II SA/Bk 171/10 – Judgment of the Regional Administrative Court in Białystok

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Judgment

of the Regional Administrative Court in Białystok

of 23 June 2010

II SA/Bk 171/10

THESIS valid

For the purpose of recognizing the social organization's capacity to lodge complaints under Article 101 (1) of the Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2001, No. 142, item 1591 as amended), it is not sufficient to merely link the subject matter of the challenged resolution or order with the statutory objectives and scope of the organization's operation, without the organization proving its own legal interest.

THESIS valid

A social organization may not challenge resolutions or orders of a municipal authority under Article 101 (1) of the Act on Municipal Self-Government solely with reference to its own statutory objective, since this would not constitute a measure substantiated by violation of own legal interest, but a measure in defense of public interest, and public interest cannot be the exclusive grounds for a legal action under the aforementioned provision.

REASONS

Panel

President: Supreme Administrative Court judge Danuta Tryniszewska-Bytys (rapporteur).
Supreme Administrative Court judges: Stanisław Prutis. Elżbieta Trykoszko.

Operative part

The Regional Administrative Court in Białystok dismissed, pursuant to Article 151 of the Act of 30 August 2002 on Proceedings before Administrative Courts (Journal of Laws No. 153, item 1270, as amended), a complaint lodged by S. "O.S. ulica S." in B. against the resolution of the Municipal Council in B. of 25 September 2006 on the local spatial development plan.

Factual reasoning

By a resolution of 25 September 2006, the Municipal Council of B. adopted a local spatial development plan for a part of B. housing estate in B. (area of R. and S. Streets). The plan, which constitutes an act of local law, was published in the Official Journal of the Podlaskie Voivodship.
The complaint against this resolution, submitted in one pleading concurrently with the complaint against the resolution of the B. City Council of 29 November 1999 on the study of conditions and directions for spatial development in B., was filed with the administrative court by "O.S. ulica S." Association in B,. represented by Andrzej P.
The complaints were separated: the complaint against the local spatial development plan was registered under file no. 11 SA/Bk 171/10 (the present case), while the complaint against the study was registered under file no. 11 SA/Bk 172/10.
As specified in the reasons to the complaint challenging the resolution of 25 September 2006 on the local spatial development plan for a part of the city of B., the main contention of the representative of the Association was that the connection of the city center with "Sady A." housing estate through S., Z. and B. Streets was designed improperly. It was argued that the most costly variant had been chosen, requiring the construction of a tunnel or a flyover over railroad tracks as well as demolishing

certain structures.
The representative also argued that the design of the S. Street crossing did not take into account the previous purpose and development of the land, the principles of protection and spatial development, the parameters and indicators of development, the construction obligation hitherto applicable in this area during the communist period, the principles of modernisation, expansion and construction of technical infrastructure communication systems; no traffic intensity study had been carried out, no public consultations had been held, and no consideration had been given to the fact that S. Street was used exclusively for the needs of the residents and that it was impossible to increase its width to 46 meters as provided for in the local plan. In the opinion of the applicant, this proves that a violation of Articles 10, 15 and 28(1) of the Act of 27 March 2003 on Planning and Spatial Development occurred.
In its reply to the complaint, the authority moved for rejecting the complaint due to contravention of res judicata, or in the alternative for dismissing the complaint as unfounded. Substantiating its request to reject the complaint, the authority referred to two judgments of the Regional Administrative Court in Białystok of 27 October 2009 which had dismissed complaints filed by the "O.S." Association in B. against the resolution of 25 September 2006 on the very same local spatial development plan (file no. II SA/Bk 491/09) and against the resolution of 29 November 1999 on the adoption of a study (file no. II SA/Bk 490/09).
Referring to substantive pleas of the complaint, the authority indicated that the challenged transportation connection between B. downtown and B., Sady A., A. and D. housing estates via S. Street was planned already in the 1970s and since then it had been consistently provided for in successive local spatial development plans: dated 1986 and 1994, with the latter being replaced by the study of 1999 due to legislative changes. The fact that this connection was necessary was also confirmed by the Institute of Spatial and Municipal Management in K. in its opinion from 2000 entitled "Transport Study of the City of B." In the opinion of the authority, the plan was adopted while complying with the planning procedure stipulated in the Act of 27 March 2003 on Planning and Spatial Development; in particular, it was consistent with binding determinations of the study, and was adopted after public consultations with stakeholders had been held, the submitted applications had been considered, the plan had been made accessible to the public, a public discussion had been held, and also in its order of 21 June 2006 the City Mayor considered the objections that were submitted to the draft plan. The adopted local plan was submitted under supervision regime to the Voivod where it was not contested.
It was also argued by the authority that the applicant did not have capacity to lodge a complaint, either in the meaning of provisions of the Act on Proceedings before Administrative Courts or under Article 101 of the Act on Municipal Self-Government. In particular, the latter provision requires that legal interest of the applicant, arising out of its individual rights or rights of a member of the local government community, be infringed. In the authority's opinion, neither did the Association manage to prove that such an infringement had taken place nor, as it was argued in the reply to the complaint, that such complaint was lodged in the interest of the general public, a possibility provided for in Article 101 (2a) of the Act on Municipal Self-Government. It failed to enclose to the complaint a written consent of individual residents of the commune, forming a group of persons whose legal interests or rights were violated by the challenged resolution.
At a hearing held on 17 June 2010, Andrzej P., representing the applicant, the "O.S. ulica S." Association, stated that the "O.S." Association which had challenged the local zoning plan in case file no. II SA/Bk 491/09 is a different entity altogether, and that both organizations were currently operating simultaneously. It was specified that the "O.S. ulica S." Association was acting in its own name in this case, while the violation of the law alleged in the complaint pertained to the interests of the Association's members.

Legal reasoning

The Regional Administrative Court considered as follows:
The complaint shall be dismissed.
Considering the case as to merits is conditional upon establishing that a complaint is admissible, that it was filed in compliance with the formal requirements, by an entity having capacity to challenge a specific legal act or inaction. Only when the conditions matters have been met is it permitted to have pleas in a complaint considered as to their merits.
A complaint lodged with an administrative court is inadmissible, inter alia, if a case subject to a complaint between the same entities is pending or has already been resolved in a final manner (Article 58 § 1 (4) of the Act of 30 August 2002 on Proceedings before Administrative Courts, Journal of Laws No. 153, item 1270, as amended). The identity of a court administrative case is determined on the basis of objective aspects: the subject-matter of the case and legal basis, as well as subjective aspects: the identity of the parties, taking into account legal succession (B. Adamiak: Przesłanki tożsamości sprawy sądowoadministracyjnej, ZNSA 2007, no. 1, item 7). Where these aspects are identical, the cases will not be identical either.
The Regional Administrative Court in Białystok, in the judgment of 27 October 2009, file no. II SA/Bk 491/09, dismissed the complaint against the resolution of 25 September 2006 on the local spatial development plan (which resolution was challenged in this case). In this case, the applicant being "Stowarzyszenie O.S." with its registered office in B., represented by Andrzej P. acting pursuant to the by-laws of 3 March 2009, it was decided that the main goals of the Association consisted in popularizing knowledge in the field of self-governance. The Association was entered in the register of ordinary associations by the City Mayor of B.
In the present case, the applicant is the Association "O.S. ulica S." with its registered office in B., represented by Andrzej P.. acting pursuant to the by-laws of 29 October 2009, whose main goal is also promoting self-governance. Further, we can read in the by-laws as follows: "The Association shall take care of the affairs of residents of S. Street and others in B." (Section 7(d) of the by-laws), works for the protection of spatial and architectural order of S. Street in B., "and in particular ensures that S. Street is a local street for use by residents" (Section 7(g) of the by-laws), and "Resorts to administrative and other courts in cases violating the Act of 27 March 2003 on Planning and Spatial Development" (Section 7(f) of the by-laws). The association was entered in the register of ordinary associations by the City Mayor of B.
It is the opinion of the court that it follows from the above that there is no identity as to all objective and substantive aspects between the present case and the case II SA/Bk 491/09. The complaints were lodged by different applicants (the "O.S." Association in case II SA/Bk 491/09 and the "O.S. ulica S" Association in the present case), operating under different by-laws. In particular, the by-laws on file in the case II SA/Bk 491/09 do not include provisions that would refer to the Association's activities in matters concerning the S. Street. Also, the representative of the "O.S. ulica S" Association informed at a hearing held on 17 June 2010 that the entity in the present case and the "O.S." Association which lodged a complaint in the case II SA/Bk 491/09 are different organizations, both operating concurrently. This substantiates the conclusion that there is no identity between the present case and the case II SA/Bk 491/09, and thus there is no formal counterindication to rule in this case. For this reason, the authority's request to reject the complaint as inadmissible due to the identity of the aforementioned cases was deemed to be unfounded.
The complaint in question was lodged on the basis of Article 101 (1) of the Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2001, No. 142, item 1591, as amended). Article 101 (2) of the Act on Municipal Self-Government excludes the possibility to challenge a resolution or order of a municipal authority on this basis, stipulating that clause 1 shall not be applicable if an administrative court has already ruled on the matter and dismissed the complaint.

It is the opinion of the court that this provision is not applicable in this case and does not render the complaint inadmissible on the grounds that a judgment in case II SA/Bk 491/09 dismissing the complaint against the resolution of 25 September 2006 on the same spatial development plan was issued. The provision of Article 101 (2) of the Act on Municipal Self-Government should be interpreted to mean that if the court has already ruled on the merits in the matter concerning a specific interest or right violated by a resolution of a municipal government authorities, a complaint on the same issue is inadmissible, which does not preclude another entity from lodging a complaint, provided such subsequent complaint is considered as regarding the matters not previously considered, i.e. in the scope of infringement of an individual interest of the applicant (cf. decision of the Supreme Administrative Court of 24 February 2009, II OSK 181/09, LEX No. 557032).

The complaint in case II SA/Bk 491/09 was dismissed on the grounds of no legal interest on the part of the applicant, "O.S." Association, and thus the case ended at a preliminary stage – without considering whether the challenged resolution violated any specific obligations or rights. In the light of the position taken by the Supreme Administrative Court in its decision of 24 February 2009, there were therefore no grounds for rejecting, pursuant to Article 101 (2) of the Act on Municipal Self-Government, the complaint lodged in this case by another entity.

Pursuant to Article 101 (1) of the Act on Municipal Self-Government, anyone whose legal interest or entitlement have been infringed by a resolution or order adopted by a municipal authority in a matter concerning public administration may, following an ineffective request to remedy the violation of law, file a complaint against the resolution with an administrative court. A formal condition of such complaint is a prior request submitted to an authority to remedy the violation of law resulting from the challenged order or resolution. The applicant complied with this condition by means of a letter of 7 December 2009 delivered to the City Mayor of B. where the "annulment" of the resolution on the local spatial development plan and changing the proposed traffic solution leading through the S. Street, with which the applicant disagreed, were sought. The applicant then filed a complaint after receiving the reply in the form of the resolution of 21 January 2010.

Considering the applicant complied with the formal requirements for the complaint, the next step was to assess whether the Association "O.S. ulica S." in B. had locus standi.

In administrative court proceedings, it is a rule that the right to lodge a complaint is granted to anyone who has a legal interest, a public prosecutor, the Ombudsman as well as a social organization in matters within the scope its statutory activity, in cases concerning legal interests of other persons, if it participated in administrative proceedings (Article 50 § 1 of the Act on Proceedings before Administrative Courts), as well as any other entity with a statutory right to lodge a complaint (Article 50 § 2 of the Act on Proceedings before Administrative Courts). It follows from the above that the right to lodge a complaint with an administrative court against an action or inaction of public administration bodies is, in principle, based on the legal interest criterion, which when missing precludes the court from resolving the dispute regarding compliance (legality) of actions or inactions of administration and from imposing measures provided for in the Act on Proceedings before Administrative Courts. A different construction was afforded to a complaint against a resolution or order of a municipal authority, regulated in Article 101 (1) and (2) of the Act on Municipal Self-Government. According to these provisions, a complaint may be filed when a challenged resolution or order of a municipal authority infringed legal interest or entitlement of the applicant. The complaint may be lodged in own name of the applicant or on behalf of a group of residents who consent thereto in writing. The above provisions impose a substantial restriction of the capacity to lodge a complaint as compared to the provisions of Article 50 of the Act on Proceedings before Administrative Courts.

In a complaint filed in its own name pursuant to Article 101 (1) of the Act on Municipal Self-Government, the capacity to lodge a complaint was based on a subjective conviction of the person

concerned that his/her legal interest or entitlement have been infringed, while such person should prove that a specific legal interest based on a violation of a specific substantive provision was infringed. Also, the court considering such complaint is obliged to examine whether the resolution or order being the subject-matter of such complaint infringes legal interest or entitlement of the application and not those of other persons. This violation may not be future and uncertain but real and actual (judgment of the Supreme Administrative Court of 12 January 2010, file no. II OSK 1736/09, CBOSA).

In contrast, filing a complaint in the interest of a group of residents (Article 101 (2) of the Act on Municipal Self-Government) requires the written consent, granted by individuals forming the group, to be represented in the filing of such particular complaint.

For this reason, the complaint regulated by Article 101 (1) and (2) of the Act on Municipal Self-Government is not a common complaint. It may be lodged on the grounds of violation of own, individual legal interest or the interest of a group of residents, but only after obtaining their authorization. It is impermissible to lodge a complaint against a resolution or order on the basis of the aforementioned provision in the interest of unspecified persons (G. Jyż, Z. Plawecki, A. Szewc: Samorząd gminny. Commentary, Warsaw 2005, 3rd thesis to Article 101 of the Act on Municipal Self-Government). In other words, a complaint based on Article 101 (1) and (2) of the Act on Municipal Self-Government must concern such legal situation that can be referred to as own, individual and specific situation of a particular entity (judgment of the Supreme Administrative Court of 4 March 2009, file no. I OSK 1157/08) or be made in the interest of a group of persons upon written authorization from them.

The requirements referred to above also apply to the complaint lodged under Article 101 (1) of the Act on Municipal Self-Government by a social organization, such as the applicant in the present case, Association "O.S. ulica S.". If the provision of Article 101 (1) of the Act on Municipal Self-Government does not provide for the capacity to lodge a complaint against a resolution of a municipal authority in the public interest by any person, then a social organization acting as an applicant should, for the purpose of lodging an effective complaint, demonstrate a link between the challenged resolution and its own individual legal situation, and this link must have the effect of restricting or excluding specific rights of the organization or imposing obligations on it.

For this reason, a social organization may not challenge resolutions or orders of a municipal authority under Article 101 (1) of the Act on Municipal Self-Government solely with reference to its own statutory objective, since this would not constitute a measure substantiated by violation of own legal interest, but a measure in defense of public interest, and public interest cannot be the exclusive grounds for a legal action under the aforementioned provision (judgment of the Supreme Administrative Court of 12 May 2006, II OSK 1457/05, judgment of the Supreme Administrative Court of 12 January 2010, II OSK 1736/09, decision of the Supreme Administrative Court of 12 October 2001, II SA 138/01, judgment of the Regional Administrative Court in Warsaw of 30 September 2005, IV SA/Wa 338/05, decision of the Supreme Administrative Court of 8 May 2008, I OZ 318/08 and decision of the Supreme Administrative Court of 2 February 2010, I OSK 40/10, all available in CBOSA).

In the judgment in case IV SA/Wa 338/05 referred to above, the court explicitly stated: "It is inadmissible for a social organization to challenge a resolution of a municipal council, being an act of local law, which does not directly concern the legal interest or obligations of the organization, but relates to matters within the scope of the organization's statutory activities". In the judgment of the second instance court in this case (dismissing the cassation appeal), the Supreme Administrative Court sustained this thesis and went on to explain that the provisions of Article 31 of the Code of Administrative Proceedings, which permit a social organization representing interests of other persons to act as a party, do not apply to the regulations provided for in Article 101 (1) and (2) of the Act on Municipal Self-Government. The Association may not effectively challenge a resolution of a municipal authority, which does not directly infringe the legal interests of the Association, while violating (in the applicant's opinion) the interests of its members. In such case, the Association may file a complaint on behalf of specific members, a group of residents, after obtaining their written authorization. The panel ruling in the present case fully shares this position.

In light of the deliberations presented above, the capacity of the Association "O.S. ulica S." in B. to lodge a complaint in the present case cannot be established.

As stated by the Association's representative at the hearing of 17 June 2010, the complaint against the resolution on the local spatial development plan was lodged by the Association in its own name, and the infringement of the legal interest consisted in that the contested resolution violated the interest of the Association's members holding real properties located within the area covered by the contested resolution. In such case, an applicant ought to demonstrate a link between the resolution and a violation of its own (i.e. the Association's) legal interest. This could be possible if the Association, as a social organization, had its own legal title to the real property located within the area covered by the local plan, but this was not established in the present case. Where, however, the applicant challenges the provisions of the plan concerning real properties while not being the owner thereof or without holding any rights in rem thereto, it should be stated that provisions of the plan cannot, as a rule, infringe its legal interest (judgment of the Regional Administrative Court in Warsaw of 17 December 2008, file no. IV SA/Wa 624/08, LEX no. 515024).

In summary, in the opinion of the panel ruling in this case, for the purpose of recognizing the social organization's capacity to lodge complaints under Article 101 (1) of the Act on Municipal Self-Government, it is not sufficient to merely link the subject matter of the challenged resolution or order with the statutory objectives and scope of the organization's operation, without the organization proving its own legal interest. This follows from the structure of the complaint under Article 101 (1) of the Act on Municipal Self-Government which, as specified above, is not in the nature of a common complaint and may not be lodged by an unidentified group of persons and only in the public interest. For this reason, the substantive pleas raised in the complaint in the present case could not be considered, as the capacity of the "O.S. ulica S." Association to lodge complaints cannot be derived solely from the fact that the by-laws provided for the objective of protecting the interests of residents of S. Street.

Since there was no infringement of an individual legal interest on the part of the Association lodging the complaint, only a complaint on behalf of a group of residents of the commune (members of the Association) could be lodged and only after obtaining their written consent. However, no such written authorization from this group of residents to represent their interests before the court is in the files. Further, it is not possible to derive legal interest of the Association solely from the legal interest of its members.

A "list of witnesses" enclosed to the complaint does not satisfy the requirement of authorization received from a particular group, as it does not provide for such authorization, while an administrative court is not permitted to hear witnesses in light of the regulation of Article 106 (3) of the Act on Proceedings before Administrative Courts. Had the representative of the Association made it clear that the complaint was lodged by the Association in its own name and not in its capacity as an authorized representative of a group (a group of named persons, and not the Association, would be the applicant in such case), there would be no need to impose an obligation on the applicant to present the authorization referred to in Article 101 (2) of the Act on Municipal Self-Government. It should also be noted that the matter of legal standing was clarified to the applicant in cases II SA/Bk 490/09 and II SA/Bk 491/09. Admittedly, the following sentence which may be found in the reasons to the ruling in case II SA/Bk 491/09: "An association could have a legal interest in challenging this resolution only if there was a substantive legal connection between the subject matter of the proceedings (the resolution) and the statutory goals and scope of operations of the organization" may have been misinterpreted due to the complexity of the legal language, but may not be taken out of context, where it is explicitly states that the capacity to lodge a complaint in accordance with Article 101 (1) and (2) of the Act on Municipal Self-Government is afforded solely to an entity whose own, individual legal interest was infringed by the challenged resolution, or to a group of residents represented by an entity that received a written authorization to challenge a resolution.

Suffice it to say, the panel ruling in this case shares the line of reasoning according to which the fact that a social organization has no capacity to lodge a complaint under Article 101 of the Act on Municipal Self-Government constitutes the grounds for dismissing the complaint, not for rejecting it. The following decisions argued for the rejection: decision of the Supreme Administrative Court of 8 May 2008, file no. I OZ 318/08, LEX no. 494188 and of 2 February 2010, file no. II OSK 40/10, CBOSA). It is the opinion of the panel ruling in this case that the category of legal interest is of substantive legal, and not formal legal, nature. Failure to establish this premise should therefore lead to issuing a ruling as to substance – i.e. to dismiss the complaint, and not to formal legal rejection of the complaint.
In view of the above, pursuant to Article 151 of the Act of 30 August 2002 on Proceedings before Administrative Courts, it was decided as specified in the operative part hereof.

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