

**Judgment  
Supreme Administrative Court  
of 12 May 2006.  
II OSK 1457/05**

**JUSTIFICATION**

Composition of the Court

Presiding Judge: Judge NSA Eugeniusz Mzyk (spr.).

Judges of the Supreme Administrative Court: Jerzy Bujko, Henryk Ożóg.

**Sentence**

The Supreme Administrative Court, having examined on 12 May 2006 at a hearing in the cassation complaint of the A. Foundation in W. against the judgement of the Regional Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny w Warszawie) of 30 September 2005, Case No. IV SA/Wa 338/05 in the case involving A. Foundation in W. against the resolution of the Municipal Council in Karczew of 25 April 2003 No. VII/47/2003 on the protection of animals dismisses the cassation appeal.

**Justification in fact**

By judgment of 30 September 2005, ref. no. IV SA/Wa 338/05, the Regional Administrative Court in Warsaw dismissed the complaint of the "A." Foundation against the resolution of the Town Council of Karczew of 25 April 2003 VII/47/2003 on animal protection.

In the justification for the ruling, the Regional Court cited that the Foundation had not demonstrated that the subject of the resolution concerned directly the rights and obligations of the Foundation (as a legal person), protected by provisions of substantive law. Even assuming that the applicant Foundation was a social organisation (which was disputed in the case law), it may not be recognised that on that grounds it is authorised to the challenged resolution. This is not authorised by the provisions of Article 11 Section 3 of the Act on the Protection of Animals, as well as the obligation to consult prior to adopting a resolution does not authorise it to do so. In the opinion of the Regional Court, the Foundation's legal interest could not be derived either from the principle of administrative authorities to carry out activities for the protection of animals in cooperation with, amongst others national institutions and organisations. Procedural rights to participate in court or administrative proceedings which do not directly concern the legal interest subject, in the Polish legal system must be expressed explicitly.

Therefore, Foundation is not entitled to challenge a normative act (local law) if it does not concern its legal interest. In such a situation, the social organisation may file a relevant motion to the relevant public prosecutor to consider using the powers under Article 5 of the of the Act of 20 June 1985 on the Public Prosecutor's Office (Journal of Laws of 2001, No. 21, item 206 as amended).

All these considerations, in the opinion of the Regional Court, speak in favour of dismissing the complaint. The cassation appeal against the above judgment of 28 September 2005 was lodged by the "A." Foundation represented by legal counsel B. B. In the appeal in cassation it was stated that "it was based on infringement of substantive law through its misinterpretation, consisting of the assumption that my Principal was not entitled to challenge the above resolution". In the justification of the cassation appeal it was, however, argued in the grounds

of the cassation appeal that the Court's statement that the appellant had not demonstrated its legal interest referred to in Article 101 (1) of the Act on Municipal Self-Government, and thus does not have standing to bring the action.

According to the appellant in cassation, under Article 3 of the Animal Protection Act implementation of animal protection by public administration bodies requires cooperation, inter alia, with social organisations the statutory aim of which is animal protection. Therefore, pursuant to art. 3 of the cited Act, the Foundation has the right to cooperate with public administration to implement the provisions of the Act on the Protection of Animals and may effectively demand such cooperation, and the public administration has a corresponding obligation to take appropriate and lawful actions. Moreover, the Foundation, which represents the residents in the present case, represents, in fact, the residents' interests which, under Article 3(1) of the European Charter of Local Self-Government always has the rank of a legal interest within the meaning of Art. 101 (1) of the Act on Municipal Self-Government. All these considerations, according to the cassation appeal, justify setting aside of the appealed judgment in its entirety and referring the case back to the Regional Administrative Court in Warsaw for re-examination.

## **Legal reasoning**

The Supreme Administrative Court held as follows:

The cassation appeal does not contain justifiable grounds of appeal. First of all, it should be recalled that in accordance with Article 174 of the Act of 30 August 2002 Law on proceedings before administrative courts (Journal of Laws No. 153, item 1270, as amended) a cassation appeal may be based on two grounds: 1/ violation of substantive law by misinterpretation or misapplication thereof, 2/ violation of procedural provisions, if that infringement could have had a significant impact on the outcome of the case. Pursuant to Article 176 of the abovementioned Act a cassation appeal should meet the requirements of a pleading and, inter alia, indicate the grounds for the cassation appeal. This means that the appellant is obliged to indicate provisions of law that may have been violated by the Provincial Court. In other words, in the cassation appeal it is necessary to indicate the specific substantive or procedural law that has been infringed, and to substantiate the grounds for such an infringement.

In the present case, the cassation appeal does not fully meet the statutory requirements thus established. According to the plea in cassation, the allegation of infringement of substantive law consists in the "infringement of substantive law through a misinterpretation of that law, consisting in the assumption that the Foundation "was not legitimate to challenge the resolution".

With such a generally formulated plea, it is not clear which provisions, according to the claimant were breached by the Regional Court. However, having regard to the fact that in the grounds of the cassation appeal Foundation referred to the Act on Municipal Self-Government (in connection with the questioning the finding that the Foundation did not have the right to bring an action), as well as invoking the provisions of Article 3 and Article 11(3) of the Act on the Protection of Animals, and Article 3(1) of the European Charter of Local Self-Government - it should be assumed that the allegation of a substantive law infringement concerned these provisions. However, these allegations are not substantiated.

The provision of Art. 101 (1) of the Act of 8 March 1990 (Journal of Laws 2001, No. 142, item 1591 as amended) stipulates that anyone whose legal interest or right has been violated by a resolution or order adopted by a municipal authority in a public administration matter, may - after ineffective request for rectification of the infringement - challenge the resolution in an administrative court. This provision does not provide a basis for anyone to exercise their right

to file a complaint in the public interest. Nor can the above-cited provision of Art. 101 (1) be treated as a basis for challenging a resolution of a municipal body by anyone who subjectively considers the resolution to have been adopted in breach of the law. The complainant should demonstrate a connection between the challenged resolution and his/her own individual legal situation, which must have the effect of limiting or deprivation of specific rights or imposition of obligations. The basis of a legal interest is a provision of substantive law, relating directly to the legal sphere of the entity that invokes it, and which gives the possibility to protect that entity in administrative proceedings (cf. J. Zimmermann, gloss to the judgement of the Supreme Administrative Court of 2 February 1996, IV SA 846/95, OSP 1997, No 4, item 83, p. 203).

A legal interest must therefore derive from a substantive legal provision, under which one may effectively demand the actions of an authority with a view to satisfy some need or demand the abandonment or to limit the actions of the authority contrary to the needs of a given person (cf. SA 742/98, not published.). The factual interest should be distinguished from interest in law. The factual interest exists in a situation in which a person, although directly interested in the resolution of an administrative case, cannot confirm such interest by provisions of universally binding law that could constitute a basis for an effective demand for appropriate actions of an administrative body. A legal interest for a given entity may be based on a provision of substantive law, from which it follows that a given person may or should obtain concrete benefits, or may be burdened with the obligation to behave in a certain way.

In the circumstances of this case, there is no doubt that the appealed resolution does not concern the interest of Foundation's legal interest as a legal person. Neither does the cassation appeal contain any such claims. Therefore, the position of the Regional Court that there is no possibility of challenging by a social organisation a resolution constituting an act of local law, which does not directly concern a legal interest or obligations of the organisation, but concerns only issues remaining in the scope of the organisation's statutory activities, should be shared.

On the other hand, one cannot share the arguments of the cassation appeal that the Foundation "in fact" (in reality), represented the residents of the municipality and their interest, which - under Article 3(1) of the European Charter of Local Self-Government - always has the rank of a legal interest within the meaning of Article 101(1) of the Municipal Self-Government Act. Even if we disregard that the interest of the residents lies not only the protection and fate of homeless animals, but also ensuring the residents' safety from attacks by homeless dogs, it is impossible not to notice that even in the appeal in cassation it was not indicated on behalf of of which residents of the commune the Foundation was acting. Therefore, these arguments are arbitrary polemics with the findings of the appealed judgment and are not supported by evidence in the case. Moreover, it should be pointed out that the provision of Article 3(1) of the European Charter of Local Self-Government (drawn up in Strasbourg on 15 October 1985, Journal of Laws of 1994, No. 124, item 607), provides only that local self-government means the right and capacity of local communities, within the limits set by law, to manage and administer an essential part of public affairs on their own responsibility and in the interests of their residents. Consequently, the following is absolutely correct of the Regional Court that the Foundation had no legal interest in lodging a complaint against a local law.

As an aside to the previous observations, it should be pointed out that due to the dismissal of the complaint owing to lack of standing to bring the action, the merits of the allegations concerning, inter alia, failure to regulate the further fate of animals placed at the shelter, etc., were not examined. In this state of affairs, since the charges raised in the cassation appeal could not have the intended effect, the appeal is dismissed pursuant to Article 184 of the Act of 30 August 2002 on Administrative Court Proceedings.