

II OSK 40/10 - decision of the Supreme Administrative Court
LEX nr 663576

Decision
of the Supreme Administrative Court
of 2 February 2010.
II OSK 40/10

THESIS (current)

The provision of Article 44 (3) of the Act on Access to Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments indicates precisely that only decisions may be appealed against, so it cannot be inferred that acts of local law may be appealed against under this provision.

JUSTIFICATION

Composition of the Court

Presiding Judge: Barbara Adamiak, Judge of the Supreme Administrative Court.

Sentence

The Supreme Administrative Court, after having examined on 2 February 2010, at a closed session in the General Administrative Chamber, the cassation appeal of the Association (...) with its registered seat in W. against the decision of the Regional Administrative Court in Warsaw of 13 October 2009, ref. No. IV SA/Wa 121/09 on rejection of a complaint by the Association (...) with registered office in W. against the resolution of the Council of the Capital City of Warsaw of 23 October 2008 No. XLII/1299/2008 concerning the local spatial development plan decides dismiss the cassation appeal.

Factual grounds

The Regional Administrative Court in Warsaw, by decision of 13 October 2009, ref. no. IV SA/Wa 121/09, rejected the complaint of the Association (...) with registered office in W. against the resolution of the Council of the Capital City of Warsaw of 23 October 2008 no. XLII/1299/2008 concerning the local spatial development plan.

The Association (...) with registered office in W. made the resolution of the Capital City of Warsaw of 23 October 2008 No. XLII/1299/2008 concerning the local spatial development plan for the area under the Jumping Tower - part I, the subject of complaint to the Regional Administrative Court in Warsaw.

In justification of its complaint, the Association claimed that the provisions of the local plan violate the provisions of the Regulation of the Wojewoda Mazowiecki of 24 December 2007 No. 67 concerning the programme of air protection in the Warsaw agglomeration, which is an act of local law. It pointed out that the regulation in question requires provisions to be included in spatial development plans prohibiting the construction of wind wedges. In the area covered by the provisions of the contested plan 'pod Skocznią - część I' ('Under the Jumping Tower - Part I'), an area for air supply and regeneration is delimited, the so-called 'wind wedge'. Since the spatial plan does not take into account the provisions of the aforementioned regulation of the Wojewoda Mazowiecki, in the opinion of the complainant Association, the motion for revoking the resolution is justified.

In response to the complaint, the Council of the Capital City of Warsaw requested that the complaint be rejected. By letter of 8 September 2009. The Court summoned the Applicant Association to prove its right to lodge a complaint against the resolution of the Capital City of Warsaw dated 23 October 2008, No. XLII/1299/2008 concerning the local spatial development plan for the Pod Skocznia area - part I. The letter contains information about Article 101 section 1 and section 2a of the Act of 8 March 1990 on municipal self-government (Journal of Laws No. 142, item 1591, as amended). The summons was served pursuant to Article 73 of the Act of 30 August 2002 on Administrative Court Proceedings (Journal of Laws No. 153, item 1270, as amended), hereinafter also referred to as "ASP".

In its letter of 5 October 2009, which constituted a response to the call described above, the Association pointed out that the object of its activities is, according to its bylaws, environmental protection. It argued that the fact that the existing state of the environment and the possibilities of its regeneration set the framework for planning changes resulted from legal provisions. It stated that the contested resolution, the provisions of which are in clear conflict with the air protection programme, violates the rights of all Warsaw residents to breathe in pollution-free air. Citing Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, as well as the Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the applicant Association stated that in environmental matters, environmental associations have a legal interest and the power to challenge any legal act that violates environmental standards.

When rejecting the complaint, the Regional Administrative Court stated that filing a complaint under Article 101(1) of the Municipal Self-Government Act is admissible if the complainant acts in the belief that its legal interest or entitlement has been infringed and it cites this legal interest or entitlement. However, according to Article 101, Clause 2a, an entity acting in the interest of the residents of the municipality must rely on the consent of individual residents to represent them in lodging a complaint.

In a situation where a complaint against a resolution of a municipality's council is submitted by an entity that does not refer to its own legal interest or entitlement, nor does it act on behalf of a group of inhabitants who gave their consent, but - as in the case in question - refers to the violation by the contested resolution of provisions of another local legal act, which in its opinion violates the legal interest of all inhabitants of a given municipality, such a complaint should be regarded as inadmissible.

The court of first instance indicated that the provision of Directive 85/337/EEC of 27 June 1985 on the assessment of the impact of certain public and private projects on the environment, cited in the letter of 5 October 2009, as amended by Directive 2003/35/EC of the European Parliament and of the Council 2001/42/EC of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (Official Journal of the European Union L 156/17 of 25 June 2006),

as well as the provision of the Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Dz. U. of 2003, No. 78, 706), do not constitute grounds for assuming that the Association (...) has standing to challenge before the Regional Administrative Court the resolution of the Council of the Capital City of Warsaw concerning the local spatial development plan for the Pod Skocznia area - Part I.

In view of the above, the Regional Administrative Court in Warsaw, pursuant to Article 58 § 1 point 6 and § 3 in connection with Article 3 § 2 and § 3 of the Act - Law on Proceedings before Administrative Courts (Journal of Laws No. 153, item 1270, as amended), rejected the complaint.

A cassation appeal against the above-mentioned decision was filed by the Association (...) with its registered office in W., contesting the decision in its entirety. The cassation appeal was based on Article 174, points 1 and 2 of the abovementioned Act - Law on proceedings before administrative courts, i.e. on: 1) violation of substantive law, namely Article 101(1) and (2a) of the Act of 8 March 1990 on communal self-government (consolidated text: Journal of Laws of 2001, No. 142, item 1591, as amended) in connection with Article 44(3) of the Act of 3 October 2008 on the provision of information on the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws No. 199, item 1227, as amended), through their incorrect interpretation. 2) breach of procedural law, namely Article 58(1)(6) and (3) in conjunction with Article 3(2) and (3) of the Act on Administrative Court Proceedings, by reason of misapplication of those provisions, which had a significant impact on the outcome of the case.

On those grounds, the applicant association requests that the contested decision of the Regional Administrative Court in Warsaw of 13 October 2009, Case No IV SA/Wa 121/09, be set aside in its entirety and that the case be referred back to the Regional Administrative Court in Warsaw for re-examination.

In the justification for the cassation appeal, the association argues that, since the planning procedure for the adoption of a spatial development plan is one of the procedures requiring public participation, one should wonder how far Article 44(3) of the Act of 3 October 2008, which is a *lex specialis* provision, is applicable. Undoubtedly, the essence of the granting, by the legislator, of broad procedural rights to environmental organisations in proceedings requiring public participation is to ensure that those social units exercise effective control over the correctness of the course of those proceedings from the point of view of the compliance of decisions taken thereunder with the provisions of environmental protection. Ecological organisations taking part in such administrative proceedings act independently on the rights of a party. This means that they do not act on behalf of other persons who are parties to the proceedings. These organisations may also file a complaint with the administrative court without first participating in the administrative proceedings. If this is the case, it should be assumed that an ecological organisation which files a complaint under Art. 101 of the Act on Municipal Self-Government against a resolution on a spatial development plan adopted as part of proceedings requiring public participation on account of the fact that it was subject to an environmental impact assessment does not have to invoke its own legal interest or entitlement or act on behalf of a group of residents who gave their written consent. It should be noted that the statutory objective of an environmental organisation is environmental

protection. Thus, an ecological organisation which brings an action under Art. 101 of the Act on Municipal Self-Government acts in the interest of an unspecified group of persons residing in the municipality affected by the spatial development plan. Undoubtedly, the legal interest of such persons may be violated by the fact that the resolution on the spatial development plan was adopted in breach of the provisions of the environmental protection law applicable in the course of the planning procedure (Art. 46 et seq. Act of 3 October 2008, and earlier Art. 40 et seq. Act of 27 April 2001. - Environmental Protection Law). In turn, they can be effectively protected by an ecological organisation, which can lodge a complaint under Article 101 of the Act on Municipal Self-Government in their interests. This is because, in principle, an environmental organisation which files a complaint under Art. 101 of the Act on Municipal Self-Government acts in the legal interest of the residents of the municipality which has been violated as a result of the adoption of a resolution on a spatial development plan in breach of environmental protection regulations. Therefore, in such cases, the environmental organisation is entitled to lodge a complaint under Article 101 of the Act on Municipal Self-Government on its own. However, in the present case, the Regional Administrative Court in Warsaw interpreted the law in a different way, which led it to unjustifiably reject the complaint filed by the applicant ecological organisation. In response to the cassation appeal, the Warsaw City Council filed a motion to dismiss the cassation appeal.

The Body points out that the applicant has not demonstrated that the content of the contested resolution infringes its legal interests or rights. The applicant's mere assertion that the contested resolution is unlawful cannot constitute an argument supporting the existence of a right of action. In the opinion of the body, the applicant association has not demonstrated how its legal interest was infringed.

Legal reasoning

The Supreme Administrative Court has ruled as follows:

Pursuant to 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 the following grounds: 1) violation of substantive law through its misinterpretation or misapplication; 2) violation of procedural rules, if this violation could have had a significant impact on the outcome of the case. These grounds determine the direction of the proceedings of the Supreme Administrative Court.

According to the principle of complaint, the initiation of general administrative court proceedings may take place only at the request of a legitimate subject, deficiencies in this respect imply a violation of the principle of complaint.

The applicant Association (...) with its registered office in W., lodging a complaint with the Court of First Instance against the resolution of the Council of the City of Warsaw of 23 October 2008 No. XLII/1299/2008 concerning the local spatial development plan, based its right to lodge a complaint on the protection of its legal and social interest. The legitimacy based on protection of a legal interest (one's own) was derived from Art. 101(1) of the Act of 8 March 1990 on Municipal Self-Government (consolidated text: Journal of Laws of 2001, No. 142, item 1591 as amended). Pursuant to Art. 101 Clause 1 of the aforementioned Act on Municipal Self-Government, "Anybody whose legal interest or right has been infringed by a resolution or order made by a municipal body in a matter of public administration may - after ineffective

calling for removal of the infringement - file a complaint against the resolution with an administrative court". In order to ascertain the existence of a legal interest on the part of the complainant in the case, the complainant should demonstrate a connection between the individual sphere of its rights and obligations and the challenged act, whereby the complainant's rights and obligations must arise from specific provisions of substantive law. The Court of First Instance concluded that the appellant association, despite the summons addressed to it, failed to demonstrate a specific legal interest of its own arising out of a particular substantive law rule entitling it to lodge an effective complaint in the case in question. The defects in the procedure of enactment of the local spatial development plan pointed to by the applicant association do not constitute an independent premise entitling the applicant association to lodge a complaint pursuant to Article 101 Section 1 of the said Act on Municipal Self-Government. The applicant failed to demonstrate which of its rights or obligations were actually violated by the alleged procedural irregularities. The allegation of a breach of Article 101 Section 2a of the cited Act on Municipal Self-Government is unfounded. The applicant association has not demonstrated the existence of a legal interest, nor has it demonstrated its authority to represent a group of residents, i.e. the consent of those residents.

The plea raised in the cassation appeal alleging infringement of Article 44, Section 3 of the Act of 3 October 2008 on providing information about the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws No. 199, item 1227, as amended) is unfounded. The Court of First Instance did not apply the abovementioned provision, thus its misinterpretation or misapplication cannot be alleged, as the attorney for the applicant association does. This provision was also not referred to in the application to the Court of First Instance in order to prove the appellant association's standing to bring an action in the case. However, the above provision transposes, inter alia, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998. (Journal of Laws of 2003, No. 78, item 706), hereinafter referred to as the "Aarhus Convention" (and provisions of Directive 2003/35/EC in identical wording), the provisions of which were invoked by the applicant in its application to the Court of First Instance. The provisions of the Aarhus Convention regulating the right of action of an association correspond in this respect with the provisions of universally binding law in the Republic of Poland. In particular, it has to be pointed out that Article 9 of the Aarhus Convention "Access to Justice", a prerequisite for lodging an effective complaint to a court is based on i.a. "sufficient interest" or "breach of rights" of the entity applying to the Court, if national provisions regulating administrative proceedings require this as a prerequisite (Article 9(2)(a and b) of the Aarhus Convention).

In view of the fact that the appellant association did not prove its right to lodge an appeal in the case, the Court of First Instance rightfully dismissed the appellant association's complaint. Thus, the allegation of the cassation complaint concerning the violation of Article 58 § 1 point 6 and § 3 in connection with Article 3 § 2 and § 3 of the cited Act - Law on Proceedings before Administrative Courts is unfounded.

Pursuant to Article 44 (3) of the aforementioned Act on the Provision of Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments, "an environmental organisation may lodge a complaint with the administrative court against a decision issued". This provision precisely indicates that only decisions may be challenged, so it cannot be deduced that acts of local law are subject

to challenge under Article 44 (3) of the Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments.

In view of the above, as the cassation appeal did not contain any justified grounds, the Supreme Administrative Court, pursuant to Article 184 of the cited Act - Law on Proceedings before Administrative Courts, ruled as in the operative part of the order.