sale of substances harmful to health and life and obtaining economic benefits.¹¹⁴ We should quote the words of a Catholic priest B. Markiewicz, who pointed out that: "one who would like to bring up children and youth with a glass of beer or wine in his hand is a traitor to his nation and faith".¹¹⁵

Fifthly, it is necessary to limit, and the best thing would be to eliminate, the "aggressive" lobbying of the representatives and quasi-representatives of the "spirit industry" in a statutory way and this way ensure the transparency of legislative processes in this area of social health, remembering that the superior aim of the Act on upbringing in sobriety and counteracting alcoholism is to protect the proper physical, psychical and social development of the community.¹¹⁶

The above-presented remarks make us state that the proposals for amendments to the Act on upbringing in sobriety and counteracting alcoholism should be implemented with full consistency in order to develop a complex legal act stipulating limited availability of alcohol. Moreover, the scale of negative consequences of

serving and consumption of alcoholic beverages based on administrative courts' rulings], *Samorząd Terytorialny* No. 6, 2015, pp. 78–87.

¹¹⁰ Compare, M. Balwicka-Szczyrba, Ł. Balwicki, *Zakaz sponsorowania przez podmioty branży tytoniowej* [Ban on sponsoring by entities from the tobacco sector], *Kwartalnik Prawa Publicznego* No. 1, 2013, p. 65 ff.

¹¹¹ Compare, M. Uliasz, *Reklama i promocja wyrobów tytoniowych* [Advertising and promotion of tobacco products], *Przegląd Sądowy* No. 7–8, 2001, p. 55.

¹¹² K. Liczmańska, *Promocja konsumencka w warunkach zakazu reklamy publicznej* [Consumer promotion in the light of ban of public advertising], *Acta Universitatis Nicolai Copernici* No. 404, 2011, p. 91 ff.

¹¹³ M. Du Vall, E. Nowińska, *Nie bujaj, łódko Bols*, Rzeczpospolita PCD 2001/6/15, Lex/el.

¹¹⁴ For example, breweries spend nearly PLN 400 million on advertising annually: *Rozwiązywanie problemów alkoholowych w gminie. Informator dla radnych* [Solving alcohol-related problems in communes. Information guide for deputies], Państwowa Agencja Rozwiązywania Problemów Alkoholowych, Warsaw 2015.

¹¹⁵ *Apel Zespołu KEP ds. Apostolstwa Trzeźwości z dnia 11 listopada 2014 r. o zaprzestanie działań prowadzących do złagodzenia prawa dotyczącego reklamy alkoholu w Polsce* [Appeal of the Team for Alcohol Abstinence of the Polish Episcopal Conference of 11 November 2014 to stop activities leading to more lenient law on alcohol advertising in Poland], <http://episkopat.pl/apel-zespołu-kep-ds-apostolstwa-trzeźwości-o-zaprzestanie-działan-prowadzących-do-złagodzenia-prawa-dotyczącego-reklamy-alkoholu-w-polsce>.

¹¹⁶ Supreme Administrative Court judgement: Wyrok NSA z dnia 11 stycznia 2011 r., II GSK 15/10, <http://orzeczenia.nsa.gov.pl/doc/FE28D6676F> [accessed on 28.06.2017].

alcohol consumption, inter alia, health-related, moral and social dysfunctions, does not let the legislator remain passive. On the contrary, it is necessary to strengthen the interference of the state in this field.¹¹⁷ Even the transformation of the social, political and economic system did not influence the significance of the problem of alcohol abuse by the community, thus the necessity of undertaking active measures of preventing those pathologies cannot be questioned even at present.¹¹⁸ Unfortunately, revenue to the State Treasury from the sale of alcohol has been rising over many years now and was a considerable and foreseeable income in every successive year, e.g. in the period 2003-2013 excise duty increased by 64% (PLN 11,812.23 million in 2013).¹¹⁹ Unfortunately, it illustrates the constant duality of the state's policy (also at the self-government level) that results in high expenses incurred by the state in connection with the consumption of alcoholic beverages that exceed the income from taxes from the sale of alcohol, e.g. treating alcoholics and clinical consequences of alcoholism accounted for PLN 514.6 million in 2013.¹²⁰

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¹¹⁷ B. Jaworska-Dębska, *Spór wokół modelu...* [Dispute over the Polish model...], p. 184 ff.

¹¹⁸ Judgement of the Voivodeship Administrative Court: Wyrok WSA w Lublinie z dnia 26 listopada 2009 r., III SA/Lu 337/09, <http://orzeczenia.nsa.gov.pl/cbo/search> [accessed on 28.06.2017].

¹¹⁹ Following D. Gałazka-Sobotka, *Koszty ekonomiczno-społeczne związane z leczeniem uzależnienia od alkoholu i jego konsekwencji zdrowotnych z perspektywy NFZ i ZUS* [Social and economic costs related to treatment of alcohol addiction and its health-related consequences from the perspective of the National Health Fund and Social Insurance Institution], [http://orka.sejm.gov.pl/WydBAS.nsf/0/16ca3bc940d9cf61c1257d50003663c8/\\$FILE/Koszty%20ekonomiczno-spo%C5%82eczne.pdf](http://orka.sejm.gov.pl/WydBAS.nsf/0/16ca3bc940d9cf61c1257d50003663c8/$FILE/Koszty%20ekonomiczno-spo%C5%82eczne.pdf) [accessed on 28.06.2017].

¹²⁰ W.S. Zgliczyński, *Alkohol w Polsce...* [Alcohol in Poland...], pp. 3–4.

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CONSUMPTION AND SALE OF ALCOHOLIC BEVERAGES: SELECTED LEGAL AND HEALTH-RELATED ISSUES

Summary

This paper is devoted to the issues of consumption and sale of alcoholic beverages viewed through the prism of selected legal, social and health-related aspects of the currently binding law on upbringing in sobriety and counteracting alcoholism. Undoubtedly, legal regulations in this area require immediate "legal amendment", because the Act on upbringing in sobriety and counteracting alcoholism, adopted almost 35 years ago, does not currently constitute a legal act reflecting a decisive idea, stemming from, inter alia, its Preamble, according to which the legislator *expressis verbis* recognizes citizens' life in sobriety as an indispensable condition of moral and financial welfare. The authors pointed out *de lege ferenda* proposals which show, among others, that the legislator should limit the excessive availability of alcohol, especially to young people, by reducing the number of points of sale, implement systematic and effective enforcement of the provisions of the Act on upbringing in sobriety and counteracting alcoholism, introduce an absolute ban on advertising, promotion, sponsorship, etc., of alcoholic beverages, or limit, and, what would be best, eliminate the "aggressive lobbying" of representatives and quasi-representatives of the "spirit industry" in a statutory form to ensure the transparency of legislative processes in this sphere of public health.

Keywords: sobriety, alcoholic beverages, alcohol, health, addiction

SPOŻYCIE I SPRZEDAŻ NAPOJÓW ALKOHOLOWYCH – WYBRANE ASPEKTY PRAWNE I ZDROWOTNE

Streszczenie

Artykuł poświęcony jest problematyce spożywania i sprzedaży napojów alkoholowych analizowanej przez pryzmat wybranych aspektów prawnych, społecznych i zdrowotnych obowiązującej ustawy o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Bez wątpienia przepisy prawne w tym zakresie wymagają bezzwłocznej „korekty prawnej”, ponieważ ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi, uchwalona prawie 35 lat temu, nie przedstawia obecnie aktu prawnego będącego odzwierciedleniem zdecydowanej idei, wpływającej m.in. z jej preambuły, zgodnie z którą prawodawca *expressis verbis* uznaje życie obywateli w trzeźwości za niezbędny warunek moralnego i materialnego dobra. Autorzy wskazali postulaty *de lege ferenda*, z których wynika m.in., że ustawodawca powinien ograniczyć nadmierną dostępność alkoholu, zwłaszcza dla młodzieży, poprzez zmniejszenie liczby punktów sprzedaży; wdrożyć systematyczną i skuteczną egzekucję przepisów ustawy o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi; wprowadzić bezwzględny zakaz reklamowania, promocji i sponsoringu, etc. napojów alkoholowych; czy też ograniczyć, a najlepiej wyeliminować „agresywną” aktywność lobbingsową przedstawicieli i quasi-przedstawicieli „przemysłu spirytusowego” mającą wpływ na kształt ustawy, aby zapewnić transparentność procesów legislacyjnych w tym obszarze zdrowia publicznego.

Słowa kluczowe: trzeźwość, napoje alkoholowe, alkohol, zdrowie, uzależnienie