

Judgment
of the Regional Administrative Court in Warsaw
of 30 September 2005.
IV SA/Wa 338/05

THESIS current

1. Procedural rights to participate in administrative or court proceedings which do not directly concern a legal interest or an interest of an entity in the Polish legal system must be expressed explicitly.
2. It is not possible for a social organisation to challenge a resolution of a municipal council constituting a local legal act which does not directly concern the legal interest or obligations of the organisation but concerns only issues within the scope of the organisation's statutory activity.
3. A social organisation is not entitled to challenge a municipal council resolution passed on the basis of Art. 11 (3) of the Act of 21 August 1997 on protection of animals (Journal of Laws of 2003 No. 106, item 1002 as amended) even if its statutory objective is the protection of animals.

JUSTIFICATION

Composition of the court

Presiding Judge: Judge of the Supreme Administrative Court Joanna Kabat-Rembelska.
Judges: Łukasz Krzycki (spr.), Assessor: Tomasz Wykowski.

Protocol officer: Julia Dobrzańska.

Sentence

The Regional Administrative Court in Warsaw, after hearing on 30 September 2005 in the presence of (...) a case concerning the A. Foundation's complaint against the decision (order) of the Municipal Council in Karczew of 25 April 2003 No. VII/47/2003 on a complaint against a resolution of a municipal body on the trapping of homeless animals dismisses the complaint.

Justification in fact

The subject matter of the appeal is resolution No. VII/47/2003 of the Town Council in Karczew of 23 April 2003 on trapping stray animals in the municipality of Karczew.

The applicant "A." Foundation called on the Municipal Council by letter of 10 January 2005 to remove the violation of law. It claimed that the resolution concerning the catching of homeless animals was adopted in violation of the Act of 21 August 1997 on animal protection (Journal of Laws of 2003. No. 106, item 1002) and the relevant implementing act to the Act. In particular, the resolution did not regulate the issue of provision of care by the municipality for the caught animals. A condition for compliance of the resolution with the law is the indication therein of such a source of financing for care in shelters that would in principle ensure indefinite care for municipal homeless animals. Failure to specify these issues in the resolution renders fictitious the requirement to agree and opinion before adopting the resolution set out in the Animal Protection Act. The Municipal Council did not accept the appeal of the Foundation. In its

response to the summons, it was indicated whose legal interest or right was violated by the questioned resolution.

In its complaint against the resolution, the Foundation raised allegations analogous to those raised in the letter of formal notice to remove the violation of law. It maintained the position that the challenged resolution violates the provisions of the Act on Protection of Animals in the scope in which it fails to set out the principles of proceeding with captured homeless animals. This leads to a lack of care for the caught animals. This had certain consequences. The fate of hundreds of animals referred to one of the shelters is unknown. The Municipal Council responded to the complaint by dismissing it, upholding the position it had taken in its reply to the call to remove the infringement of law. With regard to the allegation of not providing proper care for the caught animals, it was pointed out that trapping is done by a veterinarian. However, the amount of PLN 320 is paid for accepting a dog to a shelter, which is currently a high amount in view of the difficult financial situation of the commune. The financing of the costs of keeping animals in shelters for an indefinite period is not the responsibility of the municipality.

Legal reasoning

The Regional Administrative Court held as follows:

The Court dismissed the appeal, as the appealed resolution does not infringe the legal interest or rights of the applicant Foundation.

The basis for issuing the questioned resolution by the Municipal Council of Karczew was Article 11(3) of the Animal Protection Act. The resolution concerns the issue of trapping homeless animals and decisions on further proceedings with regard to them. In the light of Art. 101 (1) of the Act of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2001, No. 142, item 1591 as amended), a resolution may be challenged only by the entity that demonstrates that it violates its legal interest or right. The Foundation did not demonstrate that the subject of the resolution directly affected the rights and obligations of the Foundation, protected by specific provisions of substantive law. The resolution did not, in particular, prove that the resolution directly concerned the Foundation's property rights in the scope of, for instance, preventing it from providing protection for homeless animals in the form of running a shelter under Art. 11 (4) of the Act on the Protection, which, *nota bene*, applies only to social organisations. In the Court's view, a special right to challenge a resolution for a social organisation, even if its statutory aim is animal protection, cannot be derived from Article 11 Section 3 of the Act, either. Above all, the possibility of classifying a foundation as a social organisation was questioned in the previous jurisprudence of administrative courts. However, on the grounds of the regulations in question, even if one were to assume that the applicant Foundation could be treated as a social organisation, it could not be assumed that on this account it is entitled to the challenged resolution. This is because the said Article 11(3) cannot constitute the basis for a legal interest, necessary as a premise for challenging the resolution by the organisation which was consulted (given, in particular, the non-binding nature of the opinion) nor by other organisations - which did not participate in the opinion - due to the lack of indication of the rules for selecting the organisation which is competent to provide an opinion on the draft resolution. The provision of Article 1 (3) of the Act on the Protection of Animals does not constitute a basis for claiming a legal interest either, indicating the principle of the administrative authorities to carry out their activities for the protection of animals in cooperation, *inter alia*, with relevant national institutions and organisations. From this provision, it cannot be presumed from that provision that there are special procedural rights, in terms of the possibility of an appeal against a local law to an organisation or institution, as a separate basis for challenging a resolution. It should be taken into account that the following procedural rights to participate in administrative or court proceedings which do not directly concern a legal interest or an interest of an entity in the Polish legal system must be expressed in a clear

manner. For example, the possibility of participation of a social organisation in administrative proceedings which do not concern the legal interest of this organisation results from Article 31k.p.a. The special procedural rights in administrative proceedings is the possibility of filing a complaint by social organisations in cases related to administrative proceedings in which they appeared as a party, resulting from art. 50 § 1 of the Act of 30 August 2002. - Law on proceedings before administrative courts (Journal of Laws No. 153, item 1270, as amended). However, in the case under consideration, even if one were to assume that the applicant Foundation is a social organisation, the subject of the appeal is not an administrative act, but a normative act. Therefore, the provisions of the Code of Administrative Procedure and the indicated regulations of the of the Law on Proceedings before Administrative Courts cannot be applied. A simple comparison of both formal states confirms, by inference *a contrario*, the lack of possibility to challenge by a social organisation a resolution constituting a normative act, which does not directly concern legal interest or obligations of the organisation, but concerns only issues remaining in the scope of the organisation's statutory activities.

The failure of the legislator in the Polish legal system to provide legal remedies enabling a social organisation to directly challenge a defective, in its opinion, resolution, concerning the issues related to the statutory activity of the organisation, does not mean that there are no effective legal instruments for eliminating defective acts from legal circulation. In view of the fact that, in the Foundation's opinion, as set out in the resolution of the Municipal Council in Karczew is defective, the Foundation may lodge a relevant motion with the competent public prosecutor to consider exercising its rights under Art. 5 of the Act of 20 June 1985. of the Act of 20 June 1985 on the Public Prosecutor's Office (Journal of Laws of 2001, No. 21 item 206 as amended), which allows the prosecutor to challenge to an administrative court an unlawful local government resolution. This is because in general guarding the rule of law, in the public interest, in the light of Article 2 of the Act on the Public Prosecutor's Office, belongs to tasks of the public prosecutor's office.

As the contested resolution did not infringe the legal interest and powers of the applicant Foundation, the Court did not uphold the complaint and it was dismissed. In view of the above, the Court did not address the allegation that the appealed resolution was defective. For the reasons set out above, the Regional Administrative Court in Warsaw, pursuant to Art. 151 of the Act on Administrative Court Proceedings, ruled as follows.