

## ANNEX 17

### **Verdicts issued on the basis of the Act of 8 March 1990 on Communal Self-Government**

1.

#### **Verdict of the Supreme Administrative Court (SAC) of 14 November 2017 (II OSK 457/16)**

A party to proceedings under Article 101(1) of the Act on Communal Self-Government may only be an entity whose legal interest or right has been infringed. Thus, the complaint may be granted only if the infringement of a legal interest or right by the challenged measure is current, individualised and concerns the real and identifiable rights exercised by the complainant himself.

2.

#### **Verdict of the SAC of 20 czerwca 2017 r. (II OSK 2648/15)**

The complaint may be granted only if the infringement of a legal interest or right by the challenged measure is current, individualised and concerns the real and identifiable rights exercised by the complainant himself; it shall be possible to state that the infringement directly deprives the complainant of his rights or limits the way to exercise his right.

(...)

A distinction must be made between the legal interest and the factual interest, which does not entitle to challenge the acts of administrative bodies, and which occurs when a specific entity is directly interested in the manner of regulating a given issue, but there is no breach of a provision of substantive law or procedural law concerning its legal situation.

3.

#### **Verdict of the SAC of 31 May 2017 (II OSK 2298/15)**

In case of a complaint filed on the basis of Art. 101(1) of the Act on Communal Self-Government to grant the complainant a standing requires not only that he has a legal interest but also that this interest is infringed.

4.

#### **Verdict of the SAC of 20 April 2017 (II GSK 1912/15)**

Even a possible illegality of a resolution does not give the right to lodge a complaint, if the resolution does not violate the protected legal interest or the rights of the complainant. The complaint based on Article 101(1) of the Act on Communal Self-Government is of a special nature and requires additional requirements. That requirement is, inter alia, to require proof of infringement of the complainant's interest in bringing proceedings and not merely the possession of this interest.

5.

#### **Verdict of the SAC of 7 March 2017 (II OSK 1679/15)**

Art. 101(1) of the Act on Communal Self-Government does not grant standing to entities, whose legal interests or rights are only endangered by the entry into force of a local law act. The relationship between the own, individual legal situation of the complainant and the challenged resolution must exist at the time when the complaint is filed and not in the future; moreover it must result in limiting or deprivation of any specific rights of the complainant or in imposing any obligations on him.

6.

**Verdict of the SAC of 7 March 2017 (II OSK 1587/15)**

The complaint may be granted only if the infringement of a legal interest or right by the challenged measure is current, individualised and concerns the real and identifiable rights exercised by the complainant himself; it shall be possible to state that the infringement directly deprives the complainant of his rights or limits the way to exercise his right.

7.

**Verdict of the SAC of 10 February 2017 (II OSK 1344/15)**

Challenging a resolution on a local spatial plan is, as a rule, possible to the extent that it affects the applicant's legal interest. Thus, provisions of the plan which do not affect the applicant's rights in rem cannot be challenged by the applicant. Any inconvenience to which the applicant does not agree may not be called into question by the applicant unless it is contrary to his individual and genuine interest in bringing proceedings.

**Verdict issued on the basis of the Act of 5 June 1998 on Poviats Self-Government**

8.

**Verdict of the SAC of 28 June 2007 (II OSK 1596/06)**

The universality of the right to appeal against resolutions of local government bodies is ostensible, as this right may be exercised only by the person who proves a breach of his or her specific legal interest or right.

(...)

An infringement of a legitimate interest or a right referred to in Article 87(1) of the Act on Poviats Self-Government must be a genuine breach of the law which can be proven on the date on which the complaint is lodged. It must not be a hypothetical, potential violation that does not necessarily occur.

**Verdicts issued on the basis of the Act of 8 March 1990 on Regional Self-Government**

9.

**Verdict of the SAC of 25 March 2014 (II OSK 355/14)**

The complainant must demonstrate the existence of his legal interest, that is to say a personal, specific and current legally protected interest which can be exercised on the basis of a specific provision of law, most often a substantive one, directly linking the contested act with the individual and legally protected situation of the party. Moreover, in connection with Art. 90(1) and Art. 91(1) of the Act on Regional Self-Government, an additional condition for appealing to the administrative court against the resolutions of the voivodeship council is to prove that as a result of adopting such a resolution, the legal interest or rights of the complainant have been violated.

10.

**Verdict of the SAC of 5 November 2014 (II OSK 977/13)**

Only a person whose legal interest (right) has been affected by the contested resolution (order) of the authority is a party to an administrative court proceeding under Article 90(1) of the Act on Regional Self-Government. The basis for an appeal is the illegality of the resolution (order) and, at the same time, the infringement by the resolution of the interests or rights of a specific entity.

## 11.

### **Order of the SAC of 23 January 2018 (II OSK 3218/17)**

Firstly, the essence of the capacity to bring legal action in court as defined in Article 90(1) of the Act on the Regional Self-Government is the right to demand a review of a specific act or activity in order to bring them to a condition which is consistent with the law, i.e. with an objective legal order. This is a measure which serves to protect other entities against the effects of an exceedance by a territorial self-governmental unit of the limits of its independence laid down by the provisions of the law, with a detriment to the rights of another unit within the sphere of public administration. This institution is sometimes also called a general complaint (*actio popularis*) which, however, is incorrect inasmuch as **the capacity to lodge a complaint depends on whether the Complainant can demonstrate that the challenged local act violates his legal interest or right**. It is with this meaning that Article 90(1) of the Act on the Regional Self-Government is a *lex specialis* in relation to Article 50(1) of the LPAC which makes the capacity to lodge a complaint only dependent on the possession of a legal interest, at the same time, without requiring the demonstration of its violation. In the case where a complaint is lodged against this type of an act of local law, the consequence of failure to demonstrate a violation of a legal interest is the rejection of the complaint (Article 58(1)(5a) of the LPAC).

Secondly, in this case it is undisputed that **the condition for successfully lodging a complaint against an act of local law of the Regional Self-Government authority is the demonstration of a violation of a legal interest**. The Complainant did question this in his complaint, nor is it questioned by the Cassation Complainants in their cassation complaints. In contrast, both the Complainant and the Foundation demand the application of the interpretation of Article 90(1) of the Act on the Regional Self-Government in favour of the EU by allowing the possibility of challenging a resolution of this type, although the air protection plan does not impose any obligations on the Complainant, nor does it confer any rights and it is addressed to the administration authorities. The Foundation (and the Complainant) believe that Article 23(1) of the CAFE Directive makes it possible to apply this type of interpretation. However, in the opinion of the Supreme Administrative Court, the proposed interpretation would be an interpretation *contra legem* which cannot be reconciled with the principle of a democratic state governed by the rule of law and the related principle of equality before the law. Indeed, such an interpretation would lead to the unacceptable situation where, depending on the type of a challenged act of local law, specific entities would be obliged to demonstrate a violation of a legal interest whereas others would not.

Both the Complainant and the Foundation refer to the case-law of the Court of Justice of the European Union, which, however, may not provide the basis for interpreting *contra legem* Article 90(1) of the Act on the Regional Self-Government. **The Polish legal system admits the possibility of challenging a resolution of a Regional assembly concerning the air protection programme; however, the effective lodging of a complaint in a case of this type depends on the demonstration of a violation of a legal interest, which did not happen in this case.**

## **Verdicts concerning standing in case of individual decision (under CAP) vs. standing in case of plans and programs**

**12.**

### **Verdict of the SAC of 20 November 2014 (I OSK 1747/14)**

Unlike a party to an administrative court proceeding following a complaint against an administrative decision issued under CAP, in an administrative court proceeding under Article 87(1) of the Act on Poviats Self-Government the complainant must demonstrate not only a legal interest or right but also a breach of that interest or right. Violation of the legal interest or the right of the complainant to appeal against a resolution of a poviat body only opens the way to substantive examination of the complaint. The applicant's interest in bringing proceedings, to which Article 87(1) of the Act on Poviats Self-Government expressly refers, must be based on a rule of substantive law which determines the applicant's legal position.

**13.**

### **Order of the SAC of 8 October 2013 (II OZ 787/13)**

The attribution of a party to the proceedings challenging the Regulation on the establishment of a protective zone for underground water intakes is based on principles other than in the administrative proceedings regulated by CAP. Infringement of a legal interest or right only opens the way to a substantive examination (assessment) of the Regulation. This assessment concerns the type of infringement of the legal interest or the right of the entity contesting before the administrative court the legality of the establishment of the protection zone. On the other hand, another entity, which did not file an effective complaint to the administrative court in its own interest, cannot effectively apply for participation in the administrative court proceedings. However, under certain statutory conditions, he may lodge a complaint on his own behalf under Article 63(1) of the Act on the Voivod and the Governmental Administration in the Voivodship.