Supreme Administrative Court
00-011 Warsaw, ul. G.P. Boduena 3/5
General Administrative Chamber
DIVISION II

Date: 15 April 2015
Case ref. no. II OSK 647/14

Please refer to the case number in the reply

1. legal advisor Beata Filpcova
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The Secretariat of the Supreme Administrative Court, General Administrative Chamber hereby sends the official copy of the verdict issued on 25 February 2015, case ref. no. II OSK 647/14 in the case of extraordinary appeal filed by Anna Dziadek against the verdict of the Voivodeship Administrative Court in Gorzów Wielkopolski dated 5 December 2013, case ref. no. II SA/Go 833/13 in the case of appeal filed by Anna Dziadek against the resolution of the Lubuskie Voivodeship Sejmik of 21 March 2012, no. XXII/191/12 concerning the modification of the spatial development plan for the voivodeship.

App.

1. official copy of the verdict

KL

Case ref. no. II OSK 647/14

VERDICT

ON BEHALF OF THE REPUBLIC OF POLAND

Date 25 February 2015

The Supreme Administrative Court in the following composition:

Presiding Judge: Supreme Administrative Court Judge Włodzimierz Ryms (reporter)

Judges: Supreme Administrative Court Judge Barbara Adamiak
Delegated Supreme Administrative Court Judge Jerzy Solarski

Recording clerk: - senior assistant to the judge Anna Sidorowska - Ciesielska

having examined on 25 February 2015

at the court hearing at the General Administrative Chamber

the case of extraordinary appeal by Anna Dziadek

against the verdict of the Voivodeship Administrative Court in Gorzów Wielkopolski

of 5 December 2013, case ref. no. II SA/Go 833/13

issued in the case of appeal by Anna Dziadek

against the resolution of the Lubuskie Voivodeship Sejmik

of 21 March 2012 no. XXII/191/12

concerning the modification of the spatial development plan for the voivodeship.

1. dismissed the extraordinary appeal;

2. decided not to order the appellant to reimburse the authorities with the costs of the extraordinary appeal proceedings.

Justification

In the contested verdict of 8 December 2013 the Voivodeship Administrative Court in Gorzów Wielkopolski dismissed the appeal by Anna Dziadek against the resolution of the Lubuskie Voivodeship Sejmik concerning the modification of the spatial development plan.

In the justification of the verdict the Court quoted the following facts and legal

aspects of the case.

On 21 March 2012 the Lubuskie Voivodeship Sejmik, in accordance with art. 19 point 3 of the Voivodeship Self-Government Act of 5 June 1998 (Dz. U. of 2001, no. 142 item 1590 as amended) and art. 42 par. 1 and 3 of the Spatial Planning and Development Act of 27 March 2003 (Dz. U. No. 80, item 717 as amended) adopted a resolution amending the spatial development plan for the Lubuskie Voivodeship. In the resolution it was stated that the graphic annex does not constitute terms of the plan and the designations presented in the maps are estimates only in terms of 1) surface area (in addition to those defined by the regulations of the law) - designation of an area where the phenomenon, process or postulated development directions occur and require clarification at the poviat or municipality level, or determination of detailed boundaries by the authority, 2) lines - general directions of traffic and infrastructural connections, 3) points - designation of only a general area within a specific municipality or region. Point II 5 of the resolution ("Polish Energy Policy by 2030") states that the resolution takes into account the tasks defined in the programmes adopted by the Council of Ministers, including the "Polish Energy Policy by 2030" programme, while the plan included the investment called: "Gubin Brown Coal Deposits" in the Gubin municipality and Brody municipality.

Anna Dziadek filed an appeal against the aforementioned resolution to the Voivodeship Administrative Court claiming that the contested resolution affects her ability to dispose of her real estate and shapes the method of exercising the ownership right. The appellant stated that she owned the real estate situated in the area covered by the plan and also designated for the public purpose investment in the form of the brown coal strip mine.

The Voivodeship Administrative Court while dismissing the appeal stated that the resolution of the Voivodeship Sejmik concerning the voivodeship spatial development plan is not an act of local law, despite the fact that in accordance with art. 42 par. 2 of the Spatial Planning and Development Act it must be published in the voivodeship's official journal. The voivodeship development plan does not contain general and abstract norms imposing orders and prohibitions of specific behaviour upon specific addressees. According to the first instance Court the appellant failed to prove her legal interest that would be directly and objectively violated by the contested resolution amending the plan. The contested resolution amending the

voivodeship's spatial development plan, as opposed to the local spatial development plan is not a commonly applicable legal act and does not define in general and abstract way the behaviour of its addressees. The provisions of the voivodeship spatial development plan are implemented in the local plan having first agreed the implementation date for the public purpose investment of supralocal importance and the terms of implementation in the local plan. In the light of art. 44 par. 2 of the Spatial Planning and Development Act the aforementioned provisions are implemented by the Voivodeship Marshall with the poviat municipality, town or city mayor. It means that the implementation of the solutions adopted in the voivodeship spatial development plan in the local plan is not automatic, but rather takes place in two stages. First it is necessary to agree the deadline for the planned public utility investment of supralocal importance and the terms of its implementation. One cannot arbitrarily and unilaterally expect that the municipal authorities already upon the adoption of the voivodeship spatial development plan would include the provisions contained therein in the local spatial development plan. The voivodeship plan is a document to a large extent purely descriptive-conceptual in nature, characterised by high degree of generality. Therefore the planned investment exists only in the conceptual sphere of the national energy policy and has not been clarified enabling exact designation of its boundaries, and therefore it is impossible to determine whether and how it would affect use of the real estate owned by the appellant and consequently infringe upon the appellant's rights.

In the extraordinary appeal against the verdict of the Voivodeship Administrative Court in Gorzów Wielkopolski the appellant claimed violation of art. 50 § 1, art. 141 § 4, art. 147 § 1 and art. 151 of the Administrative Courts Procedure Act and art. 90 par. 1 and art. 91 par. 1 of the Voivodeship Self-Government Act, and also of art. 140 and 143 of the Civil Code and of art. 9 par. 2, art. 10 par. 2 point 7, art. 12 par. 3, art. 15 par. 3 point 4b, art. 55 par. 1, 2, 3 and 4 of the Spatial Planning and Development Act. The exact nature of the appellant's interest resulting from the provisions of art. 140 of the Civil Code should not raise any doubts. The contested act of the voivodeship

self-government authorities completely changes the intended purpose of the real estate to which the appellant has the ownership rights. The agricultural real estates owned by the appellant shall be completely liquidated since the construction of the

strip mine cannot be conducted without fully removing all the objects situated on the land. The system of interconnections between the planning acts defined in the Spatial Planning and Development Act causes that the provisions of the voivodeship spatial development plan directly affect the way the appellant exercises her ownership rights. The arrangements made with the Voivode concern the public utility investment implementation deadline and terms rather than the circumstances whether and how the investment will be implemented. Whether the specific investment is conducted within the specific municipality is already determined by the voivodeship spatial development plan. In addition the Voivodeship Administrative Court acting in accordance with the substantive truth principle should analyse accordingly the existence of a legal interest, even if the appellant failed to directly articulate it or failed to quote the specific legal basis. The Court cannot remain passive. The scope of the Court's fact finding has been limited to the determination whether there are individual rights and obligations of the appellant resulting from the regulations of the law that could justify the legitimacy of the appeal. The Court failed to make efforts to find appropriate facts as to the existence of the appellant's legal interest resulting from the real estate ownership right.

Quoting these bases of the extraordinary appeal the appellant requested the repealing of the contested verdict, transfer of the case to the Voivodeship Administrative Court in Gorzów Wielkopolski for re-examination, and the reimbursement of the costs of the proceedings.

In response to the extraordinary appeal the Voivodeship Sejmik just requested the dismissal of the extraordinary appeal, and the reimbursement of the costs of the proceedings. According to the authorities the appellant failed to prove the violation of her legal interest.

The Supreme Administrative Court took the following into consideration:

The extraordinary appeal shall be dismissed because it does not contain justified basis.

The claims included in the extraordinary appeal boil down to the fact that the appellant contests the first instance Court's view that there was no violation of her legal interest as a result of the adoption of the spatial development plan for the Lubuskie Voivodeship. The appellant claimed that the contested resolution infringes

upon her rights resulting from the ownership right.

Examination of the extraordinary appeal against the voivodeship spatial development plan not being an act of local law, which is a public administration act, firstly requires an evaluation whether it is permissible to contest such a resolution, and then whether the resolution infringes upon the legal interest or rights of the appellant. The voivodeship spatial development plan is not an act of local law but rather the act of internal management. This view is also presented in the doctrine (compare Z. Niewiadomski, Planowanie i zagospodarowanie przestrzenne, Komentarz, Warsaw 2015, p. 320, Ł. Maszewski [in:] Aspekty prawne planowania i zagospodarowania przestrzennego, ed. W. Szwajdler, Warsaw 2013, p. 132). One must concur with the view of the first instance Court that was not contested by either the Voivodeship Sejmik or by the appellant that the regulations of art. 90 par. 1 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act and art. 3 § 2 point 6 of the Administrative Courts Procedure Act may constitute the basis of contesting the Voivodeship Sejmik resolution in the scope of public administration despite the fact that the resolution is not an act of local law. Not only acts of local law implemented by the voivodeship self-government authorities can be appeal against before administrative courts, but also other legal actions taken by those authorities, if these actions infringe the rights of other people. This view, which one must accept in this case, was presented in the decision of the Supreme Administrative Court of 8 March 2012 case ref. no. I OSK 306/11.

As for the claims included in the extraordinary appeal one must concur with the appellant that during the examination of an appeal against the voivodeship spatial development plan it was necessary to assess whether the resolution violates the legal interest or rights of the appellant. If and only if there are grounds to conclude that the provisions of the voivodeship spatial development plan violate the legal interest or rights of the appellant it is possible to assess whether the violation complies with the current legal system.

In accordance with art. 90 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act any person whose legal interest or right is violated by a public administration resolution adopted by the voivodeship authorities after an ineffective demand to stop the violation may contest the resolution before the administrative court. As opposed to the proceedings conducted on the basis of the Administrative

Procedure Code regulations, in which in accordance with art. 28 a party to the proceedings can be any person whose legal interest or rights are affected by the proceedings, the party to the proceedings conducted in accordance with art. 90 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act can be only be an entity whose legal interest or right was violated by the contested resolution. The legitimacy of the appeal is therefore based on the claim of the specific entity that the resolution violates its legal interest or right and constitutes a basis for the contesting of the specific resolution adopted by the voivodeship self-government authority.

Although one must concur with the appellant's view that the contested resolution is related to its legal interest, the appellant failed to prove that the legal interest was violated.

The issue, whether the voivodeship spatial development plan violates the legal interest or right of a specific entity, as defined in art. 90 par. 1 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act requires detailed analysis on case-by-case basis, which should take into account the consequences of the adoption of the voivodeship spatial development plan in particular its impact on the legal situation of that entity. This evaluation in the context of the analysed case should refer to provisions of the law regulating the matters of the content of the voivodeship plan and to the extent to which the municipality is bound by the provisions of the contested plan. Whether the voivodeship spatial development plan violates a legal interest or right of a specific entity can be mentioned only if according to the regulation of the law, in particular administrative law, the provisions of the plan impose specific legal obligation as a result of the adoption of the plan. The consequences may be direct and obvious, but they also may result from indirect causes. The legal interest should be separated from the actual interest which boils down to the fact that the specific entity is directly interested in the provisions of the adopted voivodeship spatial development plan, but that interest cannot be supported by the commonly applicable regulation of the law that would constitute a basis of an effective demand for the authority to take appropriate action. Therefore the assessment whether the appellant's legal interest was violated requires an analysis of the provisions of the contested resolution and of the regulations of the Spatial Planning and Development Act regulating the impact of the voivodeship plan provisions on the way the appellant exercises her ownership rights.

The shaping and implementation of the spatial policy in a voivodeship, including the adoption of the voivodeship spatial development plan is one of the tasks of the voivodeship self-government (art. 3 par. 3 of the Spatial Planning and Development Act). It means that the planning rights in the scope of shaping the spatial policy are held not only by the municipality but also by the voivodeship. Adopting a voivodeship spatial development plan the voivodeship sejmik defines in particular: the basis elements of the settlement network in the voivodeship and the transportation and infrastructure connections, the system of protected areas, placement of the supralocal public utility investments, boundaries and development terms of supraregional functional areas, flood risk areas and the presence of documented deposits and documented underground carbon dioxide storage complexes (art. 39 par. 1 of the Spatial Planning and Development Act). Although the voivodeship spatial development plan is not an act of local law but rather an act of the internal management, as a planning act it may affect the content of the local development study and plan. In accordance with art. 10 par. 2 point 7 of the Spatial Planning and Development Act the study defines areas where the supralocal public utility investments will be located in accordance with the voivodeship spatial development plan. If the municipality council did not adopt the study, did not initiate amendments thereof, failed to defined the locations of the public utility investments of national and voivodeship importance included in the voivodeship spatial development plan, having taken actions in order to agree the completion deadline for those investments and the terms of those investments to be included the study, the Voivode asks the municipality council to adopt the study or amend the study by a specific deadline. Upon uneventful expiration of that deadline the Voivode drafts the local spatial development plan or and amendment thereto for the area affected by the municipality's omission in the scope necessary to implement the public utility investment and issues a substitute decision in this case. The plan adopted in this procedure has the same legal consequences as the local spatial development plan (art. 12 par. 3 of the Spatial Planning and Development Act). In addition, in the spatial plan the municipality defines as required the boundaries of the areas of public utility investments included in the voivodeship spatial development plan (art. 15 par. 3 point 4b of the Spatial Planning and Development Act). The provisions of the voivodeship spatial development plan are implemented in the local plan after the voivodeship marshal consults the completion deadline with the public utility investment of

supralocal importance and the terms of its inclusion in the local plan with the executive authority of the municipality (art. 44 of the Spatial Planning and Development Act).

Violation of the legal interest or of the rights of the land owner by the resolution concerning the voivodeship spatial development plan is difficult to prove because it does not have the consequences typical for the act of local law, in particular for the local plan and does not affect directly the way the real estate ownership right is exercised, but rather is binding when the study and local plan are drafted and adopted. The binding power of the voivodeship spatial development plan in relation to the municipality's planning acts mostly depends on the provisions of the voivodeship spatial development plan and the provisions thereof. Bearing in mind the provisions of the Spatial Planning and Development Act one cannot preclude a priori any possible violation of the rights or legal interest of the owners of the real estates situated in the area covered by the voivodeship spatial development plan taking into account the differences between the voivodeship spatial development plan and the planning acts of the municipality in terms of direct and real consequences of those acts. Not every voivodeship spatial development plan violates the legal interest or rights of the real estate owners. The very fact that a real estate is situated in an area covered by the voivodeship spatial development plan does not prove that the legal interest or rights of the owner are violated.

The appellant claimed in the extraordinary appeal that provisions of art. 50 § 1, art. 134 § 1, art. 141 § 4, art. 147 § 1 and art. 151 of the Administrative Courts Procedure Act, art. 91 par. 1 and art. 90 par. 1 of the Voivodeship Self-Government Act, art. 140 and 143 of the Civil Code, and art. 9 par. 2, art. 10 par. 2 point 7, art. 15 par. 3 point 4b, art. 44 par. 1, 2, 3, and 4 of the Spatial Planning and Development Act were violated by the very fact that the first instance Court incorrectly assumed that the contested resolution does not violate the appellant's legal interest. In the justification of the extraordinary appeal the appellant claimed that her legal interest was violated due to the fact that the voivodeship spatial development plan foresees construction of a strip mine on her real estates among others. Formulating these claims the appellant failed to state in the appeal or in the extraordinary appeal or during the court hearing, which provisions of the voivodeship spatial development plan specifically stipulate the construction of a strip mine on the appellant's real

estates. The contested resolution only indicates that the area within the Gubin, Brody and Lubsko municipalities were designated in the plan as basic problematic areas, which require a separate economic policy and spatial policy in the scope of potential exploitation of the brown coal deposits Gubin and Gubin 1 and the location of a power plant near the brown coal deposits situated near Gubin, Lubsko and Brody. The plan assumes that the area defined as the "brown coal deposits complex in the Gubin and Brody municipalities" is a problematic area that requires detailed, separate analyses and decisions conducted in addition to the planning activities related to the voivodeship development plan. In particular this requirement applies to the impact of the strip mine on the water system in the entire region, taking into account the Oder river and the cross-border aspects in relation to Germany. The access to those strategic resources should be secured through investment projects conducted as public utility investments of supralocal importance. In the contested plan the "Gubin" brown coal deposits, location Gubin municipality, Brody municipality, have been defined as public utility investments. This general wording of the voivodeship spatial development plan provisions does not indicate that the appellant's legal interest was violated, in particular it does not indicate that the construction of the brown coal strip mine is planned on the appellant's real estates. The voivodeship plan only stipulates the obligation of the municipalities to take into account the brown coal deposits situated in the Gubin municipality and Brody municipality and to protect those strategic resources in further planning processes. Therefore one cannot concur with the claim stated in the extraordinary appeal that the first instance Court incorrect assumed that the contested resolution does not violate the appellant's legal interest as a real estate owner.

In this situation one cannot assume that the basis of the extraordinary appeal effectively contested the correct assessment of the lack of violation of the appellant's legal interest in particular if the provisions of the voivodeship spatial development plan were formulated so generally. The appellant failed to point out any specific provisions of the voivodeship spatial development plan that would violate here constitutional or legislated rights. The claim that the regulations of the administrative courts procedure, i.e. art. 134 § 1 and art. 141 § 4 of the Administrative Courts Procedure Act concerning the defective determination of facts or failure to take into account violations of the law are incorrect and are not related to the claims of

substantive law violations. There is no basis to assume that the first instance Court incorrectly evaluated the case and assumed incorrectly determined facts of the case. Consequently the claim of violation of art. 151 of the Administrative Courts Procedure Act is also incorrect because the first instance court had sufficient grounds to dismiss the appeal and therefore there were no grounds to invalidate the resolution (art. 147 of the Administrative Courts Procedure Act did not apply).

In this situation the Supreme Administrative Court, in accordance with art. 184 of the Administrative Court Procedure Act, dismissed the extraordinary appeal.

In accordance with art. 207 § 2 of the Administrative Courts Procedure Act the Court decided not to order the appellant to reimburse the costs of the proceedings.

Supreme Administrative Court
00-011 Warsaw, ul. G.P. Boduena 3/5
General Administrative Chamber
DIVISION II

Date 10 April 2015
Case ref. no. II OSK 1598/13

Please refer to the case number □in the reply

1. Legal Advisor BEATA FILIPCOVA
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The Secretariat of the Supreme Administrative Court, General Administrative Chamber hereby sends the official copy of the verdict issued on 25 February 2015, case ref. no. II OSK 1598/13 in the case of extraordinary appeal filed by the Gubin Municipality against the verdict of the Voivodeship Administrative Court in Gorzów Wielkopolski dated 20 March 2013, case ref. no. II SA/Go 154/13 in the case of appeal filed by Gubin Municipality against the resolution of the Lubuskie Voivodeship Sejmik of 21 March 2012, no. XXII/191/12 concerning the modification of the spatial development plan for the voivodeship.

App.

1. official copy of the verdict

KL

Case ref. no. II OSK 1598/13

VERDICT

ON BEHALF OF THE REPUBLIC OF POLAND

Date 25 February 2015

The Supreme Administrative Court in the following composition:

Presiding Judge: Supreme Administrative Court Judge Włodzimierz Ryms (reporter)

Judges: Supreme Administrative Court Judge Barbara Adamiak
Delegated Supreme Administrative Court Judge Jerzy Solarski

Recording clerk: - senior assistant to the judge Anna Sidorowska - Ciesielska

having examined on 25 February 2015

at the court hearing at the General Administrative Chamber

the case of extraordinary appeal by the Gubin Municipality

against the verdict of the Voivodeship Administrative Court in Gorzów Wielkopolski

of 20 March 2013, case ref. no. II SA/Go 154/13

issued in the case of appeal by the Gubin Municipality

against the resolution of the Lubuskie Voivodeship Sejmik

of 21 March 2012 no. XXII/191/12

concerning the modification of the spatial development plan for the voivodeship.

1. dismissed the extraordinary appeal;

2. decided not to order the appellant to reimburse the authorities with the costs of the extraordinary appeal proceedings.

Justification

In the contested verdict of 20 March 2013 the Voivodeship Administrative Court in Gorzów Wielkopolski dismissed the appeal by Gubin Municipality against the resolution of the Lubuskie Voivodeship Sejmik concerning the modification of the voivodeship development plan.

In the justification of the verdict the Court quoted the following facts and legal

aspects of the case.

On 21 March 2012 by virtue of Resolution no. XXII/191/12 the Lubuskie Voivodeship Sejmik, in accordance with art. 19 point 3 of the Voivodeship Self-Government Act of 5 June 1998 (Dz. U. of 2001, no. 142 item 1590 as amended) and art. 42 par. 1 and 3 of the Spatial Planning and Development Act of 27 March 2003 (Dz.U. No. 2012, item 647 as amended) adopted a resolution amending the spatial development plan for the Lubuskie Voivodeship.

The Gubin Municipality appeal against that resolution to the Voivodeship Administrative Court in Gorzów Wielkopolski. The appellant claimed that in accordance with art. 10 par. 2 point 7 of the Spatial Planning and Development Act the Gubin Municipality, which is situated in the area covered by the Lubuskie Voivodeship spatial development plan is obligated to include in the study of terms and directions of spatial development areas where the supralocal public utility investments would be located in accordance with the provisions of the voivodeship spatial development plan. In accordance with art. 15 par. 3 point 4b of the Spatial Planning and Development Act the municipality is also obligated to include in the local spatial development plan the boundaries of the supralocal public utility investments included in the voivodeship spatial development plan. According to the appellant the contested plan directly interferes with the scope of competence and tasks of the Municipality in the scope of shaping and conducting the spatial policy within the municipality because the appellant is obligated to include the public utility investment entailing construction of a brown coal strip mine in the study and local plan.

The Voivodeship Administrative Court while dismissing the appeal stated that there is no relationship between the sphere of individual rights and obligations of the appellant resulting from the norms of the substantive law and the contested resolution. Resolution of the voivodeship sejmik concerning the voivodeship spatial development plan is a planning act defining the terms of spatial organisation of the voivodeship. According to the Voivodeship Administrative Court the appellant failed to prove the legal interest that would be objectively violated by the contested resolution. Since the voivodeship spatial development plan is not an act of the local law and therefore does not contain commonly applicable legal norms, one of the main requirements of substantive examination of such appeal is for the appellant to

precisely point out the violation of a specific legal interest resulting from the norms of the substantive law, which the appellant fail to do. The legal interest in contesting the resolution must have its source in commonly applicable regulations of the law and must be sufficiently individualised and precise, which is not the case here. The regulations of art. 10 and art. 15 of the Spatial Planning and development Act quoted by the appellant in relation to the extent to which a municipality is bound by the voivodeship spatial development plan provisions when adopting its own plans do not prove that the appellant's legal interest was violated. The Spatial Planning and Development Act incorporates a principle of division of tasks and competence of the local self-government and the state, which means that municipalities may independently determine the intended purpose of areas situated within their boundaries although they do not enjoy complete independence because they are obligated to take into account e.g. provisions of the voivodeship spatial development plan. The voivodeship self-government authorities are in turn obligated to take into account the national spatial development concept provisions in the voivodeship spatial development plan. Binding of one authority when conducting public administration activities by provisions or indications issued by another authority essentially differs from the imposition of specific obligations or granting of specific rights to the entity (in this case the municipality). This relationship is not a typical administrative law relationship where there is an administrative authority and an entity subordinated to that authority. Therefore one cannot claim violation of the municipality's legal interest on the basis of this relationship. According to the first instance court the legal interest in contesting the resolution cannot be drawn from the result of the local referendum. The result of the referendum reflects the views of the local community and imposes an obligation on the Municipality authorities to take actions in order to implement the issue subjected to vote in a referendum. It does not mean that the decision made by the municipality residents constitutes the Municipality's legal interest in contesting the resolution concerning the voivodeship spatial development plan.

In the extraordinary appeal the Gubin Municipality claimed violation of art. 50 § 1, art. 134 § 1, art. 141 § 4, art. 147 § 1 and art. 151 of the Administrative Courts Procedure Act, art. 91 par. 1 and art. 90 par. 1 of the Voivodeship Self-Government Act of 5 June 1998 (Dz.U. of 2001, No. 142, item 1590 as amended), and also art. 58

par.1, art. 85 of the Local Referendum Act of 15 September 2000 (Dz.U. No. 88, item 985 as amended), art. 3 par. 1 and 2, and art. 11 of the European Charter of Local Government drawn in Strasbourg on 15 October 1985 (Dz.U. of 1994, No. 124, item 807 as amended), art. 140 and 143 of the Civil Code, art. 185 par. 1 and 2 of the Constitution, art. 3 par. 1, art. 10 par. 2 point 7 and art. 15 par. 3 point 4b of the Spatial Planning and Development Act, and art. 7 par. 1 point 1 of the Municipality Self-Government Act. According to the appellant Municipality the voivodeship spatial development act is an act in the scope of public administration. The contested resolution violates the municipality's ownership right because it designates area owned by the municipality for the construction of a strip mine. If the voivodeship's planning act applies to an area owned by the municipality, the Voivodeship Administrative Court should have taken into account the municipality's ownership rights ex officio. The first instance Court by incorrectly determining the facts failed to take into account the ownership right as the source of the appellant's legal interest. According to the justification of the appeal and according to all the circumstances of the case (range of the brown coal strip mine covering 8,470 ha of area of the Gubin municipality) the appellant has the ownership right to the real estate in the area covered by the plan and therefore the investment project included in that plan in the form of a strip mine significantly changed the intended purpose of those real estates. Despite the obligations in the scope of fact finding the Voivodeship Administrative Court failed to make any effort to determine and explain the existence of the appellant's legal interest resulting from the ownership of real estates. In a separate case concerning the same resolution the town of Gorzów Wielkopolski was asked to prove the legal interest. In this case the appellant's legal interest should be found in the fact that the contested act deprives the Municipality from its right to respect the intentions of the residents expressed in the referendum and even imposes upon the appellant the obligation to contradict the intentions of the residents. The Municipality has the right to shape the spatial policy within the confines of the law within its own territory - including to adopt a local study and plan. In the scope in which the Voivodeship Sejmik affects the Municipality's freedom to exercise that right it infringes upon the Municipality's rights guaranteed on the constitutional and legislative level. In accordance with art. 10 par. 2 point 7 of the Spatial Planning and Development Act the Municipality is obligated to include in the study the areas where the supralocal public utility investments will be located in accordance with the

voivodeship spatial development plan.

Quoting these bases of the extraordinary appeal the Municipality requested the repealing of the contested verdict, transfer of the case to the Voivodeship Administrative Court in Gorzów Wielkopolski for re-examination, and the reimbursement of the costs of the proceedings.

In response to the extraordinary appeal the Voivodeship Sejmik just requested the dismissal of the extraordinary appeal, and the reimbursement of the costs of the proceedings. According to the authorities the appellant failed to prove the violation of her legal interest.

The Supreme Administrative Court took the following into consideration:

The extraordinary appeal shall be dismissed because it does not contain a justified basis.

The claims included in the extraordinary appeal boil down to the fact that the Gubin Municipality contests the first instance Court's view that there was no violation of the Municipality's legal interest as a result of the adoption of the spatial development plan for the Lubuskie Voivodeship. The appellant claimed that the contested resolution interfered with the scope of rights of the Municipality resulting from the Municipality's ownership rights, the principle of the Municipality's independence and planning authority. In addition, the Municipality claimed that the violation of its legal interest is also related to the negative result of the local referendum conducted concerning the location of the brown coal strip mine.

Examination of the extraordinary appeal against the voivodeship spatial development plan not being an act of local law, which is a public administration act, firstly requires an evaluation whether it is permissible to contest such a resolution, and then whether the resolution infringes upon the legal interest or rights of the appellant. The voivodeship spatial development plan is not an act of local law but rather the act of internal management. This view is also presented in the doctrine (compare Z. Niewiadomski, Planowanie i zagospodarowanie przestrzenne, Komentarz, Warsaw 2015, p. 320, Ł. Maszewski [in:] Aspekty prawne planowania i zagospodarowania przestrzennego, ed. W. Szwajdler, Warsaw 2013, p. 132). One must concur with the view of the first instance Court that was not contested by either the Voivodeship Sejmik or by the Municipality that the regulations of art. 90 par. 1 in

relation to art. 91 par. 1 of the Voivodeship Self-Government Act and art. 3 § 2 point 8 of the Administrative Courts Procedure Act may constitute the basis of contesting the Voivodeship Sejmik resolution in the scope of public administration despite the fact that the resolution is not an act of local law. Not only acts of local law implemented by the voivodeship self-government authorities can be appeal against before administrative courts, but also other legal actions taken by those authorities, if these actions infringe the rights of other people. This view, which one must accept in this case, was presented in the decision of the Supreme Administrative Court of 8 March 2012 case ref. no. I OSK 306/11. As for the claims included in the extraordinary appeal one must concur with the appellant that during the examination of an appeal against the voivodeship spatial development plan it was necessary to assess whether the resolution violates the legal interest or rights of the appellant. If and only if there are grounds to conclude that the provisions of the voivodeship spatial development plan violate the legal interest or rights of the appellant it is possible to assess whether the violation complies with the current legal system.

In accordance with art. 90 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act any person whose legal interest or right is violated by a public administration resolution adopted by the voivodeship authorities after an ineffective demand to stop the violation may contest the resolution before the administrative court. As opposed to the proceedings conducted on the basis of the Administrative Procedure Code regulations, in which in accordance with art. 28 a party to the proceedings can be any person whose legal interest or rights are affected by the proceedings, the party to the proceedings conducted in accordance with art. 90 in relation to art. 91 par. 1 of the Voivodeship Self-Government Act can be only be an entity whose legal interest or right was violated by the contested resolution. The legitimacy of the appeal is therefore based on the claim of the specific entity that the resolution violates its legal interest or right and constitutes a basis for the contesting of the specific resolution adopted by the voivodeship self-government authority.

Although one must concur with the Municipality's view that the contested resolution is related to the appellant Municipality's legal interest, the appellant failed to prove that the legal interest was violated.

The issue, whether the voivodeship spatial development plan violates the legal interest or right of a specific entity, as defined in art. 90 par. 1 in relation to art. 91

par. 1 of the Voivodeship Self-Government Act requires detailed analysis on case-by-case basis, which should take into account the consequences of the adoption of the voivodeship spatial development plan in particular its impact on the legal situation of that entity. This evaluation in the context of the analysed case should refer to provisions of the law regulating the matters of the content of the voivodeship plan and to the extent to which the municipality is bound by the provisions of the contested plan. Whether the voivodeship spatial development plan violates a legal interest or right of a specific entity can be mentioned only if according to the regulation of the law, in particular administrative law, the provisions of the plan impose specific legal obligation as a result of the adoption of the plan. The consequences may be direct and obvious, but they also may result from indirect causes. The legal interest should be separated from the actual interest which boils down to the fact that the specific entity is directly interested in the provisions of the adopted voivodeship spatial development plan, but that interest cannot be supported by the commonly applicable regulation of the law that would constitute a basis of an effective demand for the authority to take appropriate action. Therefore the assessment whether the appellant Municipality's legal interest was violated requires an analysis of the provisions of the contested resolution and of the regulations of the Spatial Planning and Development Act regulating the impact of the voivodeship plan provisions on the content of individual spatial policy instruments within the municipality.

The shaping and implementation of the spatial policy in a voivodeship, including the adoption of the voivodeship spatial development plan is one of the tasks of the voivodeship self-government (art. 3 par. 3 of the Spatial Planning and Development Act). It means that the planning rights in the scope of shaping the spatial policy are held not only by the municipality but also by the voivodeship. Adopting a voivodeship spatial development plan the voivodeship sejmik defines in particular: the basis elements of the settlement network in the voivodeship and the transportation and infrastructure connections, the system of protected areas, placement of the supralocal public utility investments, boundaries and development terms of supraregional functional areas, flood risk areas and the presence of documented deposits and documented underground carbon dioxide storage complexes (art. 39 par. 1 of the Spatial Planning and Development Act). Although the voivodeship spatial development plan is not an act of local law but rather an act of

the internal management, as a planning act it may affect the shape of planning acts taken by the municipality. In accordance with art. 10 par. 2 point 7 of the Spatial Planning and Development Act the study defines areas where the supralocal public utility investments will be located in accordance with the voivodeship spatial development plan. If the municipality council did not adopt the study, did not initiate amendments thereof, failed to defined the locations of the public utility investments of national and voivodeship importance included in the voivodeship spatial development plan, having taken actions in order to agree the completion deadline for those investments and the terms of those investments to be included the study, the Voivode asks the municipality council to adopt the study or amend the study by a specific deadline. Upon uneventful expiration of that deadline the Voivode drafts the local spatial development plan or and amendment thereto for the area affected by the municipality's omission in the scope necessary to implement the public utility investment and issues a substitute decision in this case. The plan adopted in this procedure has the same legal consequences as the local spatial development plan (art. 12 par. 3 of the Spatial Planning and Development Act). In addition, in the spatial plan the municipality defines as required the boundaries of the areas of public utility investments included in the voivodeship spatial development plan (art. 15 par. 3 point 4b of the Spatial Planning and Development Act). The binding power of the voivodeship spatial development plan in relation to the municipality's planning acts is difficult to determine in general and should be assessed in relation to a specific voivodeship plan. The legal importance of the voivodeship spatial development plan and the consequences of the municipality authorities shaping local spatial policy being bound by the voivodeship plan mostly depend on the content of that plan and its provisions. Bearing in mind the regulations of the Spatial Planning and Development Act one cannot preclude the possibility of a violation of the municipality's rights or legal interest by the fact that it determines the content of the study and local spatial development plan in the area covered by the voivodeship spatial development plan. Meanwhile it does not mean that every voivodeship spatial development plan violates the municipal planning rights by the fact that it determines the content of the study and local spatial development plan within the territory of the voivodeship. The very fact that the municipality is situated in an area covered by the voivodeship spatial development plan does not prove that its legal interest or rights are violated.

In the extraordinary appeal the appellant also claimed violation of art. 50 § 1, art. 134 § 1, art. 141 § 4, art. 147 § 1, and art. 151 of the Administrative Courts Procedure Act, and art. 91 par. 1 and art. 90 par. 1 of the Voivodeship Self-Government Act, art. 140 and 143 of the Civil Code, art. 3 par. 1, art. 10 par. 2 point 7 and art. 15 par. 3 point 4b of the Spatial Planning and Development Act, art. 7 par. 1 point 1 of the Municipality Self-Government Act, which boils down to the claim that the first instance Court incorrectly assumed that the contested resolution does not violate the Municipality's legal interest.

In the justification of the extraordinary appeal the appellant Municipality claimed that its legal interest was violated due to the fact that the voivodeship spatial development plan foresees construction of a strip mine in the territory of the Gubin Municipality that owns the real estates in that area. Formulating these claims the appellant failed to state in the appeal or in the extraordinary appeal or during the court hearing, which provisions of the voivodeship spatial development plan specifically stipulate the construction of a strip mine in the Municipality's territory. The contested resolution only indicates that the area within the Gubin, Brody and Lubsko municipalities were designated in the plan as basic problematic areas, which require a separate economic policy and spatial policy in the scope of potential exploitation of the brown coal deposits Gubin and Gubin 1 and the location of a power plant near the brown coal deposits situated near Gubin, Lubsko and Brody. The plan assumes that the area defined as the "brown coal deposits complex in the Gubin and Brody municipalities" is a problematic area that requires detailed, separate analyses and decisions conducted in addition to the planning activities related to the voivodeship development plan. In particular this requirement applies to the impact of the strip mine on the water system in the entire region, taking into account the Oder river and the cross-border aspects in relation to Germany. The access to those strategic resources should be secured through investment projects conducted as public utility investments of supralocal importance. In the contested plan the "Gubin" brown coal deposits, location Gubin municipality, Brody municipality, have been defined as public utility investments. This general wording of the voivodeship spatial development plan provisions does not indicate that the Municipality's legal interest was violated, in particular it does not indicate that the construction of the brown coal strip mine is planned on the appellant's real estates. The voivodeship plan only

stipulates the obligation of the municipalities to take into account the brown coal deposits situated in that Municipality and to protect those strategic resources by the Gubin Municipality in further planning processes. Therefore one cannot concur with the claim stated in the extraordinary appeal that the first instance Court incorrect assumed that the contested resolution does not violate the appellant Municipality's legal interest as a real estate owner.

The appellant also failed to prove that the contested resolution formulated in general manner (general indication that in the Gubin Municipality there are brown coal deposits that require recognition in the further planning process) violates the constitutionally guaranteed independence and planning authority of the Municipality.

The obligation to include the documented deposits in the study results not only from the voivodeship spatial development plan, but also from art. 10 par. 1 point 11 of the Spatial Planning and Development Plan and from art. 72 par. 1 point 1 and 2 of the Environmental Protection Act. In addition, art. 125 of the Environmental Protection Act stipulates the obligation to protect natural deposits. The municipality's independence is not absolute and can be limited to certain extent. The very reference to regulations of art. 165 of the Constitution and art. 7 par. 1 point 1 of the Municipality Self-Government Act and the regulations of the Spatial Planning and Development Act concerning the binding of the Municipality by the provisions of the voivodeship spatial development plan cannot constitute a substantive law basis of claims that the principle of the Municipality's independence and planning authority was violated without referring to specific provisions of the voivodeship spatial development plan that violate or limit the planning authority reserved to the Municipality. The claims included in the extraordinary appeal boil down to general statements that the voivodeship plan stipulates construction of a strip mine in the Gubin Municipality (investment covering 8,470 ha of the Municipality's area), which the Municipality is obligated to introduce in the study and local plan. Meanwhile these statements are not supported by the provisions of the contested resolution. General provisions of the Lubuskie Voivodeship Spatial Development Plan concerning the public utility investment – the Gubin brown coal deposit – without further clarification indicating the location of the deposit do not determine the location of the investment project and the method of development of the Municipality's area.

One also cannot concur with the alleged violation of art. 85 in relation to art. 58

par. 1 of the Local Referendum Act in relation to art. 3 par. 1 and 2 and art. 11 of the European Charter of Local Government. The appellant referring to those regulations attempts to prove its legal interest by claiming that the provisions included in the voivodeship plan violate that interest because they contradict the result of the referendum. Responding to this claim one should firstly state that the regulations of the Spatial Planning and Development Act clearly stipulate that the planning assumptions are determined in the procedure defined in the Act. The Supreme Administrative Court in the verdict of 20 March 2014, case ref. no. II OSK 344/14 stated that the conducting of a referendum concerning planning assumptions is contrary to the regulations of the Spatial Planning and Development Act, which in a detailed procedure, by awarding the decision-making right to the municipality, guarantee the participation of the local community in a strictly regulated forms, which do not include a local referendum. Therefore one cannot ascribe the result of the referendum such importance that would justify a violation of the municipality's legal interest.

In this situation one cannot assume that the basis of the extraordinary appeal effectively contested the correct assessment of the lack of violation of the appellant's legal interest in particular if the provisions of the voivodeship spatial development plan were formulated so generally. The appellant failed to point out any specific provisions of the voivodeship spatial development plan that would violate here constitutional or legislated rights. The claim that the regulations of the administrative courts procedure, i.e. art. 134 § 1 and art. 141 § 4 of the Administrative Courts Procedure Act concerning the defective determination of facts or failure to take into account violations of the law are incorrect and are not related to the claims of substantive law violations. There is no basis to assume that the first instance Court incorrectly evaluated the case and assumed incorrectly determined facts of the case. Consequently the claim of violation of art. 151 of the Administrative Courts Procedure Act is also incorrect because the first instance court had sufficient grounds to dismiss the appeal and therefore there were no grounds to invalidate the resolution (art. 147 of the Administrative Courts Procedure Act did not apply).

In this situation the Supreme Administrative Court, in accordance with art. 134 of the Administrative Court Procedure Act, dismissed the extraordinary appeal.

In accordance with art. 207 § 2 of the Administrative Courts Procedure Act the

Court decided not to order the appellant to reimburse the costs of the proceedings.