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Glosa do uchwały Naczelnego Sądu Administracyjnego z 30 czerwca 2022 r., sygn. akt I OPS1/22

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Streszczenie:

Komentowana uchwała dotyczy problematyki związanej z przysługiwaniem legitymacji procesowej podmiotom czynności prawnych ze sfery prawa cywilnego w postępowaniu administracyjnym. Rozważania Naczelnego Sądu Administracyjnego koncentrują się na źródłach i specyfice interesu prawnego w prawie administracyjnym i zmierzają do ustalenia, czy strona umowy przelewu, ujętej w art. 509 k.c., której przedmiotem jest wierzytelność odszkodowawcza za wywłaszczenie własności nieruchomości, jako nabywca tej wierzytelności w sprawie o ustalenie odszkodowania ma interes prawny do bycia stroną, w rozumieniu art. 28 k.p.a.

Słowa kluczowe: strona postępowania administracyjnego, czynność prawna ze sfery prawa cywilnego, interes prawny, odszkodowanie za wywłaszczenie własności nieruchomości

Gloss to the resolution of the Supreme Administrative Court of 30 June 2022, file ref. no. I OPS 1/22

Abstract:

The commented resolution concerns issues related to whether entities involved in a civil law transaction have a locus standi in administrative proceedings. The deliberations of the Supreme Administrative Court (SAC) focus on the sources and specific nature of legal interest in administrative law and are aimed at determining whether a party to an assignment agreement, defined in Article 509 of the Civil Code, whose object is the claim for compensation for expropriation of real estate does, as an the assignee of this claim in a case for determination of compensation, have a legal interest to be a party in the meaning of Article 28 of the Code of Administrative Procedure.

Keywords: party to administrative proceedings, civil law legal transactions, legal interest, compensation for expropriation of real estate

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1. Introduction

The resolution under consideration has been adopted on the basis of Article 15, item 1, point 3 of the Proceedings Before Administrative Courts Act of 30 August 2002[2] in connection with the emergence of a legal question causing serious doubt while the Supreme Administrative Court, in a case with ref. no. I OSK 810/19, was examining a cassation complaint against the judgement of the Gdańsk Provincial Administrative Court of 9 January 2019, file ref. no. II SA/Gd 840/18, concerning refusal to initiate proceedings in the matter of compensation for expropriated real estate.

The discussed legal question arose in connection with serious doubts as to whether a party to a debt assignment agreement entered into on the basis of Article 509 of the Civil Code of 23 April 1964,[3] whose object is a compensatory claim for deprivation of the right of ownership due to a public law event or act, can be granted the status of a party in a case for determination of compensation. These doubts emerged due to discrepancies in legal theory and judicial decisions as to whether an assignment agreement may be treated as a source of legal interest depending on the assessment if the claim for compensation being its object has a public or private law nature.

2. Factual background

The commented resolution was passed against the following factual background.

An authority approved by means of a decision a proposal to divide real estate being the property of the complainant. Based on the decision, the ownership of a plot on which a road was to be built passed to the commune without any compensation being paid. Subsequently the complainant and the P. company concluded, on the basis of Article 509 of the Civil Code, an agreement assigning all claims for compensation on account of land forming a land real estate being taken over by the commune. The P. company applied to the authority to determine compensation on the company's behalf due to the commune taking over land real estate which passed to the commune by operation of law in connection with a final decision of the authority. The county head refused to initiate proceedings to determine compensation for the right of ownership of real estate on behalf of the P. company, stating that the applicant is not the individual whose right of ownership was expropriated or their heir, and the produced assignment agreement could not transfer compensatory claims to the applicant. In examining the complaint of the P. company against the decision of the authority, the first instance

[2] Dz.U. z 2022 r., poz. 329, z późn. zm.; dalej jako: p.p.s.a.

[3] Dz.U. z 2020 r.. poz. 1740, z późn. zm.; dalej jako: k.c.

court considered that a compensatory claim for expropriated real estate, like any compensatory claim, has a civil law nature and is a transferable claim which can therefore be the object of a debt assignment agreement under Article 509 of the Civil Code, as a result of which the obligation relationship remains unchanged except for the person of the creditor. A debt assignment that transfers to the P. company the right to demand compensation to be determined and paid on that account means that the company has a legal interest concerning the proceedings in that scope and should be considered a party to administrative proceedings. For these reasons, the first instance court quashed the appealed decision of the authority refusing to initiate proceedings to determine compensation.

As the court turned to the SAC in the manner provided for in Article 187, item 1 of the Proceedings Before Administrative Courts Act to resolve a legal question causing serious doubts,[4] the SAC, in examining a cassation complaint against the aforesaid first instance court judgement, noted that on one hand, the view according to which the source of legal interest referred to in Article 28 of the Code of Administrative Procedure of 14 June 1960[5] must be a substantive law norm is established and indisputable in legal theory and judicial decisions. On the other hand, however, this view is not followed with respect to a party to an assignment agreement referred to in Article 509 of the Civil Code, and the assignment agreement is treated as a source of legal interest depending on the assessment of whether the claim for compensation being its object has a private or public law nature.

3. Resolution of the SAC

The SAC, sitting in a panel of seven judges and having examined the aforesaid legal question, adopted the following resolution:[6]

> "1. An assignment agreement, as defined in Article 509 of the Civil Code of 23 April 1964 (Dz. U. 2020, item 1740, as amended), whose object is compensatory claim for deprivation of the right of ownership due to a public law event or act, does not by itself grant to the purchaser of such claim the status of a party within the meaning of Article 28 of the Code of Administrative Procedure of 14 June 1960 (Dz. U. 2021, item 735, as amended) in a case for determination of compensation referred to in Article

[4] Postanowienie Naczelnego Sądu Administracyjnego z 7 lutego 2022 r., sygn. akt I OSK 810/19, LEX nr 332 5178.

[5] Dz.U. z 2021 r.. poz. 735 z późn. zm.; dalej jako: k.p.a.

[6] Uchwała składu siedmiu sędziów Naczelnego Sądu Administracyjnego z 30 czerwca 2022 r., sygn. akt I OPS 1/22, ONSAiWSA 2022/5/64.

128, item 1 of the Real Estate Management Act of 21 August 1997 (Dz. U. 2021, item 1899, as amended);
2. The source of legal interest referred to in Article 28 of the Code of Administrative Procedure is a norm of generally applicable law and not the consequences of a legal transaction undertaken by a civil law entity."

The justification of the resolution mentions that the essence of the submitted legal question relates to whether parties to civil law legal transactions have a locus standi in administrative proceedings to determine the compensation referred to in Article 128, item 1 of the Real Estate Management Act of 21 August 1997.[7] Citing a considerable body of court decisions, the SAC declared that the source of legal interest in administrative law lies in substantive law norms, which must be norms of generally applicable law. The SAC reasoned that only a close connection between an individual interest and a legal norm which has the nature of a rule norm and is the source of such interest allows the interest to be classified as a legal interest. This close connection which must exist between the individual interest and the underlying legal norm for the interest to be classified as legal interest means that such interest is a direct one. Further in the resolution, the SAC analysed in detail the notion of "direct legal interest" and concluded that the characteristics of legal interest that cause it to be a direct one justify the conclusion that the consequences of legal transactions entered into by civil law entities by themselves do not constitute a source of legal interest in the administrative law sphere. If the legislator sees the need to closely connect the legal situation of a particular entity with civil law acts and transactions in the administrative law sphere, a separate legal norm is created whose contents refers directly to such acts or transactions.

The resolution concluded that the presented argumentation related to the features of legal interest in administrative law which result from the specific character of that branch of law and the nature of sources of such interest in the administrative law sphere that determine the close connection between an individual interest and the underlying legal norm justifies the statement that it is a generally applicable norm of substantive law and not the outcome of a legal transaction undertaken by a civil law entity that constitutes the source of legal interest which underlies locus standi in cases being the object of proceedings before administrative authorities and administrative courts, including the locus standi defined by the contents of Article 28 of the CAP.

[7] Dz.U. z 2021 r., poz. 1899 z późn. zm.; dalej jako: u.g.n.

4. Assessment of the resolution

I share the view presented in the cited resolution, offering the following arguments in support.

The issues discussed in the resolution are of very considerable importance as regards the impact of the civil law sphere (and more specifically the outcomes of legal transactions entered into by civil law entities) on administrative law as far as interpreting the notion of legal interest found in Article 28 of the CAP is concerned. The resolution explains very clearly the differences between these two branches of law, particularly in the context of sources of legal interest in the civil law and administrative law spheres. In showing these differences, the SAC explained why the results of a legal transaction entered into by a civil law entity do not constitute a source of legal interest referred to in Article 28 of the CAP. Even though the resolution deals with a legal question concerning the status of a party in proceedings to determine compensation for deprivation of the right of ownership of real estate due to public law event or act (referred to below as “compensation for expropriation of real estate” for short), it may undoubtedly, mainly due to its universal nature, be applicable in any other administrative proceedings, especially because of the contents of the resolution concerning Article 28 of the CAP.

Pursuant to Article 28 of the CAP, a party is anyone whose legal interest or obligation is the object of the proceedings or anyone who demands the authority to act due to the party's legal interest or obligation. The notion of legal interest – the matter with which the discussed legal question deals – has not been defined in the provisions of the Code of Administrative Procedure. Multiple definitions have been proposed in both legal theory and judicial decisions. Legal interest is characterised by being individual, concrete, current and objectively verifiable and its existence is confirmed by facts which are the prerequisites for application of a substantive law provision.[8] An entity has legal interest when it is able to effectively demand an authority to act to satisfy its own needs on the basis of a specific provision of law. Actually, therefore, it is not Article 28 of the CPA but another provision (legal norm) protecting the rights of a particular person that grants that person the status of a party in a specific case, and the objective of administrative proceedings is to issue a resolution that defines these rights.[9] The contents of the notion of legal interest will be a public subjective right understood as a specific benefit granted by a provision of law to an individual and able to be actualised in administrative proceedings in which such right is the object of an

[8] Wyrok Naczelnego Sądu Administracyjnego z 23 marca 1999 r., sygn. akt I SA 1189/98, LEX nr 47969.

[9] Wyrok Naczelnego Sądu Administracyjnego z 14 czerwca 2022 r., sygn. akt II OSK 2534/19, LEX nr 3370861.

issued administrative decision.[10] Legal interest is therefore related to a right of which a competent authority resolves by means of an administrative decision, stating the legal basis.[11] Understood directly, the notion of legal interest therefore means an interest based on or protected by law.[12]

A common feature of these exemplary definitions produced by both judicial decisions and legal theory is that legal interest must be anchored in a legal basis. The source of this interest must lie in a substantive law norm,[13] however legal interest may also stem from substantive law norms classified under different branches of law.[14] Such norms, in turn, must be generally applicable norms, because to have a legal interest means the same as to determine a generally applicable provision of law under which a party may successfully request an authority to take action to satisfy its own need or to stop or limit an action which opposes such need.[15]

Since the legal interest referred to in Article 28 of the CPA may stem not only from substantive provisions of administrative law but also, for example, from substantive civil law, a question arises why Article 509 of the Civil Code, under which the parties entered into a debt assignment agreement whose object were all claims for compensation on account of land forming a land real estate being taken over by the commune, cannot be a source of legal interest in proceedings to determine compensation for expropriated real estate. The SAC made an answer to this question dependent on determining, firstly, whether the consequences of a legal transaction may grant the status of a party within the meaning of Article 28 of the CAP. The court reached the conclusion that the consequences of such legal transaction by themselves do not constitute a source of legal interest in the sphere of administrative law. Only a legal norm whose contents directly references civil law acts and transactions may constitute a source of legal interest in the meaning of Article 28 of the CAP. In reference to the above, the SAC cited examples of provisions of substantive administrative law[16] containing norms that presented this problem in an illustrative way.

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[10] J. Borkowski [w:], B. Adamiak, J. Borkowski, *Kodeks postępowania administracyjnego. Komentarz,* Warszawa 2017, s. 230.

[11] J. Borkowski [w:] *System Prawa Administracyjnego. Prawo procesowe administracyjne,* t. 9, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2010, s. 118.

[12] A. Wróbel [w:] M. Jaśkowska, M. Wilbrandt-Gotowicz, A. Wróbel. *Komentarz aktualizowany do Kodeksu postępowania administracyjnego,* LEX/el. 2022, komentarz do art. 28.

[13] M. Romańska [w:] *Kodeks postępowania administracyjnego. Komentarz,* red. H. Knysiak-Sudyka, Warszawa 2015, s. 180; A. Wróbel [w:] *Komentarz,...* komentarz do art. 28; postanowienie Naczelnego Sądu Administracyjnego z 10 listopada 2017 r., sygn. akt I FPS 2/17, LEX nr 2390034.

[14] Wyroki Naczelnego Sądu Administracyjnego z: 25 lutego 2014 r., sygn. akt I OSK 1101/13, LEX nr 1460783; 12 września 2013 r., sygn. akt II OSK 889/12, LEX nr 1375645.

[15] Wyrok Naczelnego Sądu Administracyjnego z 7 czerwca 2013 r., sygn. akt I OSK 2226/12, LEX nr 1356980.

[16] Jako przykład Naczelnego Sądu Administracyjnego wskazał na art. 4 w zw. z art. 3 pkt 11 ustawy z dnia 7 lipca 1994 r. - Prawo budowlane (Dz.U. z 2021 r., poz. 2351, z późn zm.) oraz art. 12 ust. 4f oraz art. 18 ust. 1a, 1c i 1d

While I concur as to the essence of this assessment, I believe that the resolution is devoid of a fuller justification (expansion) of these arguments in the context of referencing directly the assignment agreement referred to in Article 509 of the Civil Code, under which the former creditor (assignor) transfers a debt out of its property into the property of a third party (assignee)[17] in connection with Article 128, item 1 of the REMA (constituting a substantive law norm which is a source of legal interest in proceedings to determine compensation). Making this argument more precise and directly referencing the agreement mentioned in Article 509 of the Civil Code, which I consider to be the core of the problem under discussion, appeared only at the close of the justification of the resolution, where the SAC argued that in order to obtain the status of a party within the meaning of Article 28 of the SAC it is necessary for a substantive law norm to exist that would combine entering into a debt assignment agreement with a consequence in the form of ascribing legal interest in the sphere of administrative law to the purchaser of the debt. The court also added that no norm such exists in the area to which the legal question submitted for resolution belongs. In particular, it does not result from the contents of Article 128, item 1 of the REMA, which stipulates that expropriation of ownership of real estate, perpetual usufruct or other property right is effected in exchange for compensation equal to the value of such rights on behalf of the expropriated party.

One should also examine a certain aspect disregarded by the SAC. I mean here the discrepancy observed by the SAC while presenting the legal question under consideration in the context of treating an assignment agreement under Article 509 of the Civil Code as a source of legal interest depending on whether the claim for compensation being the object of the agreement has a public or private law character. Such discrepancy was connected primarily to differing interpretation of the legal nature of compensation for expropriated real estate.

Proponents of the view that such compensation has a public law nature point out that compensation due for authoritative deprivation of the right of ownership of separated plots of land when dividing the real estate does not have a civil law but a public law nature because it is an obligation, arising by operation of law, of the commune towards the real estate owner for depriving them of the ownership of said plots of land.[18] Compensation for expropriated real estate is an institution of administrative law. It is one of the forms of redress for damage caused by authoritative

ustawy z dnia 10 kwietnia 2003 r. o szczególnych zasadach przygotowania i realizacji inwestycji w zakresie dróg krajowych (Dz.U. z 2022 r.. poz. 176).

[17] G. Kozieł, [w:] *Kodeks cywilny. Komentarz,* red, A. Kidyba, LEX/el. 2014, komentarz do art. 509.

[18] Wyroki NSA Naczelnego Sądu Administracyjnego z: 6 lutego 2009 r., sygn. akt I OSK 335/08; ONSAiWSA 2010/4/72; 17 czerwca 2009 r., sygn. akt I OSK 874/08, LEX nr 561302.

and lawful action of administrative bodies, and therefore by an administrative law relationship. Expropriation, the unilateral, public law, authoritative interference of the state in an individual's property rights in the public interest is an example of such relationship. Even though such interference has direct civil law consequences, compensation – which is an indispensable element of expropriation as a public law institution – has its roots in a public law relationship and has the nature of a public law claim.[19] According to the other view, each compensation has the nature of a civil law consideration. This nature is inherent in the compensation and inseparably connected with it. It is wrong to assume that entitlement to seek compensation for occupied real estate is limited to the owner.[20] Due to assignment of a claim to determine and pay compensation, the purchaser of such debt becomes the entitled party. Such an assignment may constitute a separate agreement and, since civil law allows a claim for compensation to be disposed of, the purchaser of such claim is entitled to request that an administrative decision be issued in this respect. In such proceedings, the purchaser of the claim may obtain – or be deprived of – specific legal benefits, but only after they are fixed in a final administrative decision.[21] The question of the legal nature of compensation for expropriation has attracted the interest of legal theorists ever since the expropriation institution emerged as a form of deprivation of an individual right by the state in exchange for returning its value to the expropriated individual. From the very beginning, it has also been closely connected to and formed an element of a much wider question of the separation of and boundary between public and private law.[22]

The discrepancy noted above was not, however, brought under consideration by the panel of seven judges that adopted the discussed resolution. With respect to that issue, only the last paragraph of the justification of the resolution contains a parenthetical mention that the nature of the claim for compensation covered by the assignment agreement referred to in Article 509 of the Civil Code, including the circumstance whether such debt results from a public law event or act, is of no essential importance. In the opinion of the court, considerations concerning the permissibility, validity, effectiveness, rationality and enforceability of the assignment agreement and the fact and degree of protecting the parties to the agreement in the sphere of private law are likewise irrelevant.

[19] Uchwała składu siedmiu sędziów Naczelnego Sądu Administracyjnego z 20 maja 2010 r., sygn. akt I OPS 14/09, ONSAiWSA 2010/4/55.

[20] Wyroki Naczelnego Sądu Administracyjnego z: 14 listopada 2007 r., sygn. akt I OSK 1485/06. LEX nr 417765: 20 czerwca 2018 r., sygn. akt I OSK 1927/16, LEX nr 2556815.

[21] Wyrok Naczelnego Sądu Administracyjnego z 12 lipca 2017 r., sygn. akt I OSK 274/17, LEX nr 2463293.

[22] T. Woś, *Wywłaszczanie nieruchomości i ich zwrot,* Warszawa 2010, s. 213-214; M. Wolanin [w:] J. Jaworski et al., *Ustawa o gospodarce nieruchomościami. Komentarz,* Warszawa 2021, s. 776.

One should therefore consider whether the previous discrepancy concerning the legal nature of the claim for compensation will continue to be cited in judicial decisions. Even though the resolution and its justification are on the whole unequivocal and convincing, it is difficult to foresee whether the dispute concerning the nature of a claim for compensation will cease to exist. Because the resolution has binding power as stipulated in Article 269, item 1 of the Proceedings Before Administrative Courts Act, it will likely be no longer important as regards determining the status of a party in cases to determine compensation referred to in Article 128, item 1 of the REMA, as was the previous court practice. The message contained in the resolution in this context is clear and legible. A debt assignment agreement whose object is compensatory claim for deprivation of the right of ownership of real estate does not by itself grant to the purchaser the status of a party in administrative proceedings, because the consequences of legal transaction performed by a civil law entity are not a source of legal interest in these proceedings. It cannot be excluded, however, that issues related to the legal nature of a claim for compensation will be of importance in other proceedings.

Finally, one should mention another important issue, namely using the above resolution in other administrative proceedings in which the parties derive their legal interest from consequences of legal transactions made in the sphere of civil law. By way of example, one might cite one of several SAC judgements delivered on 29 August 2022, file ref. no. I OSK 2034/20, in which the court granted cassation complaints alleging a violation of Article 7, item 1 of the decree of 26 October 1945 on the ownership and use of land within the Capital City of Warsaw[23] with respect to a normatively specified scope in which the legislator granted rights to subjects in the degree. The SAC questioned the position of the authority which in the reprivatisation decision granted to natural persons (who were not former owners of the real estate covered by the cited decision, nor their heirs) the right of perpetual usufruct to Warsaw real estate based on the provisions of the Warsaw decree, deriving such right to the application of Article 7, items 1 and 2 of the decree from an agreement, having the form of a notarial deed, on acquiring a share in rights and claims to establish a right of usufruct resulting from Article 7, items 1-4 of the Warsaw decree, together with all rights to compensation on any account with respect to the real estate covered by the decision under consideration. In the view of the SAC, the provisions of the Warsaw decree do not create a substantive law norm granting legal interest in administrative proceedings conducted under that decree in order to grant rights specified in the decree to parties of an agreement on acquiring a share in rights and claims. Neither does such a norm

[23] Dz.U. Nr 50, poz. 279 ze zm.; dalej jako: dekret warszawski.

result from provisions of civil law. The civil law basis of concluding such an agreement by itself does not create legal interest in an administrative procedure conducted under the Warsaw decree. The concluded agreements did not provide a locus standi, within the meaning of administrative law, including Article 28 of the CAP, to persons mentioned therein as the purchasers of rights and claims (in the civil law meaning) to effectively seek the granting of a perpetual usufruct right under the Warsaw decree to a Warsaw land real estate specified in the reprivatisation decision.

The SAC thereby shared the position expressed in the voted resolution and stressed that the fact of adopting the cited resolution in a compensatory case, regulated by the provisions of another statute and not the Warsaw decree, is of no importance. The arguments found in this resolution deal, however, with construing the notion of legal interest found in Article 28 of the CAP, which is applied in any administrative case, including also in a case to grant rights under the Warsaw decree, because this provision is a normative point of reference for identifying the parties in administrative proceedings.

5. Summary

Beyond all doubt, the position found in the resolution offers a rather strict approach to the source of legal interest of an entity which is a party to a civil law sphere agreement and requests to be granted the status of a party in administrative proceedings. The SAC justified its position by a thorough elaboration on differences between administrative and civil law, mainly in the context of sources of legal interest in both branches of law. The position presented in the resolution will undoubtedly radically change the former jurisprudence practice, according to which entities that were parties to civil law agreements and acquired thereunder claims to compensation on which they could rely in administrative proceedings were treated as parties to those proceedings. Using the resolution under consideration to construe the notion of legal interest found in Article 28 of the CAP will take place not only in cases to determine compensation from expropriation of ownership of real estate, but also in other administrative cases, as suggested by the recent August 2022 judgment cited above.

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2. Wyrok Naczelnego Sądu Administracyjnego z 14 listopada 2007 r., sygn. akt I OSK 1485/06, LEX nr 417765.
3. Wyrok Naczelnego Sądu Administracyjnego z 6 lutego 2009 r., sygn. akt I OSK 335/08, ONSAiWSA 2010/4/72.

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7. Wyrok Naczelnego Sądu Administracyjnego z 12 września 2013 r., sygn. akt II OSK 889/12, LEX nr 1375645.
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