

II OSK 649/20 - Decision of the Supreme Administrative Court

LEX No. 2979529

Decision
of the Supreme Administrative Court
of March 18, 2020
II OSK 649/20

Status:

ruling valid

STATEMENT OF REASONS

Adjudicating Panel

Presiding Judge: Judge of the Supreme Administrative Court Robert Sawuła.

Conclusion of the judgment

The Supreme Administrative Court, having examined on March 18, 2020, at a closed sitting in the General and Administrative Chamber of the cassation complaint of M. W., B. W., M. B., M. K., K. N., E. P., A.S., A. B., P. S., K. D., W. Z., P.D. and M. W. against the decision of the Provincial Administrative Court in Warsaw of April 17, 2019, file ref. no. IV SA/Wa 76/19 on the rejection of the complaint of M. W., B. W., M. B., M. K., J. Z., K. P., K. N., E. R., E. P., A. S., A. B., D. D., P. S., K. D., W.Z., P. D. and M. W. against the act of the Minister of Environment dated (...) August 2015, no. (...) on the approval of the forest management plan for the Forest District (...) for 2015-2024 decides: to dismiss the cassation complaint.

Factual Justification

By decision dated April 17, 2019, file ref. no. IV SA/Wa 76/19, the Provincial Administrative Court (hereinafter: PAC) in Warsaw rejected the complaint of M. W., B. W., M. B., M. K., J. Z., K. P., K. N., E. R., E. P., A. S., A. B., D. D., P. S., K. D., W. Z, P. D. and M. W. against the act of the Minister of Environment dated (...) August 2015, no. (...) on the approval of the forest management plan for the Forest District (...) for 2015-2024.

In the statement of reasons for the above decision, the court of first instance indicated that in a letter dated January 11, 2019, the complainants, represented by a lawyer, complained against the "administrative act" of the Minister of Environment dated (...) August 2015 in the form of approval of the forest management plan for the Forest District (...) for 2015-2024 to PAC in Warsaw.

They preceded their complaint with a letter including a request to remove a breach of law. They indicated that they own real estates located in the village of (...), where summer houses are built. Directly adjacent to the village and the real estates located therein are forest areas described as divisions (...),(...),(...) and (...) included in the forest management plan for the Forest District (...) for 2015-2024. In general, they alleged that no information or consultation

activities were undertaken during the development of the plan, the principles of sustainable forest management were violated, and the social and ecological function of the forest was completely ignored.

In response to the complaint, the Minister of the Environment requested that the complaint be dismissed.

The court of first instance held that the complaint was subject to rejection because it did not fall within the jurisdiction of administrative courts.

In the opinion of the court, the minister's approval of the plan is an internal action taken in connection with the performance of ownership tasks, and therefore an action in the sphere of *dominium*, not *imperium*.

In the cassation complaint of M. W. and others (it should be pointed out that the cassation complaint of J. Z., E. R., D. D. and K. P. was rejected by decision of the Provincial Administrative Court of Warsaw of November 7, 2019) on the basis of Article 174 of the Act of 30 August 2002 Law on Proceedings before Administrative Courts (as at the date of filing the cassation complaint: Journal of Laws of 2018, item 1302, as amended, LPBAC) it is alleged that the above ruling is a breach of:

1. procedure, namely Article 3 § 2 point 4 and Article 58 § 1 point 6 of LPBAC, having a fundamental impact on the outcome of the proceedings, by their misapplication and assumption that the administrative act of the Minister of Environment of (...) August 2015 does not constitute an act or activity of public administration within the meaning of Article 3 § 2 point 4 of LPBAC;
2. a procedural rule having a significant impact on the content of the ruling, namely Article 5 point 1 of LPBAC through its misinterpretation and misapplication and, consequently, the decision that the administrative act of the Minister of the Environment of (...) August 2015 complained against, constitutes an act of an internal nature resulting from a relationship of subordination within the meaning of the said provision;
3. substantive law, namely Article 22 section 1 and 2 of the Forests Act of September 28, 1991 (Journal of Laws of 2015, item 2100, as amended, FA) through their misinterpretation and misapplication, and consequently the decision that the forest management plan constitutes an administrative act within the meaning of Article 3 § 2 point 4 of LPBAC, only with respect to forest management plans in conjunction with Article 22 section 2 of that Act. In view of the above, the cassation complainants claim that the ruling complained against should be repealed and the case should be remanded to PAC in Warsaw, or alternatively that the judgment complained against should be amended and the ruling should be given in accordance with the complainants' request.

It is also requested that this cassation complaint be heard by the Supreme Administrative Court.

According to the cassation complainants, the adoption of the standpoint presented by the court of first instance would lead to an unjustified situation in which the subjects of rights to land, the effective use of which depends on the content of a forest management plan and its implementation, would be deprived of the right to any legal-administrative control of this type of acts, despite the fact that their content directly affects, inter alia, the exercise of the property right, including the use of the property for its intended purpose. This act also directly affects the scope of civil rights and liberties.

In the pleading dated July 19, 2019, the attorney acting on behalf of the cassation complainants, in connection with the obligation of PAC in Warsaw dated June 25, 2019, indicates that in the motion contained in the cassation complaint, the complainants request that the decision of PAC in Warsaw dated April 17, 2019 complained against be repealed in its entirety. In the alternative, the motion seeks an amendment to the decision the WSA in Warsaw complained against.

In response of the Minister of Environment to the cassation complaint, it was requested as follows:

- I. dismissal of the cassation complaint as unfounded,
- II. conducting a hearing,
- III. awarding the costs of court proceedings and legal representation in accordance with the prescribed standards.

The body agrees with the position of the court of first instance that the approval of the forest management plan for the Forest District (...) for 2015-2024 by the Minister of Environment is an internal action taken in connection with the performance of tasks of an ownership nature and is not subject to the jurisdiction of administrative courts.

Legal grounds

The Supreme Administrative Court considered the following:

Pursuant to Article 174 of LPBAC (current consolidated text Journal of Laws of 2019, item 2325, as amended), a cassation complaint may be based on the following grounds:

- 1) breach of substantive law through its misinterpretation or misapplication,
- 2) breach of procedure, if such infringement could have significantly influenced the outcome of the case.

When deciding on the present case, the Supreme Administrative Court was limited to the grounds set forth in the appeal and did not ex officio find any of the conditions of invalidity of the administrative court proceedings listed enumeratively in Article 183 § 2 of LPBAC.

Pursuant to Article 182 § 1 of LPBAC the Supreme Administrative Court may hear at a closed sitting a cassation complaint against a decision of a provincial administrative court that concludes the proceedings. The cassation complainant's request that their appeal be heard at a hearing, as well as the Minister's conformant position in his response to the cassation complaint, are not deciding in this regard. The Supreme Administrative Court, in making its decision at a closed sitting, was guided by considerations of speed and simplicity of the proceedings, in which all significant issues of legal nature were explained in the materials gathered in the case file.

The cassation complaint should not be accepted.

A. The essence of the dispute in the present case gets down to deciding whether the "administrative act" of the Minister of the Environment dated (...) August 2015, no. (...), in the form of approval of the forest management plan for the (...) Forest District for 2015 -2024 that was complained against in the provincial court is subject to the jurisdiction of the administrative court.

At this point, it should be indicated that pursuant to Article 3 § 2 LPBAC, control of public administration activities by administrative courts includes ruling on complaints against:

- 1) administrative orders;

- 2) decisions made in administrative proceedings which may be appealed against or which end the proceedings, as well as decisions which settle the matter as to the merits;
- 3) decisions made in enforcement proceedings and proceedings to secure claims, which may be appealed against, excluding decisions of creditors on inadmissibility of the plea put in, and decisions, the subject of which is the creditor's position on the plea put in;
- 4) acts or activities in the field of public administration concerning rights or obligations arising from legal regulations, other than those specified in points 1-3, excluding acts or activities undertaken as part of administrative proceedings specified in the Code of Administrative Procedure, proceedings specified in Sections IV, V and VI of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2018, item 800, as amended), proceedings referred to in Section V, chapter 1 of the Act of November 16, 2016 on the National Tax Administration (Journal of Laws of 2018, item 508, 650, 723, 1000 and 1039), and proceedings to which the provisions of the aforementioned Acts apply; 4a) written interpretations of tax law regulations issued in individual cases, securing opinions and refusals to issue securing opinions;
- 5) local law acts of local government authorities and regional government administrative authorities;
- 6) acts of local government authorities and their unions, other than those specified in point 5, undertaken in matters of public administration;
- 7) acts of supervision over the activities of local government authorities;
- 8) inactivity or protraction of proceedings in the cases set forth in points 1-4 or protraction of proceedings in the case set forth in point 4a;
- 9) inactivity or protraction of proceedings in cases concerning public administration acts or activities other than those set forth in points 1-3, concerning rights or obligations arising from provisions of law, undertaken as part of administrative proceedings defined in the Act of June 14, 1960 - Code of Administrative Procedure and of proceedings specified in sections IV, V and VI of the Act of August 29, 1997 - Tax Ordinance and proceedings to which the provisions of the aforementioned acts apply.

Furthermore, pursuant to Article 3 § 3 LPBAC, administrative courts also rule on cases in which the provisions of special laws provide for judicial control, and apply the measures specified in those provisions. The limits of the material jurisdiction of administrative courts, aside to the provisions of LPBAC cited above, also result from specific provisions contained in other legal acts.

The enumeration of acts, actions and cases in the above provisions of LPBAC is exhaustive and constitutes a closed list (positive enumeration), which means that a complaint filed in cases other than those specified therein does not fall under the jurisdiction of administrative courts.

B. The plea alleging breach of procedure, namely Article 3 § 2 point 4 and Article 58 § 1 point 6 of LPBAC, having a fundamental impact on the outcome of the proceedings, by their misapplication and assumption that the administrative act of the Minister of Environment complained against does not constitute an act or activity of public administration within the meaning of Article 3 § 2 point 4 of LPBAC, is not justified.

The Supreme Administrative Court shares the standpoint of PAC in Warsaw stated in the decision complained against that the approval of a forest management plan by the Minister of

Environment cannot be regarded as an administrative order. Contrary to the claims of the cassation complainants, the said approval made by the Minister of Environment cannot be qualified as another act or activity within the meaning of Article 3 § 2 point 4 of LPBAC. In view of the above, the matter of approval of the forest management plan for the Forest District (...) for 2015-2024 by the Minister of the Environment does not fall under jurisdiction of administrative courts, which has already been stated by the Supreme Administrative Court in its judgment of March 12, 2014, II OSK 2477/12 ((in:) LEX no. 1522467) and reiterated by PAC in Warsaw in its valid decision of March 14, 2017, IV SA/Wa 2787/16 ((in:) LEX no. 2321843).

It should be pointed out that, in the case of an activity or act, their inclusion in the scope of application of Article 3 § 2 point 4 of LPBAS depends on meeting a positive criterion (the action concerns a matter within the scope of public administration) and a negative criterion (the action is not taken in the forms set out in Article 3 § 2 point 1-3 of LPBAS). At the same time, the legislator does not define the terms "public administration act or activity". It is assumed in the literature and jurisprudence that acts or activities under Article 3 § 2 point 4 of LPBAC have to be addressed to a concrete, individualized addressee, have an external character, which means that they are addressed to the subject which is not subordinated, organizationally or in terms of service, to the body issuing the act or undertaking a given activity, they have to concern matters within the scope of public administration, and thus cover authoritative actions of public administration bodies, by which the content of the right or duty is determined unilaterally by the entity executing public administration, and the addressee is bound by this action, as well as cover rights or duties resulting from universally applicable law (see T. Woś (ed.) Law on Proceedings before Administrative Courts. Commentary, 6th Edition, WK 2016, J.P. Tarno – Law on Proceedings before Administrative Courts. Commentary, 6th Edition Lexis Nexis 2011, or the decision of the Supreme Administrative Court of August 29, 2019, I OSK 1759/17, LEX no. 2690591). It should be particularly emphasized that the acts or activities referred to in Article 3 § 2 point 4 of LPBAC, are taken outside the jurisdiction proceedings with the proper form of a decision or a ruling, which means that they correspond to the formula not of the application of law, but of its execution, i.e. the executive formula, which expresses itself in the implementation (realization) of the disposition of a legal norm creating a concrete (i.e. already existing) administrative relation and the resulting right or duty (cf. Z. Kmieciak, Glosa do uchwały składu siedmiu sędziów Naczelnego Sądu Administracyjnego of February 4, 2008 r. file ref. no. I OPS 3/07oSP 2008, z. 5, item 51, pp. 350 - 351).

The Supreme Administrative Court, applying the above considerations to the case at hand and assessing the legal nature of the act of the Minister of the Environment on the approval of the forest management plan for the Forest District (...) for 2015-2024, concluded that it did not constitute an activity referred to in Article 3 § 2 point 4 of LPBAC.

C. The plea alleging a breach of procedure having a significant impact on the content of the ruling, in the form of Article 5 point 1 of LPBAC is non-relevant. It should be noted that in the decision of October 17, 2017, file ref. no. II OSK 2336/17 (LEX no. 2376100), the Supreme Administrative Court accepted that, unlike in the case of simplified forest management plans drawn up for forests that are not owned by the State Treasury, and approved by the head of district, the minister's action is not directed at third parties - natural persons or legal entities that own the forest.

What is decisive here is the determination of the jurisdiction of administrative courts according to Article 5 point 1 of LPBAC, which stipulates that administrative courts shall have no jurisdiction over matters arising from organizational superiority and subordination in relations between public administration bodies. Consequently, an occurrence of a managerial relationship precludes the jurisdiction of administrative courts. The Supreme Administrative Court then concluded that for establishing the relationships of organizational superiority and subordination, importance should be attached to the legal solutions adopted in Article 4 section 1, Article 5 section 1 point 1 and Article 32 section 1 of FA. It follows from these legal provisions that forests owned by the State Treasury are managed by the State Forests National Forest Holding. Pursuant to Article 32 section 1 of FA, State Forests are a state organizational unit without legal personality. The supervisory powers of the minister for the environment are determined by Article 4 section 1 of FA. In light of this legal provision, the relationship of organizational superiority and subordination of State Forests to the minister for environmental protection should be derived. Consequently, this organizational subordination excludes the jurisdiction of the administrative court. The above view is shared by the Supreme Court deciding the present case and considered by the Court as its own.

D. Consequently, the ground for cassation with regard to the violation of Article 22 section 1 and 2 of FA by their misinterpretation and misapplication, and consequently the decision that the forest management plan constitutes an administrative act within the meaning of article 3 § 2 point 4 of PLBAC only with respect to forest management plans in conjunction with Article 22 Section 2 of that Act is not justified.

The Minister of Environment in the reply to the cassation complaint rightly argues that in cases concerning the approval of a forest management plan for particular forest districts, no administrative proceedings are carried out on the basis of the provisions of the Code of Administrative Procedure. Actions taken under Article 22 section 1 of FA are activities of an internal nature arising out of a relationship of subordination, so they do not constitute an act or activity within the scope of public administration. It is groundless to conduct administrative proceedings in a case that is not subject to settlement in the form of an administrative order, but in the form of an activity or another act (cf. valid judgment of the Provincial Administrative Court in Poznań of January 25, 2017, II SA/Po 890/16, LEX no. 2230062).

The State Treasury is a state legal person and represents state property, whenever by law another state legal person does not do so. In this situation, the State Treasury acts as the owner (*dominium*). This position should be contrasted with the situation in which the authority of the State, i.e. *imperium*, is externalized, when the State acts through appropriate authorities and exercises superiority over other subjects of law, using orders, prohibitions, creating statutory acts, issuing administrative orders and other legal forms, the execution of which is guaranteed by means of administrative coercion.

In view of this, the court of first instance reasonably assumed that the minister's approval of the plan was an internal action taken in connection with the performance of tasks of an ownership nature, i.e. an action in the sphere of *dominium*, i.e. management of the State Treasury's property, i.e. so-called "ownership" actions, and not *imperium* actions.

E. For the above reasons, the Supreme Administrative Court, pursuant to Article 184 of LPBAC, dismissed the cassation complaint.

F. The request included in the reply of the body to the cassation complaint to award the costs of the cassation proceedings could not be accepted. In administrative court proceedings, the parties bear the costs of proceedings related to their participation in the case, unless a specific provision provides otherwise (Article 199 of LPBAC). Exceptions to this rule are set forth in Article 200, Article 201, Article 203 and Article 204 of LPBAC and only in these cases the court may rule on the reimbursement of the costs of the proceedings between the parties (Article 209 of the cited Act). In the examined case, these provisions do not apply. The Supreme Administrative Court in the resolution of February 4, 2008 (file ref. no. I OPS 4/07, ONSAiwsa 2008, no. 2, item 23) explained that the provisions of Article 203 and 204 of LPBAC which determine the manner in which parties bear the costs of cassation proceedings, do not apply when the subject of the cassation complaint is the decision of the court of first instance closing the proceedings in the case.