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GLOSS TO THE JUDGMENT OF THE PROVINCIAL
ADMINISTRATIVE COURT
IN SZCZECIN OF 22 AUGUST 2019,
FILE REF. NO.: II SA / SZ 597/19¹(CRITICAL GLOSS)

GLOSA DO WYROKU WOJEWÓDZKIEGO SĄDU
ADMINISTRACYJNEGO W SZCZECINIE
Z DNIA 22 SIERPNIĄ 2019 R.,
SYGN. AKT: II SA/SZ 597/19 (GLOSA KRYTYCZNA)

Summary: This gloss is critical and addresses the issue of establishing local legal acts by a municipality limiting access for disabled persons in wheelchairs to public transport and questioning the solutions adopted by the supervisory body - the Voivode. As a result of the analysis, the Author finds several violations by both the municipal body, the Voivode and, above all, the administrative court. Individual violations can be attributed a significantly different importance. The author proves that the solutions (restrictions) adopted by the municipality are unjustified and may lead to social exclusion of some disabled people.

Keywords: disabled persons, order regulations, supervisory decisions, social exclusion

Streszczenie: Niniejsza glosa ma charakter krytyczny i porusza problematykę stanowienia aktów prawa miejscowego przez gminę ograniczających dostęp dla osób niepełnosprawnych poruszających się na wózkach inwalidzkich do środków transportu publicznego oraz kwestionowania przyjętych rozwiązań przez organ nadzoru – wojewodę. W wyniku analizy autor stwierdza szereg naruszeń zarówno przez organ gminy, wojewodę, jak i przede wszystkim sąd

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¹ Legalis No. 2226149.

administracyjny. Poszczególnym naruszeniom można przypisać znacząco różny ciężar gatunkowy. Autor dowodzi, że przyjęte przez gminę rozwiązania (ograniczenia) są nieuzasadnione i mogą prowadzić do wykluczenia społecznego niektórych osób niepełnosprawnych.

Słowa kluczowe: osoby niepełnosprawne, przepisy porządkowe, rozstrzygnięcia nadzorcze, wykluczenie społeczne

Thesis No. 1: *When considering a complaint of a commune about an act of supervision declaring the invalidity of a resolution issued by a commune body, the court is obliged to investigate, in particular, the content of the resolution itself, deciding, inter alia, whether the declaration of invalidity was taken in accordance with the provision establishing the criteria for this declaration. Therefore, the subject of the court's assessment must also be whether the resolution or order really violates the law. The court's action should be of a two-stage nature and include the investigation of the legality of the resolution or order itself, followed by the investigation of the legality of the supervisory decision declaring its invalidity.*

Thesis No. 2: *(...) the provision on the parameters of a wheelchair is not feasible because the dimensions of the wheelchair should be verified before each transport. The unenforceability could be claimed if the driver could not actually verify such parameters.*

I. In the voted judgment of the Provincial Administrative Court in Szczecin (hereinafter referred to as "Provincial Administrative Court in Szczecin") in the complaint of the Municipality of the City of Szczecin (hereinafter also as "Municipality") about the supervisory decision of the West Pomeranian Voivode of 30 April 2019 No. P-1.4131 .282.2018.EM regarding the declaration of invalidity of the resolution amending the resolution on order regulations regarding the transport of persons and hand luggage by means of local public transport organised by the City of Szczecin, overruled the appealed supervisory decision.

By resolution No. V / 123/19 of 26 March 2019, Szczecin City Council amended the resolution on order regulations regarding the transport of persons and hand luggage by means of local public transport organised by the City of Szczecin - the Roads and Public Transportation Board in Szczecin. In § 1 of this resolution, the City Council of Szczecin introduced, in the Annex to Resolution No. VI / 79/15 of 24 March 2015 issued by Szczecin on order regulations regarding the transport of persons and hand luggage by means of local public transport organised by the Municipality of the City of Szczecin - Roads and Public Transportation Board in Szczecin, the following changes:

1) § 8 section 7 letter b was given the following wording: «a wheelchair, including one with an electric drive, should have the maximum dimensions, i.e. total length 1200 mm, total width 700 mm, total height 1090 mm, provided that it is cor-

rectly placed in the place intended for its transport and has been properly secured with safety belts if they are in the vehicle's equipment;» and

2) § 8 section 7 letter c has been replaced by the following: «a wheelchair including an electric wheelchair must have the option of being rotated inside the vehicle around its axis;» and

3) § 8 section 7 letter d is replaced by the following: «It is forbidden to transport motor scooters or other vehicles that are not explicitly referred to as wheelchairs, including electric wheelchairs, and which do not meet the parameters set out in point (b).

II. The justification of the voted judgment shows that the above resolution was adopted based on Art. 15 section 5 of the Transport Law².

West Pomeranian Voivode (hereinafter referred to as the “Voivode”) by supervisory decision No. P-1.4131JSZ282 / 2018.EM of 30 April 2019 (hereinafter referred to as “the supervisory decision”) pursuant to Art. 91 section 1 of the Act of 8 March 1990 on municipal government³ declared invalidity of § 1 item 2, 3 and 4 of Resolution No. V / 123/19 of 26 March 2019 issued by the City Council of Szczecin. In the justification of the decision, the Voivode indicated that in his opinion the changes significantly infringed the law. First, the introduced provisions did not meet the requirements of the order regulations. According to the Voivode, the provision of § 8 section 7 of Resolution No. V / 123/19, was addressed to the group of travellers who are disabled, as indicated by the first sentence of this regulation, which is an introduction to the list of the rules in force in the context of the transport of disabled people. These rules were regulated by the Council in subsequent editorial units, i.e. from letters a) to d). The Voivode’s analysis of these regulations led to the conclusion that the regulation contained in § 8 section 7 letter a of the Annex to the resolution met the statutory requirements provided for in Article 15 section 5 of the Transport Law. However, in the provisions of § 8 section 7 letters b, c and d the City Council of Szczecin defined both the type of the vehicle (wheelchair, including electric wheelchair, scooter or another vehicle that is not explicitly referred to as wheelchairs) on which the disabled persons move, and its parameters (dimensions, design requirements enabling the chair to rotate inside the vehicle around its axis), which must be met so that a disabled person moving on it could benefit from transport by public transportation organised by the Municipality – the City of Szczecin. The above, in the opinion of the supervisory authority – cannot be included within the concept of “order regulations” within the meaning of transport law, to which the municipality authority is authorized, and which – as indicated above – should only determine the behaviour of travellers or employees of the carrier (bus drivers, tram driver) when

² The Law of 15 November 1984 Transport Law (consolidated text: Journal of Laws of 2017, item 1983).

³ I.e.: Journal of Laws from 2019 item 506; hereinafter referred to as the municipality law.

using transport infrastructure. Therefore, the statutory delegation resulting from art. 15 section 5 of the Transport Law had been exceeded. Another argument raised by the Voivode was that these regulations allowed the driver to assess freely whether a disabled person in a wheelchair (or another vehicle) “would get the privilege” of traveling by public transport. Whereas the person driving such a vehicle is by no means authorised to examine whether a person in a wheelchair (or another vehicle) is entitled to travel by public transport, on the other hand, it is difficult to imagine a situation in which the driver (driver) will measure a wheelchair before deciding about the possibility of transporting a person with a disability. In addition, such regulations constitute a manifestation of discrimination by limiting the right to transport disabled persons who use wheelchairs (or other vehicles intended for disabled persons) with parameters other than those specified in the resolution, which is a violation of the constitutional principle of equality. The applied diversity leads to unconstitutional discrimination on the grounds of the social situation (disability). And finally, the Voivode argued that the challenged provisions of Resolution No. V / 123/19 led to a de facto narrowing of the subjective group of persons authorised to use means of local public transport, which is unlawful from the point of view of the Transport Law (lack of competence of the city council). Summing up, the Voivode stated that the provisions of § 8 section 7 letters b, c and d in the wording given by § 1 item 2, 3 and 4 of Resolution No. V / 123/19 of 26 March 2019 by Szczecin City Council, significantly violated the applicable legal order (Article 15 (5) of the Transport Law and Article 32 of the Constitution of the Republic of Poland).

Regarding the aforementioned discrimination, the Voivode pointed out that he analysed the recording of the fifth session of the City Council, which shows that the introduction to the universally binding regulations of the entire Municipality - the City of Szczecin of the challenged regulations was aimed at regulating the transportation by the local means of transport in connection with one disabled resident of the Municipality moving by means of an electric vehicle with dimensions slightly exceeding the maximum dimensions set by the Council, entitling to be transported by the municipal public transport. In the Voivode's opinion such behaviour of the municipal body did not meet the basic standards. Public authorities are obliged to support people with disabilities and create such legislative mechanisms that are to achieve this goal, secure the participation of people with disabilities in social life and counteract their social exclusion. In turn, watching over road safety and order, directing and controlling the traffic does not belong to the tasks of the municipal authority, but to the tasks of the Police.

The situation described above was not a single case. The justification for the supervisory decision of the Voivode shows that on 30 October 2018, the City Council of Szczecin adopted Resolution No. XLV / 1325/18 amending the resolution on the order regulations regarding the transport of persons and hand luggage by means of

local public transport organised by the City of Szczecin - Roads and Public Transportation Board in Szczecin, in which § 1 point 2 gave almost identical wording to the regulations of § 8 section 7 letters b, c and d of the annex to resolution No. VI / 79/15 of 24 March 2015 issued by the City Council of Szczecin on order regulations regarding the transport of persons and hand luggage by means of local public transport organised by the City of Szczecin – the Roads and Public Transportation Board in Szczecin, as in § 1 item 2, 3 and 4 of Resolution No. V / 123/19 of 26 March 2019. The Voivode with a supervisory decision of 6 December 2018, reference number P-1.4131.392.2018.EM, acting pursuant to art. 91 section 1 of the Law on municipal government, declared invalidity of the abovementioned provisions of Resolution No. XLV / 1325/18. The City Council of Szczecin did not use its right pursuant to art. 98 section 1 of the Law on municipal government, the power to appeal against the decision of the supervisory body to the administrative court, but after 4 months it made another attempt to change the order regulations regarding the transport of persons and hand luggage by means of local public transport organised by the Municipality of Szczecin City, neglecting the legal assessment of these regulations provided by the Voivode.

The Voivode's supervisory decision was appealed with the Provincial Administrative Court in Szczecin by the Council of the City of Szczecin, requesting that it be declared invalid in full in respect of the violation of:

- 1) the provision of art. 91 section 1 of the Law on municipal government through its incorrect application and declaration of invalidity of § 1 item 2, 3 and 4 of Resolution No. V / 123/19,
- 2) Art. 15 section 5 of the Transport Law by its misinterpretation and assuming that § 1 point 2, 3 and 4 of Resolution No. V / 123/19 was adopted exceeding the statutory delegation resulting from the above provision,
- 3) Article 32 of the Polish Constitution by its misinterpretation and assumption that § 1 items 2, 3 and 4 of Resolution No. V / 123/19 violates the constitutional principle of equality.

In the opinion of the City Council, the provisions of the resolution challenged by the Voivode were adopted based on art. 15 section 5 of the Transport Law. It can be concluded from the above provision that order regulations apply to all travellers, and their primary purpose is to guarantee safety and order in transport. The adopted provisions refer directly to the behaviour of travellers, in this case people with disabilities, because they specify the technical requirements for the vehicle that must be met so that a disabled person traveling on it could benefit from transport by public transportation organised by the City of Szczecin. However, the adopted maximum dimensions for wheelchairs were set out in the universally applicable Polish Standard PN-ISO 7193 of December 2001. The City Council disagreed with the supervisory body that “these regulations allow for an assessment by the driver of

the vehicle whether a disabled person in a wheelchair (or another vehicle) “will be granted the privilege” of traveling by public transportation”, because it would not be arbitrary decided by the driver whether a given disabled person moving on a specific vehicle would be able to use public transport, but this resulted from the maximum dimensions of wheelchairs allowed for transport by buses, which resulted from the above-mentioned Polish Standard PN-ISO 7193 dated December 2001, ISO 7176 / 5 and Regulations 107EKG / UN. There can be no discrimination (breach of the principle of equality). At the same time, supplementing its arguments, the City Council pointed out that it was not a matter of the supervisory authority to “care” how the driver of the vehicle would measure the wheelchair or another vehicle on which the disabled person would be moving, because the future practice of applying the law does not fit in no degree within the examination of the legality of the act.

In response to the complaint, the voivode requested its dismissal, maintaining his current position and submitting the following additional arguments. He emphasized that local government normative acts must meet the requirement of compliance with the Constitution and laws. The legislator (also local) is therefore obliged to use all the available methods of legal analysis and legislative techniques to ensure this compliance. The situation in which a given legal solution is illusory and apparent is undesirable. Referring to the judgment of the Constitutional Tribunal, the Voivode also mentioned that it was impossible to create normative constructions that were not feasible, constituted an illusion of the law and, as a consequence, only gave the impression of protecting the interests of the individual, and this was the situation we were dealing with in that case.

The Provincial Administrative Court in Szczecin overturned the appealed supervisory decision, basing its judgment on the following arguments. The Provincial Administrative Court in Szczecin emphasized that a significant violation in the doctrine and judicial decision of administrative courts was a violation leading to such effects that could not be accepted in a democratic state ruled by law that affected the content of the resolution or regulation. In the opinion of the Provincial Administrative Court in Szczecin, when considering the complaint of the municipal body regarding the act of supervision declaring the invalidity of the resolution issued by the municipal body, the court is obliged to investigate, in particular, the content of the resolution itself, deciding, among other things, whether the declaration of invalidity was taken in accordance with the provision establishing the criteria for this declaration. The determination whether the resolution or regulation really violates the law must also be the subject of the court’s assessment. Order regulations under the transport law should be understood as a legal regulation containing orders and prohibitions aimed at protecting the life, health, property of persons using public collective transportation and ensuring order, peace and public safety in public collective transportation. The Provincial Administrative Court in Szczecin, as a result of the analysis of the provisions of Resolution No. V / 123/19, came to the conclusion that a quality which the local legislator gave priority to was ensuring the safety of transport for all travellers using

local public transport, regardless of whether it was a disabled person moving on a wheelchair, a disabled person traveling alone, or passengers who were able-bodied. The Provincial Administrative Court in Szczecin indicated that the previous regulation regarding the transport of passengers in a wheelchair, contained in § 8 section 7 of Resolution No. VI / 79/15 of 24 March 2015, according to which: „Wheelchairs, including those with an electric drive, should be placed in a designated place rearward-facing, blocked with a brake and secured with safety belts being the equipment of the vehicle.” was – in the court’s opinion, rather limited. In fact, it only specified the obligations of a disabled person moving in a wheelchair during transport but ignored the driver’s obligations towards those people. It also did not contain regulations regarding the wheelchair itself, only indicating that it could also be an electric wheelchair. The Provincial Administrative Court in Szczecin did not see in the provisions of the resolution questioned by the supervisory authority the discrimination against the disabled persons in wheelchairs. These provisions regulate in a legible and understandable manner the conditions of carriage of persons in wheelchairs. Therefore, establishing precise rules in order regulations by specifying the parameters of a wheelchair (corresponding to the Polish Standard PN-ISO 7193) and announcing them, as required by local law, is not a manifestation of discrimination against people with disabilities, but means the formulation of minimum conditions for them to ensure that all passengers are transported by local public transport safely. The Provincial Administrative Court in Szczecin did not share the view of the Voivode about the unenforceability of the provisions of the Resolution. The infeasibility could be claimed if the driver could not actually verify such parameters. The Provincial Administrative Court in Szczecin compared this view to the transportation of the oversize baggage or other items that could pose a security risk. In the opinion of the Court, the resolution did not violate the constitutional principle of equality. Specifying by the legislator the rules for the transportation of a person in a wheelchair to ensure the safety of both that person and other passengers was not a violation of this rule. Importantly, the Court also pointed out that the adoption of these provisions did not mean that the City Council created such legislative mechanisms that did not serve the support of people with disabilities and did not counteract their social exclusion. In the opinion of the Provincial Administrative Court in Szczecin, one can expect the local legislator (City Council) to introduce and enforce such provisions of law which clearly and legibly define the rights and obligations of passengers, regardless of whether they are disabled persons or not, and persons servicing the means of transport, and the resolution, the legality of which was assessed by the Court in these proceedings and the Voivode, as the supervisory body, meets these criteria.

III. An analysis of the content of the justification of the ruling of the Provincial Administrative Court in Szczecin shows that the following issues are key in this case:

1) the permissible subject and object scope of order regulations issued by the municipal council pursuant to the provisions of the Transport Law,

- 2) the scope of the obligation to ensure the safety of travellers in public transport,
- 3) the scope of statutory guarantees for the disabled and obligations in this respect,
- 4) prioritizing individual values resulting from legal provisions.

IV. According to art. 15 section 5 of the Transport Law with respect to the municipal regular passenger transport as well as passenger and luggage transport by taxi, the order regulations are specified by the municipal council. General principles and procedure for establishing local law by a municipality are set out in the Law of 8 March 1990 on municipal government⁴.

First, it should be pointed out that art. 40 section 1 of the Law on the municipality establishes the general rule according to which statutory authorisation is required to issue local legal acts in force in the municipality. The law on the municipality itself already contains such authorisation (Article 40 (2) of the Law on the municipality). Order regulations are referred to by Art. 40 section 3 of the Law on the municipal government, which indicates that the municipal council may issue order regulations if it is necessary to protect the life or health of citizens and to ensure order, peace and public safety to an extent not regulated by separate laws or other generally applicable provisions. It is said in the judicature that an unregulated scope can be raised when there is a certain gap in the content of generally applicable legal provisions, and this gap should be understood as the lack of regulation regulating a given issue in other provisions⁵. Therefore, the inclusion of provisions, regarding an issue already regulated in generally applicable provisions, in the content of a resolution issued by the municipal council, constitutes an unacceptable repetition in the act of the local law of the provisions of laws or their modifications⁶. It is also unacceptable to introduce in this way provisions that do not implement the provisions of generally applicable law⁷. For proper issuing of order regulations, it is necessary to verify the applicable legal status in each area⁸, including provisions that even indirectly apply to it (provisions establishing the general principles mentioned above)⁹. Another important circumstance indicated in the judicature is the need to justify the introduction of a specific solution by means of order regulations. Otherwise, there may even be

⁴ Uniform text.: Journal of Laws of 2019, item 506; further as a law on municipality.

⁵ Compare the judgment of the Provincial Administrative Court in Kraków of 1 February 2017, reference number file: III SA / Kr 679/16, Legalis No. 1568635 and the judgment of the Provincial Administrative Court in Gliwice of 29 June 2011, reference number act: III SA / Gl 821/11, Legalis No. 388803. In this judgment, the Provincial Administrative Court in Gliwice also emphasizes the importance of the intention of the legislator.

⁶ Compare the judgment of the Provincial Administrative Court in Poznań of 14 September 2011, file reference number: IV SA / Po 659/11, Legalis No. 450221.

⁷ Compare the judgment of the Supreme Administrative Court of 4 June 2008, file reference number: II OSK 268/08, Legalis No. 114930.

⁸ Compare the judgment of the Provincial Administrative Court in Poznań of 18 May 2011, file reference number: IV SA/Po 213/11, Legalis No. 435245.

⁹ Compare the judgment of the Provincial Administrative Court in Warsaw of 8 February 2008, file reference number: IV SA/Wa 2160/07, Legalis No. 164295.

a violation of constitutional guarantees¹⁰. An insufficient justification for adopting order regulations is, for example, regulating issues that cannot be assigned an urgent or extraordinary nature¹¹. Hence, order regulations “appear” during extraordinary states, e.g. natural disasters¹². In turn, the judicature of the Supreme Court emphasizes one more important circumstance, namely: the mutual relationship of local law (including order regulations) and other generally applicable legal acts. The Supreme Court indicates that the acts of local law are basic acts¹³, which should be understood as being in line with statutory regulations. The above results directly not only from art. 87 of the Polish Constitution, but also from Art. 40 of the municipality law. Based on the above argument, it can be concluded that the power to issue order regulations should not be interpreted broadly¹⁴. Article 15 section 5 of the Transport Law constitutes an independent basis for issuing order regulations and determines the scope of matter which may be regulated by these provisions. Therefore, not all the above-mentioned views can be directly referred to the content of this provision. Nevertheless, the conclusions are still valid regarding: a ban on the use of a broad interpretation because despite the indicated differences, the order regulations are still referred to,

- a. the need for a justification for the introduction of a particular solution, especially when it constitutes a limitation of guarantees arising from other provisions, including above all constitutional provisions due to the specificity of order provisions in general and their relationship with other generally applicable provisions,
- b. the need to conduct an analysis of the broadly understood legal status in order to implement the provisions of generally applicable law.

Referring the above to the factual state in the present case, it should be noted that the Municipality had the legal possibility to adopt order regulations in this area. However, this should be done considering the above circumstances (points 1-3).

IV. In accordance with art. 14 section 2 of the transport law, the carrier should take measures to facilitate travellers, especially, persons with reduced mobility and people with disabilities, the use of means of transport.

It is aptly argued in the literature that the introduction of this provision into the Transport Law in the mid-90s is undoubtedly „an expression of the legislator’s concern for making life easier for such people, because traveling (regardless of whether within the same city

¹⁰ Compare the judgment of the Provincial Administrative Court w Kraków of 1st February 2017, file reference number: III SA/Kr 679/16, *Legalis* No. 1568635.

¹¹ Compare the judgment of the Provincial Administrative Court in Wrocław of 18 November 2015, file reference number: II SA/Wr 590/15, *Legalis* No. 1390923.

¹² Compare the judgment of the Supreme Administrative Court of 13 February 2018, file reference number: II OSK 994/16, *Legalis* No. 1716599.

¹³ See the judgment of the Supreme Court of 19 August 2009, file ref. No.: III KK 230/09, *Legalis* No. 227360.

¹⁴ So also, the Supreme Administrative Court in the judgment of 11 July 2006, file ref. number: II GSK 68/06, *Legalis* No. 81675. The Supreme Administrative Court also indicates that order regulations may be issued only in exceptional circumstances strictly defined by the analysed regulation.

or on longer distances) is an integral part of every human's life," and that the creation of appropriate (facilitating) conditions applies not only to vehicles (means of transport), but also to the entire infrastructure (check-in points, stops, stations, platforms, etc., equipped with the necessary equipment: elevators, lifts), and that it was unnecessary in this provision to distinguish people in wheelchairs¹⁵. At the same time, by way of art. 14 section 1 of the transport law there is an obligation imposed on the carrier to provide travellers with appropriate safety and hygiene conditions as well as convenience and proper service. The transport law does not contain a legal definition of the carrier. Art. 1 section 1 of this Law shows that they are entities authorised to the transport of persons and goods, performed against payment under an agreement. Principles of organisation and functioning of regular passenger transport in public collective transport carried out on the territory of the Republic of Poland and in the cross-border area, in road, rail, other railway, rope, off-road, sea and inland shipping (passenger transport as part of public collective transport¹⁶) is determined by the law of 16 December 2010 on public collective transport¹⁷, in which the carrier was defined as an entrepreneur authorised to perform business activity in the range of transport of people based on the confirmation of the transport declaration, and in railway transport – based on the decision on the granting of open access (Article 4 (1) (11) of the Law on Public Collective Transport). On the other hand, for the municipality, as a local government unit, a different role was assumed in this Law, i.e. the organiser of public collective transport¹⁸ (Article 4 section 1 point 9 in connection with Article 7 section 1 point 1 of this Law). The organiser's tasks were specified in the closed catalogue in Art. 8 of the Law on public collective transport. This law also applies to the situation of people with disabilities. In accordance with art. 15 section 1 point 1 of this Law, organising public collective transport consists in examining and analysing the transport needs in public collective transport, taking into account the needs of disabled persons and persons with reduced mobility. Other provisions of this Law also apply to this issue. Considering the need to provide technical solutions in means of transport to ensure their accessibility for disabled persons and persons with reduced mobility should already occur at the stage of awarding a public contract for public collective transport (Article 21 section 1a of the Law on Public Collective Transport). At the same time, the legislator decided that the requirements for means of transport, including the introduction of modern technical solutions, as well as their adaptation to the needs of disabled persons and persons with reduced mobility should be subject to the provisions concluded after the choice of the contract (Article 25 section 3 point 5 of this Law). The needs of people with disabilities should

¹⁵ See T. Szanciło, *Komentarz do art. 14, Prawo przewozowe. Komentarz*, Legalis [access: 30.12.2019].

¹⁶ The Law defines the collective public transport as "Publicly available regular passenger services carried out at specified intervals and along a specific transportation line, transportation lines or transportation network".

¹⁷ Uniform text.: Journal of Laws of 2019, item 2475; further as the Law on public collective transport.

¹⁸ The municipality also has its own tasks in the field of public collective transport, compare art. 18 of the Law on public collective transport. The organiser may choose the operator or perform public transport in the form of a local government budgetary establishment (Article 19 section 2 of the Law).

also be considered when developing the transport plan referred to in Article 12 section 2 point 4 of the Law on public collective transport. The cited provisions show that an indispensable element of Polish legislation is the regulation securing the situation of persons with disabilities. The task of public administration is to implement them, including the needs of people with disabilities¹⁹ and such shaping of the legal state on which they have an influence, to provide these people with the best possible living conditions. This does not mean, however, that there are no issues to which the legal order gives greater importance. The Polish legal order adopts and then protects several other values, including the security of citizens. The combination of these two issues and considering the legal status referred to above leads to the conclusion that the essence of the problem in this case was the appropriate prioritization of individual values protected by law. Achieving (drawing the right conclusions) required the municipal authorities, the Voivode as the supervisory body and the Provincial Administrative Court in Szczecin, to analyse all the provisions related to the discussed issues. The analysis of the justification of the issued court decision leads to the conclusion that the position of the municipal body does not take into account relevant circumstances arising from the content of art. 14 section 2 of the Transport Law and the provisions of the Law on public road transport, including in particular art. 15 section 1 point 1 of this Law. Even if they do not apply directly to a particular entity, the resulting values cannot be ignored. On the other hand, from the content of the justification for the supervisory decision of the Voivode, there is no reference to the cited legal provisions, whereas the position adopted by the Voivode indicates that the analysis of these provisions was carried out and an attempt to ensure appropriate conditions for disabled people was undertaken. And finally, in the case under discussion, this lack can also be seen in relation to the justification of the verdict of the Provincial Administrative Court in Szczecin. Despite the fact that the Provincial Administrative Court in Szczecin formulated the view that “The subject of the court’s assessment must therefore also be to determine whether the resolution or order really violates the law in a significant way”, it rightly pointed out that all legal provisions relevant to the case should be taken into account and assessed, ultimately it did not refer to their content in any way, and the final decision indicated that they had not been taken into account.

V. The above is not the only shortcoming of the Provincial Administrative Court in Szczecin. In accordance with art. 133 § 1 of the Law on proceedings before ad-

¹⁹ Unfortunately, in many areas already at the regulatory level there are no solutions implementing this assumption, including at the level of living and organisational conditions. See K. Majewski, I. Majewski, P. Majewska, *Ochrona dóbr osobistych osób niepełnosprawnych przebywających w jednostkach penitencjarnych – wybrane zagadnienia*, [in:] M. Borski (ed.), *Urzeczywistnienie idei humanitaryzmu w kontekście zagwarantowania podstawowych praw osobom z niepełnosprawnościami*, Sosnowiec 2017, pp. 295 et seq. It is comforting, however, that there are also areas of life in which disabled people have been protected. See K. Majewski, *Status prawny i zadania centrum integracji społecznej*, [in:] M. Borski (ed.), *Bariery w otoczeniu osób z niepełnosprawnościami. Zagadnienia wybrane*, Sosnowiec 2017, pp. 61 et seq.

ministrative courts²⁰ the court issues a judgment based on the case file. In accordance with art. 134 § 1 of the law on proceedings before administrative courts, the court decides within the limits of a given case without being bound by the charges and motions of the complaint and the legal basis invoked, with the proviso that a complaint about a written interpretation of tax law issued in an individual case, a hedging opinion and a refusal to issue a hedging opinion may be based solely on the allegation of violation of the provisions of the procedure, misrepresentation or misjudgement regarding the application of a substantive law.

It should be emphasized at this point that the *reformatio in peius* on the basis of law on proceedings before administrative courts does not apply if the court finds a violation of law resulting in the invalidity of the appealed act or action (Article 134 § 2 of the p.b.a.c.). At the end of this listing the content of art. 135 law on proceedings before administrative courts, in which the legislator obliged the Court to apply the measures provided for in the Law to remove the violation of law in relation to acts or activities issued or undertaken in all proceedings conducted within the scope of the case to which the complaint relates, if it is necessary for its final settlement. In the opinion of the Supreme Administrative Court, the premise for applying the regulation contained in art. 135 of the law on proceedings before the administrative court is “a statement of a violation of substantive or procedural law not only in the appealed act or action, but also in the acts or actions preceding it, as long as they were taken within the limits of the case”²¹. The content of the supervisory decision of the Voivode, which is in the case file, refers to the course of the fifth session of the City Council (the session recorded by means of video and sound recording devices), which, in the opinion of the Voivode, indicates that introduction to the generally applicable regulations throughout the Municipality - The city of Szczecin of the questioned regulations is intended to regulate the transport by local public transport of one disabled resident of the Municipality. What is equally important, this inhabitant is moving on an electric vehicle with dimensions slightly exceeding the maximum dimensions set out in the Resolution of the City Council of Szczecin. The Provincial Administrative Court in Szczecin did not refer to these circumstances, and it is important because it determines discrimination / non-discrimination of a specific entity, i.e. compliance with or violation of the Constitution. It is true that the Provincial Administrative Court in Szczecin referred to the issue of discrimination, but merely analysed the content of the questioned resolution by the

²⁰ Law of 30 August 2002 Law on proceedings before administrative courts (i.e., Journal of Laws of 2019, item 2325; hereinafter referred to as p.b.a.c.).

²¹ See the judgment of the Supreme Administrative Court of 5 July 2019, file reference number: I OSK 2233/17, Legalis No. 2194184, judgment of the Supreme Administrative Court of 19 September 2018, file reference number: II OSK 63/18, Legalis No. 1868233. At the same time, the Supreme Administrative Court recommends “caution” in applying this procedure, indicating the “necessity” criterion, see the judgment of the Supreme Administrative Court of 12 June 2018, file reference number: I OSK 1796/16, Legalis No. 1806491. Even if the application of this procedure in the present case was not legally permissible, it can be concluded from this provision that the obligation of the administrative court is to take all the actions necessary to issue a correct decision, and thus to take into account all the relevant circumstances.

supervisory body (Voivode). This is insufficient in the light of the provisions of the p.b.a.c law, if firstly, there are circumstances relevant to the assessment carried out, and secondly, they were referred to in the content of the (supervisory) decision, which is subject to the analysis in the course of the proceedings.

VI. Returning to the prioritization mentioned above, it raises doubts in the present case giving priority to the safety of transport, disregarding here whether it concerns all travellers using local public transport or a selected group of entities.

The justification for the judgment under appeal shows that wheelchairs which are used in everyday life slightly exceed certain maximum dimensions. So, do these few centimetres have such a great impact on the safety of other travellers that one can speak of excluding a number of provisions guaranteeing disabled people or people in a special life situation taking into account their needs and facilitating their existence, and thus refraining from introducing restrictions for them? It seems that the solution adopted by the City Council of Szczecin is unjustified and promotes social exclusion of some disabled people (those who use wheelchairs exceeding the limits). Even if the basic purpose of introducing these solutions by means of an act of local law was to ensure security, they constitute a significant limitation for a specific group of people, contrary to the provisions of law of a higher rank than those adopted by the Municipality. Public administration bodies are obliged to take measures facilitating, not hindering the existence of these people. It is also worth emphasizing that the case concerns the use of public transport, i.e. the basic public form of movement within the municipality. This aspect has not been fully examined by the Provincial Administrative Court in Szczecin, which constitutes a violation of the provisions of the p.b.a.c Law. The adopted solution, in turn, constitutes a violation of the provisions of the Law on public collective transport and the Transport Law. In the explanatory memorandum to the judgment, the Court referred to this thread only in the context of discrimination. In the remaining scope, it indicated the intention of the municipal body which adopted these solutions by way of resolution. Determination of the facts is not the only task assigned to the Administrative Court by the p.b.a.c. Law.

VII. At the end of these considerations, attention should be paid to the view presented by the Provincial Administrative Court in Szczecin regarding the introduced legislative mechanisms. The Court in Szczecin stated that “the adoption by the City Council of this provision does not mean, contrary to what the supervisory authority claims, that the municipal authority creates such legislative mechanisms that do not support disabled people and do not counteract their social exclusion.” The quoted fragment of the justification of the judgment does not match the actual state indicated by the Court in the judgment issued. There is no doubt, however, that the solutions introduced exclude the possibility of using some means of public transport by some persons, i.e. persons

in wheelchairs that exceed the introduced maximum dimensions. From the presented position of the Municipality and the Voivode, it can be concluded that on both sides there is no doubt that the introduced solutions limit the possibility of disabled persons to use public transport. The dispute arose over whether this solution is legally permissible. Therefore, one cannot talk in this situation, with the use of denial (negation), about supporting disabled people or counteracting their social exclusion.

VIII. From the analysis of the content of the ruling issued by the Provincial Administrative Court in Szczecin, it can be concluded that in the present case the Court did not consider all the provisions regarding this administrative case. Even though the arguments made by the Provincial Administrative Court in Szczecin are based on the provisions of generally applicable law and cite the relevant court rulings, the lack of consideration of some provisions has a significant impact on the outcome of the proceedings. Mistakes were also not avoided by the authorities taking part in the case at its earlier stages, respectively the Municipality of the City of Szczecin and the Voivode. It should be emphasized, however, that the scale of irregularities of these entities is significantly different. Among these irregularities, the most important is the faulty prioritization of values made by the City Council of Szczecin. This matter, therefore, requires another thorough analysis.

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