

IV SA/Wa 558/07 - Judgment of the Regional Administrative Court in Warsaw

LEX No 460565

Judgment
of the Regional Administrative Court in Warsaw
of 8 November 2007.
IV SA/Wa 558/07

THESIS (current)

A resolution of the regional council concerning the spatial development plan of the voivodship is not an act of local law and thus does not have any direct legal effect. Since the resolution is not universally binding, it does not interfere with the applicants' proprietary rights with respect to the plots of land through which the planned road route is to run. It is only at the stage of the planning work and adoption of the local spatial development plan that the applicants will be able to raise such an objection.

JUSTIFICATION

Chairperson: WSA Judge Małgorzata Miron. WSA Judges: Alina Balicka (spr.), Assessor Marta Laskowska.

Protokolant: Dominik Nowak.

Sentence

The Regional Administrative Court in Warsaw, having examined on the hearing on 8 November 2007 the case of Elżbieta K. and Janusz K. against the resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodeship of 7 June 2004 on adopting the Spatial Development Plan for the Mazowieckie Voivodeship - dismisses the complaint. Factual reasons By Resolution No. 65/2004 of 7 June 2004, the Regional Assembly of the Mazowieckie Voivodeship acting on the basis of Article 18 point 3 of the Act of 5 June 1998 on regional self-government (Journal of Laws 2001 No. 142, item 1510 as amended) in connection with Article 85 point 2 of the Act of 27 March 2003 on spatial planning and development (Journal of Laws No. 80, item 717), adopted the Spatial Development Plan for the Mazowieckie Voivodeship (Journal of Laws of the Mazowieckie Voivodeship No. 217, item 5811).

Elżbieta K. and Janusz K. applied, by a motion of 26 September 2006, for cancellation of resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodeship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodeship.

In their application, the applicants argued that the route of the Dukes of Mazovia planned in Spatial Development Plan for the Mazowieckie Voivodeship serves no one and will increase environmental pollution. The route would run through their two plots of land, with survey nos. x and y, and would significantly restrict their development, thereby adversely affecting their market value. Moreover, the applicants had not been informed of the content of the resolution.

The Regional Assembly of the Mazowieckie Voivodeship, in its resolution No. 17/06 of 18 December 2006 on a motion of Elżbieta and Janusz K. to revoke resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodeship of 7 June 2004 on adopting the Spatial

Development Plan for the Mazowieckie Voivodeship, considered the motion unjustified and refused to revoke the resolution.

In the justification of the resolution it was stated that the application is in fact a call for removal of the infringement of the law which arose in connection with passing a resolution by the Regional Assembly of the Mazowieckie Voivodeship on the Spatial Development Plan for the Mazowieckie Voivodeship filed under Article 91 in connection with Article 90 of the Act on the Self-Government of the Voivodeship. The rights arising from those provisions give the right to lodge complaints about omissions of the Voivodeship self-government bodies and legal and factual actions taken by those bodies to persons whose legal interest (entitlement) was infringed by that omission or action. Since the applicants claim that the establishment of the Plan challenged by them, concerning the route of the Dukes of Mazovia, influences the limitation of the exercise of the right to property in relation to their real property, it should be assumed that the prerequisites for considering the application under Article 91 in connection with Article 90 of the Act on Provincial Self-Government have been fulfilled.

Referring to the allegations raised by the applicants in their motion of 26 September 2006, the Regional Assembly of the Mazowieckie Voivodeship stated that the planned route of the Dukes of Mazovia is an element of the provincial road system, determining the efficient functioning of the western part of the Warsaw metropolitan area. The existing studies of conditions and directions of spatial development of the municipalities of Pruszków and Michałowice take into account the corridor of the planned route, in accordance with earlier conceptual studies. Relevant arrangements were also included in local plans, which have lost their legal force. The substantiation of the resolution also states that the spatial plan of the voivodship is not an act of local law, and therefore it does not have the force of universally binding norms, which means that its conclusions do not directly affect the manner in which the ownership right to real property is exercised, and therefore do not cause legal and financial effects related to limitation of this right. Pursuant to the provisions on spatial planning and development, such effects are produced by the local spatial development plan or the decision on land development conditions.

The applicants' allegation that they were not notified of the adoption of the Spatial Development Plan for the Mazowieckie Voivodship is also misconceived. The plan was drawn up in accordance with a statutorily determined procedure which did not provide for the possibility of individual notification of property owners about the intention to adopt the plan. In accordance with the statutory obligation in this respect, the notice on the accession to the Spatial Development Plan for the Mazowieckie Voivodeship was published in the national press.

Resolution No. 17/06 of the Regional Assembly of the Mazowieckie Voivodeship of 18 December 2006 was delivered to the applicants on 10 January 2007 by letter of 19 December 2006. On 11 January 2007, Elżbieta K. and Janusz K. filed a complaint with the Regional Administrative Court in Warsaw against Resolution No. 17/06 of the Regional Assembly of the Mazowieckie Voivodeship of 18 December 2006.

The applicants claim that the resolution fails to provide any reasons as to why their application of 26 September 2006 is unfounded. In that application, the applicants merely sought the deletion of the route of the Dukes of Mazovia from the Spatial Development Plan for the Mazowieckie Voivodeship on the ground that it was to run through their land, a fact of which they had not been informed. Resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodeship was adopted on 7 June 2004 and local spatial plans ceased to apply at the end of 2003, with the result that all owners of plots within the area of the projected route had to be notified.

The applicants claim that their application could only have been dismissed and not refused by not providing an appeal route and by addressing the letter of 19 December 2006 to them by ordinary mail and not by registered mail.

By Resolution No. 54/07 of 19 March 2007, the Regional Assembly of the Mazowieckie Voivodeship forwarded to the Regional Administrative Court the complaint of Elżbieta and Janusz K. against Resolution No. 17/06 of the Regional Assembly of the Mazowieckie Voivodeship of 18 December 2006 together with the response to the complaint in question.

In its reply to the complaint, the Regional Assembly of the Mazowieckie Voivodeship called for dismissal of the complaint against Resolution No 17/06 of the Regional Assembly of the Mazowieckie Voivodeship of 18 December 2006 and upheld the reasoning set out in the justification for the resolution. In a letter of 27 July 2007 responding to the letter of 19 March 2007 from the Regional Assembly of the Mazowieckie Voivodeship, the applicants claim that Resolution No 65/2004 infringes the fundamental right to private property in so far as it allows the projected route of the Dukes of Mazovia to cross through private land without expropriation of all the owners of the plots of land through which the route is to cross. Resolution No 65/2004, on the basis of which local spatial development plans are drawn up, directly restricts the right to free development of the land as municipalities refuse to allow any investment within the planned route. They also argue that there is no economic justification for the proposed route in its proposed form.

In their letter of 8 August 2007, the applicants seek the annulment of resolution No 64/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 in its entirety on the ground that its content, as regards the planned route of the Dukes of Mazovia, infringes the fundamental right of citizens to private property and, regardless of the lack of expropriation, limits the area on which citizens may build. At a hearing on 12 September 2007 in case file No IV SA/Wa 558/07, the appellant, Janusz K., acting on his own behalf and as the agent of the appellant, Elżbieta K., specified in the minutes of the hearing the content of the complaint, stating that the appellants seek, by means of the complaint, annulment of resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodship and resolutions of the Regional Assembly of 18 December 2006 and 19 March 2007.

At a hearing on 8 November 2007, the applicant Mr Janusz K., on his own behalf and as agent for Ms Elżbieta K., reiterated his position from the hearing of 12 September 2007 on the scope of the application in question.

In view of the position thus defined by the applicants, at a hearing on 8 November 2007 the Court ordered that cases concerning complaints against resolutions of Regional Assembly of the Mazowieckie Voivodship dated 18 December 2006, No. 17/06 and 19 March 2007 be excluded from the case file No. IV SA/Wa 558/07 and to be considered separately. The first of these complaints was registered under file number IV SA/Wa 2181/07, and the second under file number IV SA/Wa 2182/07.

Legal reasoning

In view of the above, the Regional Administrative Court in Warsaw, examining the complaint filed by Elżbieta K. and Janusz K. against Resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodship, ruled as follows:

According to art. 1 § 2 of the Act of 25 July 2002 the subject of control in administrative court proceedings is the legality of the appealed act. Acting pursuant to this provision, the Court in the subject matter of the case adjudicates the legality of the appealed resolution in terms of its

compliance with the substantive law and procedural regulations, but does not assess the purposefulness, rightness or rationality of the planning solutions adopted in the plan.

Examining the complaint in the light of these criteria, it must be concluded that it is not well founded.

The subject of the Court's examination was a complaint against resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodship.

Pursuant to Art. 90 par. 1 of the Act of 5th June 1998 on Self-Government of the Voivodship (i.e. Journal of Laws of 2001, No. 142, item 1590 as amended), anyone whose legal interest or right has been infringed by a provision of a local legal act, issued in a matter of public administration, may - after ineffective calling upon the voivodship self-government body that issued the provision to remove the infringement - appeal against the provision to an administrative court. On the other hand, in accordance with art. 91 par. 1 of the above mentioned act, the provisions of art. 90 apply respectively, when a voivodship self-government body fails to perform the activities prescribed by law or violates the rights of third parties through legal or factual actions. A summons is ineffective both when the authority has not taken the summons into consideration as well as when it has not taken any position on the question of the summons to remove the infringement of law. The effectiveness of lodging a complaint to a court on the failure of a voivodship self-government body to perform actions required by law or by undertaking legal or factual actions infringing the rights of third parties depends on prior exhaustion of the procedure of summoning the relevant voivodship self-government body to remove the infringement of law.

The applicants claim that Resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodship interferes with their proprietary rights in relation to plots of land with registered numbers x and y located in N. at T. Street, which gives them grounds (legal interest) to challenge the resolution in an administrative court.

The party may complain to the administrative court against legal actions taken by the voivodship self-government bodies, and the resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adopting the Spatial Development Plan for the Mazowieckie Voivodship is such a legal action, after the competent body has been summoned in writing to remove the infringement of law - Article 52 § 4 of the Act on Administrative Court Proceedings (Journal of Laws No. 153, item 1270 as amended). Pursuant to Article 53 § 2 of the aforementioned Act, a complaint shall be lodged within thirty days from the date of delivery of the body's response to the summons to remove the infringement of law.

The applicants, by letter of 25 September 2006, received on 26 September 2006, which is to be construed as a request under Article 91 in conjunction with Article 90 of the Act on Provincial Self-Government, called upon the Regional Assembly of the Mazowieckie Voivodship to eliminate the breach of law committed by Resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adopting the Spatial Development Plan for the Mazowieckie Voivodship, the Regional Assembly of the Mazowieckie Voivodship, in its resolution No. 17/06 of 18 December 2006 refused to consider the appeal to remove the breach of law made by resolution No. 65/2004 of 7 June 2004, filed by the applicants.

A copy of that resolution was delivered to the applicants by ordinary mail on 10 January 2007. Consequently, the time-limit for lodging a complaint against Resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adoption of the Spatial Development Plan for the Mazowieckie Voivodship, lodged pursuant to Article 91 in

conjunction with Article 90 of the Act on Regional Self-Government, expired on 9 February 2007.

The applicants lodged their complaint against the above resolution on 11 January 2007, thus complying with the statutory period for lodging it.

As it has been pointed out above, in accordance with Art. 91 in connection with Art. 90 of the Act on Self-Government of the Voivodeship, anyone whose legal interest or entitlement has been breached by a resolution adopted by a body of the voivodeship self-government in a matter of public administration may challenge the resolution in an administrative court. It follows that the applicants may challenge Resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 only to the extent to which the resolution violates the legal interest or right of the applicants themselves. There can be no doubt as to the applicants' right to challenge the resolution in question in so far as it concerns the projected new route of the Dukes of Mazovia, which runs through part of the property designated with registered numbers x and y and belonging to the applicants.

As it results from the justification of resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adopting the Spatial Development Plan of the Mazowieckie Voivodeship, this plan, in view of the provision of Article 85 (2) of the Act of 27 March 2003 on spatial planning and development (Journal of Laws No. 80, item 717 as amended) stipulating that the local spatial development plans and the voivodeship spatial development plans for which a resolution on the accession to prepare or amendment of the plan was adopted and the time limit for displaying the plans was notified, may be included in the plan. This plan, due to the provision of Article 85, paragraph 2 of the Act of 27 March 2003 on spatial planning and development (Journal of Laws No. 80, item 717 as amended) stating that to the local spatial development plans and spatial development plans of the voivodships for which a resolution on joining the plan preparation or alteration was adopted and a notification was issued on the date of showing the plans to the public, but the proceedings were not completed by the date of entry into force of the Act, the current provisions apply, was prepared pursuant to the Act of 7 July 1994 on spatial development (Journal of Laws of 1999, No. 15, item 139 as amended).

Pursuant to Art. 4(2) of the Act of 7 July 1994 on Spatial Development, the shaping and implementation of spatial policy in the Voivodship, including the adoption of the Voivodship Development Strategy and the Spatial Development Plan of the Voivodship, as well as the coordination of translocal spatial development programmes, shall be the responsibilities of the voivodship self-government. This provision stipulates that the shaping and implementation of spatial policy in the voivodship, including the adoption of a regional development plan, shall be the responsibility of the voivodship's self-government. The voivodeship is an independent level in the spatial planning system. The regional (voivodeship) spatial development plan is the basic planning act adopted by the voivodeship self-government. The Spatial Development Plan of the voivodship is not an act of local law, but it must certainly be deemed to be an act binding, to a certain extent, upon the municipality in the course of drawing up a study of spatial development conditions and directions - Article 6(2) of the Act. It is not, however, binding on citizens or entities from outside of public administration. It may not constitute the legal basis for any administrative decisions. The Spatial Development Plan of the Voivodship defines the principles of spatial organisation of the voivodeship, including in particular:

- 1) basic elements of the settlement network,
2. the layout of social, technical and other infrastructure,

3) requirements concerning the protection of the natural environment and protection of cultural assets - taking into account the areas subject to special protection.

In accordance with art. 54b par. 3 and 4 of the abovementioned act, the spatial development plan of the voivodship takes into account the government's tasks and places the tasks of the voivodeship's self-government which serve to implement translocal public objectives. The draft of the spatial development plan of the voivodship was subject to an opinion of, among others, the municipality (gmina) authorities - article 54b, paragraph 5, item 2, letter b of the Act. The conclusions of the spatial development plan of the voivodship are incorporated into the local plan, currently under art. 44 of the Act of 27 March 2003 on spatial planning and development.

In the light of the above, taking into account the applicants' allegations raised against the appealed resolution, it should be concluded that they are not well-founded as the appealed resolution does not violate the law. A territorial self-government body has planning powers conferred by law within the territory of a voivodship. Within the framework of these powers, the Regional Assembly of the Voivodship plans investments of public interest for the realisation of supra-local public objectives, and the planned route of the Dukes of Mazovia is such an investment, and indicates in the plan the areas where the realisation of the investments is planned. As indicated above, the resolution of the regional assembly concerning the spatial development plan for the region (voivodship) is not an act of local law and, consequently, it does not have direct legal effect. Since the resolution is not generally binding, it does not interfere with the applicants' proprietary rights in relation to the plots of land through which the projected route of the Dukes of Mazovia is to run. It is only at the stage of planning work and adoption of the local spatial development plan that the applicants will be able to raise such an objection.

The planning procedure, including adoption of Resolution No. 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 on adopting the Spatial Development Plan of the voivodship for the Mazowieckie Voivodeship, was carried out in accordance with the provisions of the Act of 7 July 1994 on spatial development. That law provided for a simplified procedure for drawing up and adopting the Spatial Development Plan of the Voivodship without broader public participation in its content. In those circumstances, the applicants' allegation that, as owners of the plots of land through which the planned route of the Dukes of Mazovia is to run, they were not directly informed of the content of resolution No 65/2004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 is unfounded.

Pursuant to the Act on Provincial Self-Government, a complaint against a resolution of a Provincial Self-Government body may be filed after the body has been ineffectively summoned to remedy the breach of law. As indicated above, an ineffective appeal can be made both when the authority has not taken the appeal into consideration as well as when it has not taken any position on the appeal to remove the infringement of law. By Resolution No 17/06 of 18 December 2006, the Regional Assembly of the Mazowieckie Voivodship recognised the applicants' request for the repeal of Resolution No 65/3004 of the Regional Assembly of the Mazowieckie Voivodship of 7 June 2004 as unfounded and refused to repeal the said resolution. This decision is tantamount to disregarding the call for removal of the infringement of law, which opened the way for the applicants to file a complaint to the administrative court. In the Court's assessment, the applicants' allegation that in the Resolution No. 17/06 of 18 December 2006 the wording "refused to repeal the resolution" was used is irrelevant to the outcome of the case.

In the Court's opinion, the applicants have not demonstrated that the contested resolution violates the law or was adopted in violation of the law.

For all these reasons, the Regional Administrative Court in Warsaw, pursuant to Article 151 of the Act of 30 August 2002. Law on proceedings before administrative courts, ruled as in the conclusion.