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An approving gloss to the thesis of the judgement of the Supreme Court of 21st April 2016, ref. III ZS 1/16 regarding legal subjectivity of the Supreme Council of the Chamber of Nurses and Midwives

Glosa aprobująca do tezy wyroku Sądu Najwyższego
z dnia 21 kwietnia 2016 r., sygn. III ZS 1/16 w przedmiocie
podmiotowości prawnej Naczelnej Rady Izby Pielęgniarek i Położnych

Abstract

On 21 April 2016, The Supreme Court indicated in its judgment that the Supreme Council of the Chamber of Nurses and Midwives has legal subjectivity, which entails that it has both legal personality and judicial capacity. This is also not prevented by its legal status, i.e. being a body of the Supreme Chamber of Nurses and Midwives. It derives its qualities from the role it actually performs, i.e. representing the professional association of nurses and midwives outside. Of course, it follows from both the Act and the literature that the professional association of nurses and midwives has legal personality. However, it follows from the thesis in the judgment that the Supreme Court took into account the fact that without the Supreme Council, the proper performance of tasks by the professional association of nurses and midwives would be in practice impossible in the current legal state (which is justified by the provisions of the Act on the association of nurses and midwives). The author fully endorses this position, which he justifies with the argumentation below.

Keywords: professional association of nurses and midwives, public credibility profession, Supreme Chamber of Nurses and Midwives, Supreme Council of the Chamber of Nurses and Midwives, legal entity.

Streszczenie

Dnia 21 kwietnia 2016 r. Sąd Najwyższy wskazał w swoim wyroku, że Naczelna Rada Izby Pielęgniarek i Położnych ma podmiotowość prawną, z czym wiąże się posiadanie przez nią zarówno osobowości prawnej, jak i zdolności sądowej. Nie przeszkadza temu też pozycja prawna, tj. bycie organem Naczelnej Izby Pielęgniarek i Położnych. Swoje przymioty czerpie bowiem

z faktycznie pełnionej roli, tj. reprezentowania samorządu zawodowego pielęgniarek i położnych na zewnątrz. Oczywiście zarówno z ustawy, jak i piśmiennictwa wynika, że osobowość prawna przysługuje samorządowi zawodowemu pielęgniarek i położnych. Z tezy zawartej w wyroku wynika jednak, że Sąd Najwyższy uwzględnił to, że bez Naczelnej Rady poprawne wykonywanie zadań przez samorząd zawodowy pielęgniarek i położnych byłoby w praktyce niemożliwe w obecnym stanie prawnym (co znajduje uzasadnienie w przepisach ustawy o samorządzie pielęgniarek i położnych). Autor w pełni aprobuje to stanowisko, co uzasadni poniższą argumentacją.

Słowa kluczowe: samorząd zawodowy pielęgniarek i położnych, zawód zaufania publicznego, Naczelna Izba Pielęgniarek i Położnych, Naczelna Rada Izby Pielęgniarek i Położnych, podmiotowość prawna.

1. Introduction

The Supreme Council of Nurses and Midwives adopted a Resolution No. 373/VI/2015 of the 30th of September 2015 on registration of entities conducting postgraduate education of nurses and midwives in accordance with Article 22, paragraph 1, point 9 of the Act on professional association of nurses and midwives¹. Pursuant to Article 99 of the Act on the professions of a nurse and a midwife², the obligation of submitting an application for an entry into the register of entities conducting postgraduate training of nurses and midwives was imposed on postgraduate education providers. This obligation concerned those providers who offered education according to new curricula.

The appeal against the Resolution was lodged by Minister of Health who alleged, firstly, the infringement of Article 77, paragraph 4 in relation to Article 76, paragraph 1, point 4 of the Act on the professions of a nurse and a midwife due to exceeding powers by The Supreme Council of Nurses and Midwives, which consisted in establishing standards which violated the universally binding legal regulations. Additional obligations which were not compliant with the universally binding law were imposed on postgraduate education providers, who are referred to in Article 75, paragraph 1, point 2; secondly, the Minister also alleged the infringement of Article 17, paragraph 1 of the Constitution of the Republic of Poland³ as well as Article 22, paragraph 1, point 9 of the Act on the professional association of nurses and midwives. The allegation also concerned exceeding powers, as in the case above.

¹ The Act of 1st July 2011 on the professional association of nurses and midwives (Journal of Law of 2021, item 628).

² The Act of 15th July 2011 on the professional association of nurses and midwives (Journal of Law of 2021, item 479).

³ The Constitution of the Republic of Poland of 2nd April 1997 (Journal of Law of 1997, No. 78, item 483 with amendments).

In response, the Supreme Chamber of Nurses and Midwives lodged an appeal against the complaint on the grounds that it was addressed to the institution which does not have judicial capacity, and in the case of rejecting the plea, filed for upholding the alleged Resolution. This claim was substantiated by the lack of judicial capacity of the Supreme Council of Nurses and Midwives in civil law cases, which, according to the Supreme Chamber of Nurses and Midwives, enabled it to act as a party to the proceedings only before administrative courts. It was also claimed that rectification would be ineffective due to failing to meet a three-month period for lodging a complaint against the Resolution. The Appendix No. 1 to the Resolution No. 13 of the 6th National Convention of Nurses and Midwives of 7th December 2011 was also invoked, i.e. the Statute of the Supreme Council of Nurses and Midwives, which concerns the representation of the Supreme Chamber of Nurses and Midwives by the Chairman of the Chamber⁴ (paragraph 24, point 1).

Subsequently, the Supreme Chamber of Nurses and Midwives referred to the text of Article 76, paragraph 1 of the Act on the professions of a nurse and a midwife, according to which an entity other than the one mentioned in Article 75, paragraph 1 of this Act, intending to carry out activities within the scope of postgraduate education, is obliged to submit an application for an entry into the register providing the required data. Article 78, paragraph 1 and Article 77, paragraph 4 of the Act on the professions of a nurse and a midwife were also invoked. The former concerns details connected with developing curricula and emphasizes the role of the Postgraduate Training Center for Nurses and Midwives, which consults the Supreme Council of Nurses and Midwives regarding all courses (except for professional development courses). It was also pointed out that curricula are approved by Minister of Health. Based on the latter legal regulation, it was concluded that due to the above, a postgraduate education provider does not exercise full decision-making power within the scope of developing curricula used in the course of training and is obliged to comply with the procedure (understood here as implementation of directives set out in Article 77, paragraph 4 of the Act on the professions of a nurse and a midwife). Lastly, it was also indicated that a provider other than university or school conducting educational and scientific activity within the scope of medical sciences, as well other than a health care institution, is obliged to report to the body responsible for registry any changes to registration data within fourteen days of their appearance.

That argument was also used in reference to the unjustified accusation concerning the imposition of additional obligations on the providers. It was also noted that the Act does not use the term *modification of a registered entry* but it

⁴ The Statute of the Supreme Council of Nurses and Midwives: <https://nipip.pl/2372-2/>

uses the term *entry into the register*, which was to prejudge about the fact that an entry did not have to be required once but as many times as it was necessary. Article 87, paragraph 1 of the Constitution of the Republic of Poland which referred to the sources of law was also invoked.

After considering the Minister of Health's complaint, the Supreme Court revoked the Resolution ruling that 1) additional obligations which are not compliant with universally binding legal provisions cannot be imposed on education providers, and 2) the Supreme Chamber of Nurses and Midwives has legal personality, but it is an organizational unit of the professional association which acts through its bodies; thereby, it is the Supreme Council of Nurses and Midwives, constituting a body characterized by specific competences and functions, which carries out representative functions and supervises the professional association in between National Conventions; and this, on the other hand, determines its independent legal subjectivity, especially due to the fact that it is entitled to establish, together with Minister of Health, the terms and conditions of contracts for allocating financial resources to performance of tasks which are stipulated in Article 91 of the Act on the professional association of nurses and midwives.

According to the Supreme Court, the Statute of the Supreme Chamber of Nurses and Midwives was also an argument in favor of independent subjectivity of the Supreme Council of Nurses and Midwives; it follows from its contents that 1) in order to make declarations of will in property matters and incur liabilities on behalf of the Supreme Chamber of Nurses and Midwives, the cooperation of the Chairman or the Vice-Chairman of the Supreme Council of Nurses and Midwives and the Treasury or the Secretary of the latter is necessary, 2) the fee for an entry into the register constitutes the revenue of the Supreme Council of Nurses and Midwives and not of the Supreme Chamber of Nurses and Midwives, 3) if the Supreme Council of Nurses and Midwives has a specified legal subjectivity sanctioned by the Act, it cannot be denied judicial capacity, and 4) the alleged Resolution was within the scope of competence of the Supreme Council of Nurses and Midwives and not the Supreme Chamber of Nurses and Midwives.

2. Key terms

Legal capacity is the ability to have rights and obligations, however relatively the fewest disputes within this scope concern legal persons because when considering natural persons, there appear questions about e.g. the beginning or the end of life, which subsequently entails the commencement and the termination

of the mentioned capacity⁵. Legal persons, on the other hand, are organizational, collective entities which are characterized by the unity of will and goal, guaranteed by the organizational system, whose legal subjectivity was given by virtue of the Act⁶. Two types of them can be differentiated, i.e. corporations (associations and unions) and institutions. The establishment process is also essential. Professional associations are connected with the foundation process, which means that a legal person is appointed by virtue of a foundation Act of a specified state body and also on its initiative⁷. Pursuant to Article 33 of the Civil Code (hereinafter referred to as CC), these are State Treasury and organizational units which have legal personality by virtue of specific provisions⁸. The term of judicial capacity is regulated and clarified by the Civil Procedure Code (hereinafter referred to as CPC), specifying in Article 64, paragraph 1 that *every natural and legal person has capacity to participate in a trial as a party (judicial capacity)* and in paragraph 1¹ that *judicial capacity is given to organizational units which are not legal persons and which have legal personality provided by the Act*⁹. The latter is explained as a possibility of possessing rights (powers) and obligations. It is also claimed that it is sometimes identified with legal subjectivity¹⁰. A. Marciniak and M. Sychowicz directly indicate, referring to the Act and the glossed judgement (thesis), that the Supreme Council of Nurses and Midwives also has judicial capacity¹¹.

To conclude the above thread, the term of professional association needs to be clarified. In this case, it is necessary to refer to the regulations of Article 17, paragraph 1 of the Constitution of the Republic of Poland which stipulates that *pursuant to the Act, it is possible to establish professional associations which represent individuals who practice professions of public trust and supervise their proper performance within the scope of public interest and for its protection*¹².

⁵ T. Pietrzykowski, *Podmiotowość prawna: ujęcie teoretyczne* [In:] *O czym mówią prawnicy, mówiąc o podmiotowości*, ed. A. Bielska-Brodziak, Katowice 2015, p. 15–16 and 19.

⁶ H. Rot, *Wstęp do nauk prawnych*, Wrocław 1992, p. 99.

⁷ J. Nowacki, *Podmioty prawa* [In:] *Wstęp do prawoznawstwa*, ed. J. Nowacki, Z. Tobor, Katowice 1997, p. 164 and 166.

⁸ The Act of 23rd April 1964 r. Kodeks cywilny (Journal of Law of 2020, item 1740, 2320).

⁹ The Act of 17th November 1964 r. Kodeks postępowania cywilnego (Journal of Law of 2020, item 1575 with amendments).

¹⁰ J. Nowacki, *Podmioty prawa...*, *op.cit.*, p. 173.

¹¹ A. Marciniak, M. Sychowicz, *Komentarz do art. 64 in Kodeks Postępowania Cywilnego. Komentarz*, ed. A. Marciniak, Warszawa 2019, Legalis [access: 28.05.2021].

¹² The Constitution of the Republic of Poland of 2nd April 1997 (Journal of Law of No. 78, item 483).

As pointed out by J. Zimmermann, “nowadays, the list of professional associations which function in Poland is very long and it encompasses associations of: barristers, solicitors, doctors, veterinarians, notaries, nurses and midwives, pharmacists, expert auditors, patent counsels, farmers, tax advisors, bailiffs, architects, structural engineers, urban planners and psychologists. This list is not in alignment with a list of liberal professions”¹³.

Professional associations usually have a two-tier structure and consist of chambers. The basic tier consists of district chambers equipped with legal personality and their bodies include conventions, councils, disciplinary commissions/courts and professional liability screeners¹⁴. By way of exception, one-tier structures can also be distinguished at a national level¹⁵. Basic types of tasks carried out by professional associations include tasks of record-keeping and regulatory character, supervisory and controlling tasks, the ones used to popularize knowledge of a given profession and tasks which consist in popularizing public information. One may also distinguish an array of specific tasks which are pursuant to Acts and entrusted with by a contract¹⁶.

3. Approval for the position of the Supreme Court

The position of the Supreme Court deserves support. Following the reasoning which would exclude a possibility of considering the Supreme Council of Nurses and Midwives as a party, we would deal with inconsistencies within the Act. The provisions of the Act on the professional association of nurses and midwives explicitly indicate that the Supreme Chamber of Nurses and Midwives is represented by the Supreme Council of Nurses and Midwives, to be more specific, by its Chairman. Thereby, the logical interpretation does not leave any shadow of a doubt. The systemic and purposive interpretations would also lead to the aforementioned result if one follows the text of the regulations and even taxonomy of the considered legal act, leaving aside other tasks assigned to the Supreme Council of Nurses and Midwives.

¹³ J. Zimmermann, *Prawo administracyjne*, Warszawa 2018, p. 202.

¹⁴ *Ibidem*, p. 202.

¹⁵ M. Tabernačka, *Warunki prawne nabywania uprawnień do wykonywania zawodów zaufania publicznego i zawodów regulowanych* „Przegląd Prawa i Administracji” 2004, Vol. LXIII, p. 218.

¹⁶ M. Tabernačka, *Zakres wykonywania zadań publicznych przez organy samorządów zawodowych*, Wrocław 2007, p. 112.

4. A justification for the position. A dogmatic-legal analysis of the systemic position of the Supreme Chamber of Nurses and Midwives and the Supreme Council of Nurses and Midwives in the professional association of nurses and midwives

Pursuant to Article 2, paragraph 4, point 1 of the Act on the professional association of nurses and midwives, the Supreme Chamber of Nurses and Midwives is an organizational unit of the professional association and has legal personality. Its legal status is the subject of analysis in source literature.

For instance, M.A. Waligórski described the Supreme Chamber of Nurses and Midwives as *a central corporation unit* which operates through its bodies. The bodies include: The National Convention of Nurses and Midwives, the Supreme Council of Nurses and Midwives, the Supreme Audit Committee, The Supreme Court of Nurses and Midwives and the Supreme Screener for Professional Liability. The highest body of the Supreme Chamber is the National Convention of Nurses and Midwives convened (in principle) every four years by the Supreme Council of Nurses and Midwives. In his characteristics of the counterpart of the Supreme Chamber of Nurses and Midwives in the professional association of doctors, i.e. the Chamber of Physicians and Dentists, P. Antkowiak wrote about *a central level of the professional association*¹⁷.

It follows that, despite the fact that under Article 2, paragraph 4 point 1 on the professional association of nurses and midwives, the Supreme Chamber of Nurses and Midwives and district chambers are given legal personality, the status of the former as *a monistic whole* is not yet prejudged because it constitutes merely a kind of collective body, which manifests the core of a legal person for the purpose of legal transactions. A key role, however, is played by specific bodies, that comake this *one whole*¹⁸.

The Ancient Romans contributed do the fact that referring to one *being* does not necessarily mean that we always consider this one specific *being* in a literal sense. A definition of a corporation by K. Kopaczyńska-Pieczniak proves this point. She states: “the term *corporation* comes from the Latin word *corpora-*

¹⁷ M.A. Waligórski, *Samorząd zawodowy* [In:] *Samorząd zawodowy i gospodarczy w Polsce*, ed. M.A. Waligórski, S. Pawłowski, Poznań 2005, p. 159; P. Antkowiak, *Organizacja i zadania samorządu lekarskiego w Polsce* [In:] *Z badań nad samorządem zawodowym w Polsce*, ed. R. Kmiecik, Poznań 2010, p. 110ff.

¹⁸ M. Tabernačka, *Zakres wykonywania zadań...*, *op.cit.*, p. 71; The Supreme Chamber of Nurses and Midwives is responsible, among others, for determining a field of activity of specific district chambers with consideration for the principal territorial division of the state.

tio which means *a relationship, joining parts, an association, a club*. In Latin, on the other hand, this word is derived from the verb *corporare* which means *to embody*, and this in turn comes from the word *corpus*, i.e. *a body*. A corporation can be thereby defined as joining all persons which create it into one unity. Its essence is unification of a certain group of subjects to achieve a specific goal, which means that its principal substratum, justifying the distinction of a corporation and deciding on its existence and activity, are the people¹⁹.

Valuable conclusions in this subject matter were made by T. Bigo in the interwar period.

According to him, namely, neither nature nor a human being matter in legal deliberations. What only matters are the acts of will which manifest themselves in specific activities. Legal persons are depicted here as collective subjects, which do not constitute a subtotal of will of separate members of this group but they are an example of fusion of specific acts of will of various individuals. A necessary requirement for formulation of this fusion is possessing an organization. The latter further translates into assigning certain activities to a group of individuals, which subsequently merge into one unity. Afterwards, particular activities of individuals are specified by organizational norms, which, in accordance with the author's line of thought, was to lead to establishing a separate system. Subsequently, T. Bigo poses a question of what an organization is and points out that a constitutional act and group bodies are necessary to it; he also clarifies that a constitutional act consists in laying down organizational norms. An organizational norm defines requirements which, if met, lead to ascribing the activities of certain subjects belonging to the group to the acts of the whole group. T. Bigo names the natural persons whose activities have such implications as organs²⁰.

It constitutes another argument which supports the position of the Supreme Court. It should be pointed out that although we function as natural persons on a daily basis and no one isolates individual body parts and internal organs from our body, it cannot be denied that despite the fact that all of them are essential for our life, there are some without which the rest is not able to fulfill their tasks: the brain and the heart. We do not say *a group of organs is coming* but we simply talk about *man*. The same applies to corporations of public law with the distinction that they are not men but they are made of them constituting at the same time certain fictional persons for the purpose of legal transactions. Therefore,

¹⁹ K. Kopaczyńska-Pieczniak, *Korporacja. Elementy konstrukcji prawnej*, Warszawa 2019, p. 27.

²⁰ T. Bigo, *Związki publiczno-prawne w świetle ustawodawstwa polskiego*, Warszawa 1990 (reprint), p. 45–46.

organizational units will not only be differentiated from organs, but depending on the situation, they will be viewed either as a whole or as a part of a certain whole. Details within this scope are regulated by particular acts of law.

The tasks of the Supreme Council of Nurses and Midwives should be finally taken into consideration. Starting from subject literature, as M.A Waligórski indicates, the Supreme Council of Nurses and Midwives 1) manages the activities of the professional association between the National Convention of Nurses and Midwives, 2) implements resolutions of the National Convention of Nurses and Midwives as well as adopts resolutions in other matters which belong to the association and are not reserved for other bodies, 3) adopts a budget of the Supreme Chamber of Nurses and Midwives as well as verifies statements of its implementation, 4) represents the professional association, 5) analyses and evaluates the directions of development of public health protection, 6) draws up motions concerning principles of professional ethics and determines specimens of stamps of professional association's organs, 7) is a body which coordinates and supervises the activity of district councils, 8) is an appeal body for resolutions of district councils, 9) revokes resolutions which are not compliant with a law or a statute based on the Act or issued in pursuance of the Act or resolution of the higher authority, 10) may apply to a district council to adopt an appropriate resolution regarding a case within its competence, and finally 11) keeps records of disciplinary offenders adjudged by disciplinary courts, removes records of punishments (except for a record of a custodial sentence) from the register²¹.

The above-mentioned competences of the Supreme Council of Nurses and Midwives enumerated by M.A. Waligórski, although sometimes general, are in alignment with the current text of Article 22, paragraph 1 on the professional association of nurses and midwives.

Pursuant to Article 10, paragraph 2 of the above-mentioned regulation, the Minister responsible for health matters may lodge an appeal against the resolution of the body of the Supreme Chamber of Nurses and Midwives which is found unlawful within three months from its promulgation. As stated by S. Fundowicz, functioning of supervisory bodies can consist in determining the correctness of the activity of professional association bodies or in carrying out supervisory proceedings. He distinguishes three spheres of activities which are subject to such supervision, i.e. legislative activities, activities concerning granting permission to practice a profession, as well as activities regarding adjudication on professional liability. The type of activity determines which body will be the recipient of supervision²².

²¹ M.A. Waligórski, *Samorząd zawodowy* [In:] *Samorząd zawodowy...*, *op.cit.*, p. 159–160.

²² S. Fundowicz, *Decentralizacja administracji publicznej w Polsce*, Lublin 2005, p. 212–213.

5. Summary

The above-mentioned analyses appear to explicitly confirm the validity of the position adopted by the Supreme Court. It should be pointed out that the adjudicating panel's deep insight into the case was remarkable. Far-reaching casuistry together with not always transparent legislative processes of the legislator could have severely complicated the case. The interpretation adopted by the Supreme Court finds justification both in the Act as well as in subject literature.

Regardless of arguments of the parties and relevant interests in this particular case, it should be noted that currently the professions of a nurse and a midwife are undergoing evolution towards greater independence²³. There are, nevertheless, some difficulties concerning practical classification of these professions as liberal, but there is already no doubt about the fact that they are fairly classified as professions of public trust²⁴. This is a requirement which is necessary for a given profession to have its own professional association established²⁵.

However, the professional status of nurses and midwives is evolving rather slowly²⁶. Hence, it is essential to ensure legal protection of the status of these professions that is struggling to adapt to social reality, which is also manifested in a serious approach to their professional association bodies, in conformity with binding law.

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²³ See: K. Wojtczak, *Zawód i jego prawna reglamentacja. Studium z zakresu materialnego prawa administracyjnego*, Poznań 1999, p. 103–104, J. Jacyszyn, *Wykonywanie wolnych zawodów w Polsce*, Warszawa 2004, p. 288–289, 294 and P. Charzewski, *Aktualność pojęcia korporacji publicznoprawnej na tle dorobku literatury przedmiotu i stanu regulacji prawa* [In:] *Aktualność pojęć prawa administracyjnego*, ed. W. Jakimowicz, Warszawa 2021, p. 323.

²⁴ See: J. Pacian, *Administracyjnoprawny status zawodów pielęgniarki i położnej w świetle obowiązującego prawa*, Lublin 2019, p. 28.

²⁵ See: Article 17, paragraph 1 of the Constitution of the Republic of Poland Konstytucji RP of 2nd of April 1997 (Journal of Law, No. 78, item 483) and W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 2002, p. 29–30.

²⁶ See: M. Siwek, G. Nowak-Starz, *Współczesny wizerunek pielęgniarstwa w opinii społeczeństwa „Pielęgniarstwo Polskie”* 2017, No. 3(65), p. 487, 494 and A. Sawoni, *Medyczne samorządy zawodów zaufania publicznego – gwarancja bezpieczeństwa pacjentów* [In:] *Samorząd zawodowy gwarantem bezpieczeństwa jednostki*, Kancelaria Senatu, Warszawa 2017, p. 43.

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