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JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT of 20 January 2023 (Case no. III OSK 6651/21) [Public service, qualification proceedings and refusal of admission to the police force]

Presiding judge: SAC judge Małgorzata Pocztarek
SAC judge: Olga Żurawska-Matusiak (rapporteur)
Judge of the Voivodship Administrative Court in Krakow delegated to adjudicating in the SAC: Kazimierz Bandarzewski

The Supreme Administrative Court, on 20 January 2023, in a closed session in the General Administrative Chamber, after examining the cassation appeal filed by the Voivodship Police Commander in Katowice against the judgment of the Voivodship Administrative Court in Gliwice of 15 April 2021 (case no. III SA/Gl 80/21), in the case brought by A.Z. concerning the refusal of admission to the police force under the act of the Voivodship Police Commander in Katowice dated 24 November 2020 (no. [...]), hereby dismisses the cassation appeal.

From the following reasoning:

The Voivodship Administrative Court in Gliwice, in its judgment of 15 April 2021 (case no. III SA/Gl 80/21), after reviewing the case brought by A.Z. against the administrative act issued by the Voivodship Police Commander in Katowice on 24 November 2020 (no. [...]), concerning the refusal of admission to the police force, annulled the contested act. The judgment was based on the following factual circumstances of the case: the Voivodship Police Commander (hereinafter referred to as "the Authority"), through an administrative act dated 24 November 2020 (no. [...]), informed A.Z. (hereinafter referred to as "the Complainant") of the decision

to discontinue the qualification proceedings regarding her candidacy for service on the police force.

According to the administrative case files, the Complainant submitted to the County Police Headquarters an application for admission to police service on 22 July 2020 to. Along with the application, the required documents prescribed by law were submitted. These documents, upon being forwarded in accordance with jurisdiction to the Voivodship Police Headquarters in Katowice, provided the basis for initiating qualification proceedings. The qualification proceedings were conducted pursuant to Article 25 of the Act of 6 April 1990 on the Police (Journal of Laws of 2020, item 360 as amended, hereinafter: the "Police Act") and the Regulation of the Minister of Internal Affairs of 18 April 2012 on the qualification proceedings for candidates applying to the police force (Journal of Laws of 2012, item 432 as amended, hereinafter: the "MIA Regulation"). The subsequent stages of the qualification process, including verification of documents, validation of submitted data, a knowledge test, a physical fitness test and a psychological evaluation, were completed with positive results.

Simultaneously, as part of the qualification proceedings, actions were undertaken to verify that the candidate had no criminal record and had an impeccable reputation. Additionally, a vetting process was initiated as prescribed by regulations on the protection of classified information (Article 25(2)(8) of the Police Act and §10(8) of the MIA Regulation).

According to an official note written on 19 November 2020 by a representative of the County Police Commander, concerning the standard vetting procedure conducted with respect to the Complainant's application to the police force, it was revealed that she resides with her brother. The brother had repeatedly been a suspect in criminal proceedings, had been convicted of burglary and was frequently detained by the police for possession of narcotic substances. Indictments were issued against him for the following offences: engaging in sexual activity with a minor under the age of 15, driving a vehicle under the influence of alcohol or similar intoxicants, supplying narcotics to a minor, insulting a public official and property damage. Additionally, he was identified as the perpetrator of various traffic violations and had been placed in pre-trial detention. The Complainant's father's name also appeared in documents related to criminal proceedings conducted by the police, involving allegations of making criminal threats and domestic abuse.

Subsequently, the Complainant was informed via telephone and later in writing that the Authority had withdrawn her from the qualification proceedings, determining that this decision was justified by a lack of demand for personnel on the police force. Upon learning via telephone about her withdrawal from qualification proceedings, the Complainant submitted a letter to the administrative

body requesting reconsideration of her case and admission to the further stages of qualification. In her submission, she acknowledged that her brother had been convicted of stealing wire or cable and sentenced to imprisonment with a conditional suspension. He then ceased contact with his probation officer as he left for work, which led to the execution of his sentence. Nevertheless, he was quickly released from the penitentiary and served the remainder of his sentence under an electronic monitoring system. She emphasised that her brother was not and had never been a member of any subculture or organised group. She argued that she should not bear the negative consequences of mistakes her brother had made.

In a letter dated 1 December 2020, the Authority informed the Complainant that the regulations governing the police recruitment procedure, specifically the Police Act and the MIA Regulation, do not provide an option to appeal a decision to withdraw a candidate from qualification proceedings. These legal acts grant the Authority the right to do so when there is no justification for pursuing such proceedings due to the staffing needs of the police. The Authority additionally clarified that recruitment is conducted individually for each candidate, and decisions are contingent upon the specific circumstances of each case.

The Complainant subsequently submitted three additional letters to the Authority, requesting the reconsideration of the matter and a change of the decision. She argued that the staffing needs of the police were significant and unmet, and she requested further clarification on why her qualification proceedings had been discontinued.

In response, in a letter dated 18 December 2020, the Authority explained the legal grounds for its decision, citing Article 25(5)(7) of the Police Act. It was further stated that the evidence gathered during the qualification proceedings and the results of its analysis supported the conclusion that there was no justification for continuing the qualification process in view of the police force's staffing needs. The Authority also stated that there were no legal grounds either to appeal the decision which terminated the qualification proceedings or to resume such proceedings.

In her complaint to the Voivodship Administrative Court in Gliwice, the Complainant challenged the Authority's letter of 1 December 2020.

In response to the complaint, the Authority requested its dismissal.

The Voivodship Administrative Court in Gliwice held that the complaint warranted consideration.

The court of first instance recalled that the Complainant, on 20 July 2020, had submitted an application to join the police force, accompanied by the required documents, and had undergone the qualification process. According to the evaluation sheet, she successfully completed subsequent stages of the qualification process, including the non-scored stages of document verification and fact-checking and

the scored stages of a knowledge test and a physical fitness test on 11 October 2020 and a psychological test on 3 November 2020, all concluded with positive results.

Despite her performance, on 24 November 2020, she was informed that the qualification proceedings for her admission to the police force had been discontinued, as it was deemed unnecessary for the staffing needs of the police. Despite directing numerous letters to the Authority, the Complainant did not receive an explanation regarding the reasons for discontinuing the qualification proceedings in her case.

In the opinion of the court of first instance, the allegations in the complaint regarding violations of Articles 7, 77 and 107 §3 of the Code of Administrative Procedure, as well as Article 25(2)(7) of the Police Act, were upheld. The Authority, when issuing the contested decision, repeatedly referred in its subsequent correspondence with the Complainant to Article 25(5)(7) of the Police Act. However, the phrasing in this provision, "does not find justification in the staffing needs of the police", is vague and has not been defined in the legal provisions. Additionally, the provision does not authorise the issuance of an administrative act devoid of legal and factual justification.

The court of first instance emphasised that the contested administrative act dated 24 November 2020 lacked both legal and factual justification. Only in subsequent correspondence with the Complainant and in its response to the complaint did the administrative body refer to Article 25(5)(7) of the Police Act and § 40 of the MIA Regulation as the legal basis for its decision. Since the discontinuation of qualification proceedings pursuant to Article 25(2)(7) of the Police Act constitutes an administrative act related to rights derived from legal provisions and falls under the jurisdiction of the administrative court, the police authority was obliged under the Code of Administrative Procedure to thoroughly substantiate this decision.

Moreover, a candidate for the police force, for whom such an act is issued, has the right to receive a detailed explanation as to why the qualification proceedings were discontinued in their particular case.

The court of first instance emphasised that the administrative body, in re-conducting the proceedings, should adhere to the instructions set forth by the court. For this purpose, the administrative body must re-analyse the evidence gathered in the case, particularly the official note dated 19 November 2020 from the attorney of the County Police Commander regarding the routine background check for the police force candidate. Subsequently, the Authority must demonstrate what, in its opinion, justified the discontinuation of the qualification proceedings. If the administrative body deems it necessary to issue an act based on Article 25(2)(7) of the Police Act, it must properly substantiate it.

Disagreeing with the foregoing judgment, the Authority appealed the judgment in its entirety to the Supreme Administrative Court. In its cassation appeal, the

Authority alleged that the judgment violated substantive law due to the incorrect interpretation of the following provisions:

a) Article 25(5)(7) of the Police Act, through the assumption that this provision imposes a requirement on the public administrative body issuing an act as described in Article 3(2)(4) of the Act of 30 August 2002 – Law on proceedings before administrative courts (Journal of Laws of 2019, item 2325, hereinafter "LPAC") to conduct an exhaustive evidentiary procedure in order to provide the candidate with detailed justification as to why the qualification proceedings were discontinued in their specific case. The administrative body argued that this provision merely confers authority upon the entity identified in the statute to discontinue qualification proceedings for a candidate applying to the police force if such proceedings are unjustified based on the police's staffing needs, which was in fact presented in the act challenged before the Voivodship Administrative Court.
b) § 40(1b)(3) and § 40(1c) of the MIA Regulation, through the assumption that these provisions impose an obligation to provide a factual and legal justification for an act. The administrative body contended that these provisions do not require such justification as part of the act since the written information under these provisions that is provided during this stage of the qualification process is not an administrative decision. As such, it does not necessitate that factual findings and legal grounds be established, nor detailed explanations be given to the addressee. Instead, it constitutes an exercise of the discretionary administrative authority within the qualification proceedings, as an act of public administration, which does not require a detailed legal and factual justification.

Citing these alleged violations, the Authority requested the revocation of the judgment under appeal and the resolution of the case in accordance with Article 188 of the LPAC, by dismissing the complaint. Additionally, the administrative body petitioned for the litigation costs, including the costs of legal representation, to be awarded to the appellant. [...]

The Complainant, in her pleading filed on 12 July 2021, requested the dismissal of the cassation appeal and the awarding of litigation costs, including the costs of legal representation, against the administrative body in favour of the complainant, in accordance with the statutory standards.

[...]

The Supreme Administrative Court held as follows:

[...]

The essence of the allegations in the cassation appeal revolves around the question of whether an administrative act informing an individual applying for admission to

the police force that the qualification proceedings against them have been discontinued should be substantiated. First and foremost, it must be emphasised that in this case, there is no dispute regarding the classification of the Authority's letter of 24 November 2020 to the Complainant, which informed her that the Authority had discontinued the qualification proceedings regarding her application, deeming that such proceedings were not justified by the staffing needs of the police. This letter is classified as an act within the realm of public administration.

This act falls within the category of acts described in Article 3 § 2 point 4 of the LPAC and is subject to judicial review by an administrative court. Such acts are of an external nature, directed towards an individual outside the organisational structure of the public administration body, and they concern rights derived from legal provisions.

A favourable outcome of the qualification proceedings enables a candidate to establish a service relationship of a public-law nature. Conversely, discontinuing the qualification proceedings of a particular candidate signifies their termination. The qualification procedure regarding admission to the police force has the nature of administrative proceedings.

The issue concerning the necessity of providing reasoning for an act regarding the discontinuation of qualification proceedings for service in the police force has already been considered in the case law of the Supreme Administrative Court – see e.g. judgments of the Supreme Administrative Court of 7 July 2009 (case no. I OSK 1219/08) and of 4 July 2014 (case no. I OSK 3044/12). When these rulings were issued, different executive regulations governing qualification proceedings for police force candidates were in force. Nevertheless, the assessment within the rulings regarding the obligation to provide a written explanation of the reasons for discontinuing qualification proceedings remains valid under the legal provisions in effect when the contested act was issued.

In adjudicating the matter at hand, it should be noted that Poland ratified the International Covenant on Civil and Political Rights (adopted by the United Nations General Assembly on 19 December 1966) on 3 March 1977, subsequently publishing it in the Journal of Laws. Article 25(c) of the Covenant provides that every citizen has the right and the opportunity, without any discrimination and without unreasonable restrictions, to perform public service in their country on the basis of equality. This principle directly corresponds with the relevant provisions of the Constitution of the Republic of Poland, Article 60 of which states that "Polish citizens enjoying full public rights shall have the right to access public service on equal terms". This provision does not guarantee acceptance into public service, however, as the legislature is authorised to establish additional conditions and to make the attainment of specific public service positions contingent upon

meeting these conditions, according to the nature and essence of those positions. Furthermore, public authorities are required to determine the number of positions to be filled depending on the needs of the state. Nonetheless, this provision ensures equality of opportunity for individuals seeking to undertake public service. On the one hand, it obliges the legislature to establish substantive legal regulations that outline transparent criteria for the selection of candidates and the filling of specific public service positions. On the other hand, it mandates the creation of procedural guarantees that enable the verification of decisions concerning recruitment to public service. Consequently, the interest protected here is the transparency and openness of the rules defining the requirements for occupying a specific role. The absence of appropriate control and appellate procedures can pose a significant obstacle to the application of established rules and can lead to a violation of the constitutional requirement of equal treatment for those seeking access to public service on the same terms (see judgments of the Constitutional Tribunal of 9 June 1998 [case no. K. 28/97, OTK ZU no. 4/1998, item 50]; of 14 December 1999 [case no. SK 14/98, OTK ZU no. 7/1999, item 163]; and of 8 April 2002 [case no. SK 18/01, OTK ZU no. 2/A/2002, item 16]). Additionally, it must be emphasised that in its judgment of 29 November 2007 (case no. SK 43/06), the Constitutional Tribunal expressed the view that "Article 60 of the Constitution constitutes the source of precisely defined constitutional subjective rights that must be respected by public authorities."

The right to access to service in the police force has been codified in the relevant provisions of the Act on the Police and the cited provisions of the [MIA] regulation. A candidate for service in the police force is therefore entitled to request the administrative court to review any act that terminates the candidate's qualification proceedings. Such a decision directly impacts their constitutional rights and freedoms, specifically the right to access to public service.

The reason for terminating the qualification proceedings must comply with the constitutional principle of access to public service, which stipulates that if for any reason a candidate does not meet the defined criteria, they must be informed accordingly and must know the reasons why they were not accepted. The legislature has not imposed a formal obligation to justify the termination of qualification proceedings, as there is no specific requirement for such an act to take the form of a formal decision. However, this does not preclude the court from deriving the conclusion that written notification, informing the candidate of the termination of their consideration for service, constitutes an administrative act. The issuance of this act, which is linked to the assessment of the statutory criteria by a superior, requires justification.

It should be emphasised that the administrative court reviews an administrative act based on the criterion of legality, which encompasses verification of not only

whether the act was based on legal grounds, but also whether the authority in question acted within the limits of the law. The actions of public authorities must be based on and confined to legal limits, which is a constitutional principle enshrined in Article 7 of the Constitution of the Republic of Poland. In this case, the legal boundaries of the Authority's actions are defined by the statutory criteria considered in the course of the qualification proceedings. Without knowledge of the reasoning behind the Authority's decision-making in respect of the individual circumstances of a candidate, it is not possible to conduct a full review of the contested act.

The obligation to provide justification can also be inferred from the nature of the aforementioned act, which is similar to an administrative decision that requires justification under the Code of Administrative Procedure. Termination of the qualification proceedings prevents the candidate from establishing a public-law service relationship. Such a conclusion may be reached analogously from the Code of Administrative Procedure.

[...]

Given that the Code of Administrative Procedure, in Article 107 §3, imposes the duty to duly justify decisions, it follows by analogy that there is an obligation to provide adequate reasoning for authoritative acts in the realm of public administration that are not decisions, but still pertain to the rights of an individual entity.

By not explaining the reasons for a decision, administrative acts evade judicial/administrative review, which is unacceptable from the perspective of the requirements of the rule of law (Articles 2 and 7 of the Constitution of the Republic of Poland), as well as the constitutional right to a court hearing (Article 45 of the Constitution of the Republic of Poland) and judicial review of public administration activities (Article 184 of the Constitution of the Republic of Poland).

This leads to the conclusion that the position of the court of first instance was correct, according to which a candidate for service on the police force is entitled to a detailed explanation of the reasons why their qualification proceedings were discontinued. In this case, such information seems particularly important when considering that the appellant was informed that the qualification proceedings were discontinued because the police force did not need personnel, despite the well-known police personnel shortages: the case files contain materials indicating that there were 600 vacancies in the Silesian Police Garrison during the relevant period. As such, the criterion of personnel needs must be related to the circumstances established in the case and arising from the qualification proceedings. It is insufficient to merely invoke one of the grounds provided by the Act on the Police for discontinuing the qualification proceedings for a given candidate, especially when the Authority did not state the legal basis for its actions. The absence of any factual determinations or the Authority's reasoning prevents the administrative

court conducting a review of the actions undertaken in the matter. If the Authority's position that it is not required to explain why it decided to discontinue the qualification proceedings in a given case were accepted as correct, judicial review of the act issued in this respect would be illusory.

For all the above reasons, the Supreme Administrative Court, recognising the allegations of the cassation appeal as unfounded, dismissed the cassation appeal pursuant to Article 184 of the LPAC.

JUDGMENT OF THE SUPREME ADMINISTRATIVE COURT of 4 April 2023 (Case no. III OSK 2062/21) [Restrictions on the exercise of constitutional freedoms and rights of individuals called to military service; assigning civilian duties to a person following a declaration of mobilisation and during wartime, involving immediately reporting to the Port Command for the purpose of evacuating persons, versus the conscience clause; the scope of protection arising from the freedom of conscience and religion]

Presiding judge: SAC judge Małgorzata Masternak-Kubiak (rapporteur)
SAC judge: Piotr Korzeniowski
Judge of the Voivodship Administrative Court in Krakow delegated to adjudicating in the SAC: Mariusz Kotulski

The Supreme Administrative Court, after examining on 4 April 2023, in a closed session in the General Administrative Chamber, the cassation appeal of P.B. against the judgment of the Voivodship Administrative Court in Szczecin, dated 24 July 2019 (case no. II SA/Sz 451/19), in the case of the complaint of P.B. against the decision of the West Pomeranian Voivode dated 10 December 2018 (no. […]) regarding the assignment of civilian duties for defence purposes, hereby adjudicates: 1. The cassation appeal is dismissed. […]

From the following reasoning:

The Voivodship Administrative Court in Szczecin, by its judgment of 24 July 2019 (case no. II SA/Sz 451/19) dismissed the complaint of P.B. against the decision of the West Pomeranian Voivode dated 10 December 2018 (no. [...]), regarding the assignment to perform civilian duties for defence purposes.

As stated by the court of first instance, by the decision dated 27 September 2018 (no. [...]), the Mayor of Ś., referring to Article 203(1) of the Act of 21 November 1967 on the Common Obligation to Defend the Republic of Poland (consolidated text: Journal of Laws of 2017, item 1430, as amended) – hereinafter referred to as the "Common Defence Act" – ruled to assign civilian duties to P.B. in the event of a declaration of mobilisation and during wartime. These duties involve the immediate appearance at the Port Command for the purpose of assisting with the evacuation of individuals. In the reasoning for the decision, the authority indicated that, in accordance with Article 200(1) of the Common Defence Act, Polish citizens aged between sixteen and sixty years can be subjected to the obligation to perform various ad hoc tasks aimed at preparing the state's defence, combating natural disasters or mitigating their effects. The party satisfies the aforementioned requirements [i.e. Art. 200 (1) of the Common Defence Act] and did not submit to the authority any document confirming grounds for exemption from this obligation under Article 206a(1) of the Common Defence Act. The authority further noted that the Army Recruiting Commandant, when specifying in the application the need to impose this obligation upon the party, defined it as appearing and assisting with the evacuation of individuals. This type of task, essentially protecting citizens' safety, does not contradict the arguments raised by the party in his submission, particularly regarding the assistance which his religious organisation offers to others in the case of natural disasters.

In the [administrative] appeal against the decision and in its supplement, the appellant primarily argued that the decision was contrary to his conscience and the moral principles he adheres to as a Jehovah's Witness. Following an examination of the case resulting from the appeal, the West Pomeranian Voivode, by a decision dated 10 December 2018, upheld the contested decision. P.B. filed a complaint against this decision with the Voivodship Administrative Court in Szczecin. In response to the complaint, the Voivode petitioned for its dismissal or, alternatively, its rejection.

The court of first instance [...] determined that the complaint lacked justified grounds. In its assessment, the adjudicating authorities in the case correctly established that the prerequisites justifying the acceptance of the Army Recruiting Commandant's application had been met. The complainant holds Polish citizenship, is between the ages of sixteen and sixty years, and is not in one of the categories of

individuals excluded from the obligation to perform civilian duties under Article 206a of the Common Defence Act. Consequently, the adjudicating authorities in the case had no legal basis to take into account the complainant's individual situation, as indicated by him, regarding his conscientious objection to performing such duties for defence purposes.

Responding to the complainant's allegations of violations of the Constitution of the Republic of Poland, the court observed that the Constitution does not contain any general provision that directly addresses the issue of conscientious objection. The right to act in accordance with one's convictions arises from the general principle of human freedom (Article 31(1) of the Constitution); however, this principle is subject to limitations imposed by law (second sentence of Article 31(2) of the Constitution). Pursuant to Article 31(3) of the Constitution, such limitations must not exceed what is necessary from the standpoint of the needs of defence (national security). The issue of conscientious objection to obligations imposed by law is expressly regulated only with respect to military service. A citizen whose religious beliefs or moral principles prevent them from performing such service may be required to undertake alternative service, as provided for by statute (Article 85(3) of the Constitution). Therefore, it cannot be asserted that the framers of the Constitution ignored the issue of conscientious objection. They chose to regulate it only within a limited substantive scope and in the section of the Constitution dedicated to individual obligations, correctly recognising the possibility of refusing military service as an exception to the universal duty of defending the homeland.

This case does not concern military service, but rather the obligation to perform civilian duties for defence purposes. According to the Voivodship [Administrative] Court, these two forms of fulfilling the civic duty of defence cannot be equated. The nature of these obligations, their duration and the applicable governing regulations are entirely different and are subject to separate implementing provisions.

The court of first instance stated that, in a judgment delivered by the Grand Chamber of the European Court of Human Rights (ECtHR) in the case of *Bayatyan v. Armenia* (ECtHR judgment of 7 July 2011, application no. 23459/03), the court highlighted the existence of a common legal standard among the member states of the European Convention on Human Rights (ECHR). This standard acknowledges the acceptance of conscientious objection to military service on religious grounds and imposes a requirement to provide an alternative form of such service. One of the arguments supporting this position referred to Article 10(2) of the Charter of Fundamental Rights of the European Union (CFR). Although the CFR imposes a positive obligation on states to ensure that individuals have the right to refuse to act against their conscience, it also allows individual states the discretion to determine the scope of this right, the criteria for its exercise and

the consequences of such objection. These consequences, in practice, may include the obligation to perform some form of alternative (substitute) military service. Thus, the manner in which this right is exercised is entrusted to the discretion of the state and its domestic legislation. The aforementioned ECtHR judgment, as well as other decisions cited by the complainant in the supplementary complaint filing, strictly pertain to the issue of conscientious objection to military service. However, the complainant was not required to undertake military service under the contested decision.

Additionally, in the opinion of the [Voivodship Administrative] Court *meriti*, freedom of conscience and religion does not include an unrestricted right to act upon the dictates of conscience in every sphere of social life. Such limitations are expressly provided for in Article 31(3) of the Constitution, which allows for restrictions when they are "necessary in a democratic society"; they comply with "national laws regulating the exercise of this right"; or they are "prescribed by law" and are "necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others". According to the Voivodship [Administrative] Court, the imposition on the complainant of the obligation to perform civilian duties, such as evacuating people in the event of war or a declaration of mobilisation for a period of seven days, does not infringe on his freedom of conscience and religion due to the nature of these activities. Furthermore, this obligation aligns with one of the stated aims of Jehovah's Witnesses: providing assistance to others. Therefore, the contested decision does not violate Article 9 of the European Convention on Human Rights, Article 18 of the International Covenant on Civil and Political Rights, Article 10 of the CFR or the Constitution.

Since the allegations in the complaint were found to have no justified basis, the complaint was dismissed pursuant to Article 151 of the Act of 30 August 2002 – Law on proceedings before administrative courts (consolidated text: Journal of Laws of 2018, item 1302, as amended; hereinafter "LPAC").

P.B. filed a cassation appeal against the above-mentioned judgment [of the Voivodship Administrative Court in Szczecin]. In challenging the decision of the court of first instance in its entirety, [the appellant] alleges the following violations.

1. Violations of substantive law, specifically:
   a) Article 53(1) of the Constitution in conjunction with Article 206a of the Act on the Common Obligation to Defend the Republic of Poland [...], Article 178(1), and Article 8(2) of the Constitution, due to an incorrect interpretation and, consequently, improper application, leading to the conclusion that the imposition of the obligation to perform civilian duties does not restrict the appellant's right to freedom of conscience and religion

The appellant argues that neither the court of first instance nor the administrative authorities considered that performing civilian duties would infringe on his freedom of conscience and create a real possibility of violating his right to freedom of conscience and religion. The court and authorities should have adopted a pro-constitutional interpretation of Article 206a of the Common Defence Act, broadening the category of individuals exempted from this obligation to include those invoking Article 53(1) of the Constitution. Article 53 of the Constitution is applicable on the basis of Article 178(1) and Article 8(2) of the Constitution, and the court failed to consider this constitutional right.

b) Article 9 of the ECHR, Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the Charter of Fundamental Rights of the European Union (Charter), in conjunction with Articles 91(1) and (2), 178(1) and 8(2) of the Constitution and Article 206a of the Common Defence Act, due to their improper interpretation and application.

   The appellant contends that these provisions primarily establish the fundamental right to freedom of conscience and religion. While he acknowledges the possibility of limiting these rights to the extent allowed by law (e.g. Article 9(2) of the ECHR or Article 18(3) of the ICCPR), such limitations only pertain to the external manifestation of religion or beliefs, not to the violation of freedom of conscience itself. Performing the civilian duties, in the appellant's situation, would directly infringe on his freedom of conscience and likely his freedom of religion, as safeguarded by Article 9(1) of the ECHR, Article 18(1) of the ICCPR, Article 10 of the Charter and Article 53(1) of the Constitution.

   The court and administrative authorities should therefore have applied a pro-constitutional interpretation of Article 206a of the Common Defence Act, recognising that freedom of conscience and religion is directly derived from the aforementioned international and constitutional provisions, which take precedence over the statutory rule in Article 206a of the Common Defence Act. These provisions could have been applied directly pursuant to Articles 91(1) and (2), 178(1) and 8(2) of the Constitution.

c) Article 85(1) of the Constitution, in conjunction with Article 206a of the Common Defence Act and Articles 53(1), 178(1) and 8(2) of the Constitution, due to an incorrect interpretation and improper application, resulting in the conclusion that the obligation to defend the homeland under Article 85(1) of the Constitution by carrying out these civilian duties is superior to the appellant's right to freedom of conscience and religion

   The appellant argues that the right to freedom of conscience and religion is equally as significant as the obligation to defend the homeland. The court

and administrative authorities should have interpreted Article 85(3) of the Constitution to allow for exemptions from military service (as a qualified form of homeland defence) or civilian obligations for conscientious or religious reasons. Article 85(3) does not preclude such exemptions or their limitation based on constitutional principles. Consequently, the appellant submits that it is possible to release individuals from homeland defence duties without imposing substitute service obligations if justified by their right to freedom of conscience or religion.

d) Article 206a of the Common Defence Act in conjunction with Article 87(1) of the Constitution, Article 53(1) of the Constitution, Article 9 of the ECHR, Article 18 of the ICCPR and Article 10 of the Charter, due to an incorrect interpretation – the application of Article 206a of the Common Defence Act was based on the finding that the catalogue of individuals exempted from the obligation to perform civilian duties is exhaustive, contrary to a constitutional interpretation in harmony with ratified international agreements.

The appellant contends that the above-mentioned provisions of the Constitution, the ECHR, the ICCPR and the Charter represent superior sources of law in relation to the Common Defence Act and should have been directly applied under Articles 178(1), 8(2) and 91(1) and (2) of the Constitution. The authorities and the court failed to recognise that their correct application should take precedence, ensuring the protection of freedoms of conscience and religion.

The appellant therefore seeks to demonstrate that the court and the administrative authorities committed substantive legal errors in their interpretation and application of both domestic and international law, specifically in failing to adopt a pro-constitutional and rights-based approach to resolving the conflict between obligations under the Common Defence Act and constitutional/international guarantees of freedom of conscience and religion.

2. Violation of procedural provisions which could have had a significant impact on the outcome of the case

Specifically, the appellant alleges violations of Article 3 §1 and Article 145 §1(1) (a) and (c) of the LPAC, due to the finding of the court of first instance that the authorities had thoroughly analysed the factual circumstances of the case. The appellant argues that the following factors were omitted:

- performing the planned civilian duties in the event of mobilisation or during wartime would contradict the appellant's moral principles, conscience and deeply held and genuine religious beliefs;
- performing such duties would cause a "strong and insurmountable conflict" between the obligation to perform them and the appellant's "conscience or

deeply held and genuine religious beliefs", thereby directly violating Article 77 §1 of the Code of Administrative Procedure (CAP) in conjunction with Article 7 of the CAP, as well as Article 80 of the CAP in conjunction with Article 7 of the CAP.

On the basis of the above claims, the appellant petitioned for the contested judgment to be repealed in its entirety, pursuant to Article 185 of the LPAC, and the case to be remanded to the Voivodship Administrative Court for reconsideration [and for] the costs of the proceedings, including the costs of legal representation and the stamp duty for the power of attorney, to be awarded in accordance with Article 203 of the LPAC, based on statutory standards [...].

The grounds for the cassation complaint were elaborated in greater detail in the justification. In response to the cassation complaint, the West Pomeranian Voivode petitioned for its dismissal [and] the awarding of the costs of proceedings, including the costs of legal representation, pursuant to statutory standards [...].

The Supreme Administrative Court held as follows:

The cassation appeal does not contain justified grounds.

[...]

Contrary to the cassation allegations, the assessment of the Voivodship Court expressed in the contested judgment does not violate Article 206a of the Common Defence Act, in conjunction with Articles 53(1), 85(1), 87(1) and 178(1) of the Constitution, nor Article 8(2) of the Constitution.

The Voivodship Court's decision could not be undermined by the cassation allegations based on Article 9 of the ECHR, Article 18 of the ICCPR and Article 10 of the CFR, in conjunction with Article 91(1) and (2), Article 178(1) and Article 8(2) of the Constitution.

Referring to the above allegations, it must be stated that neither the constitutional provisions nor the provisions of international legal acts cited as the basis for the cassation claim could serve as a basis for exempting the complainant from the obligation to perform civilian duties for national defence (Article 200 of the Common Defence Act) on the grounds of objections stemming from conscience, moral principles or spiritual life.

The essence of the dispute in the case, which was resolved by the contested judgment, concerns the conflict between the complainant's obligation to perform civilian duties under the universal obligation to defend the Nation – established by the provisions of Article 85(1) of the Constitution and Article 4 of the Common Defence Act – and the complainant's ideological and spiritual convictions and conscience, which are safeguarded by Article 53(1) of the Constitution and international legal acts.

The court of first instance appropriately noted that Article 18(3) of the ICCPR and Article 9(2) of the ECHR provide for statutory limitations on the rights to freedom of thought, conscience and religion. In the Polish legal system, the Act on Administrative Procedure is such a law. Furthermore, Article 9(2) of the ECHR and Article 18(3) of the ICCPR stipulate that the freedom to manifest one's religion or beliefs may be subject to restrictions prescribed by law, as necessary in a democratic society for public safety, public order, health or morals, or the protection of the fundamental rights and freedoms of others.

Given these regulations, it is beyond doubt that obligations imposed on Polish citizens under the [Common Defence Act] may lead to limitations on the "freedom to manifest one's religion or beliefs". Moreover, Article 10(2) of the CFR recognises the right to conscientious objection in accordance with national laws governing the exercise of this right. Notably, the language of the provision does not acknowledge an absolute right to "refuse actions contrary to one's conscience", because the exercise of this right must align with national laws.

In this case, as the court of first instance rightly pointed out, Article 206a of the [Common Defence Act] does not include in its catalogue of exemptions from the obligation to perform civilian duties a situation where an individual designated to perform such duties invokes the "right to refuse actions contrary to one's conscience".

It should be emphasised that Article 10(2) of the CFR protects the right to conscientious objection; however, the exercise of this right must occur within the framework established by national laws. In legal doctrine and case law, two dimensions of freedom of thought, conscience, and religion are distinguished: internal freedom (*forum internum*) and external freedom (*forum externum*). Consequently, it is inferred that while internal freedom cannot be subject to any limitations, external freedom – which involves the expression of one's beliefs – must in some cases be subject to restrictions (see the reasoning of the judgment of the Constitutional Tribunal of 7 October 2015 (case no. K 12/14 OTK-A 2015, no. 9, item 143).

For the purposes of these deliberations, it should be clarified that conscientious objection, sometimes referred to as the conscience clause, is defined as "the right to act in accordance with one's own conscience and, consequently, also the freedom from coercion to act contrary to one's own conscience" (see P. Stanisz, *Klauzula sumienia* [Conscience clause], in: *Prawo wyznaniowe* [Church-State law], A. Mezglewski, H. Misztal, P. Stanisz, Warsaw 2011, p. 104).

In connection with the arguments presented in the cassation complaint, it is necessary to observe that in Strasbourg case law, the issue of conscientious objection has been considered in the context of the right to refuse military service. A line of jurisprudence has been developed, starting with the judgment cited in the cassa-

tion complaint, *Bayatyan v. Armenia* (application no. 23459/03) of 7 July 2011, in which the ECtHR held that, under certain conditions, opposition to military service could fall under the guarantees provided by Article 9 of the ECHR. This position concerned a Jehovah's Witness and their obligation to perform military service. Thus, it cannot be directly referred to in this case, which concerns an obligation to perform civilian duties.

It is worth noting the opinion expressed in the legal literature that "[t]he aforementioned ECHR judgment relates strictly to the issue of refusing military service and does not contain general assertions that could be interpreted as 'opening' Article 9 of the ECHR to all cases of objecting to behaviour required by law but contrary to individual beliefs" (W. Brzozowski, *Prawo lekarza do sprzeciwu sumienia – po wyroku Trybunału Konstytucyjnego* [The Right of a doctor to conscientious objection: Following the judgment of the Constitutional Tribunal], Państwo i Prawo 2017, no. 7, pp. 23–26).

In light of the above, it is reasonable to infer that according to the standard established by the provisions of those international legal acts, the guaranteed protection of freedom of conscience and religion does not apply to every conflict between beliefs and a legal obligation. The right to conscientious objection is exercised within the framework established by national law. It should also be emphasised that international legal acts, as well as the jurisprudence of the Strasbourg Court, set guidelines for the interpretation of norms applicable within the domestic legal order, which had to be taken into account when examining the case at hand.

Referring to the national legal order, it should be noted that under Article 53(1) of the Constitution of the Republic of Poland, everyone is guaranteed freedom of conscience and religion. According to the allegations raised in the cassation complaint, this particular provision should serve as the standard for a pro-constitutional interpretation of Article 206a of the Act on Administrative Procedure, and consequently, as the basis to exempt the complainant from the obligation to perform civilian duties that are contrary to his conscience and religious beliefs.

When addressing the arguments made by the complainant, it must first be pointed out that the cassation complaint emphasises the complainant's rights derived from Article 53(1) of the Constitution, which protects freedom of conscience and religion. However, it omits the relationship of this provision with other constitutional norms that allow the exercise of constitutional freedoms and rights to be limited. Specifically, within Article 53(5) of the Constitution, the framers of the constitution provided that the freedom to manifest religion may only be restricted by statute, and solely when necessary to protect the security of the state, public order, health, morality or the freedoms and rights of others.

Similarly, as regards freedom of conscience, Article 31(3) of the Constitution should be taken into consideration, which stipulates that limitations on the exercise of constitutional freedoms and rights may only be imposed by law and exclusively when necessary in a democratic state to ensure its security or public order or to protect the environment, health, societal morality or the freedoms and rights of others. Such limitations must not infringe upon the essence of freedoms and rights.

The Constitutional Tribunal, in its judgment of 7 October 2015 (case no. K 12/14) – following international regulations and the widely accepted interpretation of constitutional provisions – held that the freedom of conscience expressed in Article 53(1) of the Constitution may be subject to certain limitations. However, such limitations must be appropriately proportionate, meaning they must meet the criteria set out in Article 31(3) of the Constitution.

This case undoubtedly involves a constitutional conflict of values. On the one hand, the complainant, invoking freedom of conscience and religion, demands exemption from the obligations imposed by the contested decision. On the other hand, administrative authorities point to the Common Defence Act and Article 85 of the Constitution as the legal basis for imposing on the complainant a universal obligation to defend the homeland.

The arguments in the complaint and the cassation appeal that the obligations imposed on the complainant under the universal obligation of defence constitute a limitation on their rights derived from freedom of conscience and religion are valid. However, the key issue in this case is to determine whether these limitations comply with the requirements of Article 31(3) and Article 53(5) of the Constitution. As noted by the Constitutional Tribunal in its judgment (case no. K 12/14), the principle of proportionality expressed in Article 31(3) allows for the resolution of situations where multiple constitutionally protected rights conflict or where legislative interference made to protect one constitutional value causes an excessive limitation on another value within the same category. Article 31(3) sets out universal criteria that must be met to impose restrictions on individuals' constitutional rights and freedoms.

The focus in this case was primarily on the relationship between Article 53(1) and (5) and Article 85 of the Constitution. From Article 53, it can be inferred that everyone has the freedom to embrace religious, moral or ideological convictions, and to express them through their own behaviour. The Constitutional Tribunal, in the aforementioned judgment, stated that the right to act according to one's conscience, and consequently the right to refuse to act against one's conscience, is embodied in the concept of conscientious objection or a conscience clause. The Tribunal stated that "freedom of conscience must manifest itself in the possibility of refusing to perform a duty imposed by law by invoking scientific, religious, or

moral beliefs." Notably, the Constitutional Tribunal had already, in its judgment of 15 January 1991 (case no. U 8/90, OTK 1991, item 8), recognised that freedom of conscience does not merely mean the right to hold certain views, but also involves the right to act according to one's conscience and to be free from coercion to act against one's conscience.

With regard to conscientious objection, it is important to note that neither international standards nor the constitutional context allow Article 53(1) of the Constitution to be interpreted as creating a general right to refuse to comply with the law in every situation where legal requirements conflict with an individual's conscience. The protection arising from freedom of conscience and religion is not unlimited and does not apply to every instance of a conflict between beliefs and a legal obligation.

The framers of the Constitution, recognising the issue of conscientious objection, decided to regulate it in a narrow scope, namely through the possibility of refusing military service. Pursuant to Article 85(3) of the Constitution, a citizen whose religious convictions or moral principles do not allow them to perform military service may be required to undertake alternative civilian service under conditions specified by law. This provision constitutes an exception to the universal obligation to defend the homeland, as established in the Constitution. According to Article 85(1) of the Constitution, the obligation to defend the Republic of Poland applies to all its citizens.

From the entirety of the regulations contained in the Common Defence Act, the broadest set of responsibilities within the scope of the universal obligation of defence is associated with performing military service. This service naturally entails corresponding limitations on the exercise of constitutional freedoms and rights by the individuals called to such service. While performing obligations in support of national defence represents one form of the universal obligation of defence, it differs significantly from military service – a distinction that is reflected at the constitutional level in Article 85(3). The constitution's limiting the legal protection solely to cases of conscientious objection in the context of military service provides an important axiological indication for assessing cases involving conflicts between one's conscience and the requirements of binding law.

In the cassation appeal, the assumptions regarding the legal protection of individuals who are assigned civilian duties were formulated in a manner that resembles the legal solutions concerning military service, without adequately recognising the significant differences between these two forms of the universal obligation of defence. Contrary to the assertions made in the cassation appeal, neither the European nor the Polish legal systems contain provisions that justify extending legal protection to other cases of conscientious objection beyond those related to military service.

There are, however, compelling reasons to refrain from extending the exceptional regulation in Article 85(3) of the Constitution to other forms of the universal defence obligation. It should be emphasised that the assessment of a specific case of conscientious objection must consider other legally protected values.

In this case, the assessment that the limitations on freedom of conscience and religion resulting from the complainant's obligation to provide civilian duties for defence do not constitute excessive interference with his rights that would necessitate legal protection is warranted. The essence of the right to conscientious objection is not to grant an individual absolute discretion to choose which legal norms to comply with, but rather to permit their refusal to adhere to those norms which they perceive as flagrantly inconsistent with their professed beliefs.

In the circumstances of this case, it is difficult to accept that the complainant's performance of civilian duties – such as reporting immediately to the Port Command for the evacuation of individuals in the event of mobilisation or war – would result in a violation of the core rights derived from the freedom of conscience and religion enshrined in Article 53(1) of the Constitution. Although the complainant experienced a personal conflict between his convictions and the obligations imposed by the contested decision, there are no objective grounds to conclude that this situation threatens his identity or integrity as shaped by conscience and religion.

When resolving this case, it was also necessary to consider that "in a democratic state governed by the rule of law, there is a generally accepted mechanism for balancing conflicting values and opposing considerations that are difficult or even impossible to reconcile. This mechanism is expressed through the principle of proportionality set out in Article 31(3) of the Constitution of the Republic of Poland" (*Konstytucja RP. Komentarz* [Constitution of the Republic of Poland: Commentary], edited by M. Safjan and L. Bosek, vol. I, C.H. Beck, Warsaw 2016, p. 1263).

[I]t must be recalled that one of the purposes set out in Article 31(3) of the Constitution that may justify imposing limitations on the exercise of constitutional freedoms and rights is the necessity to safeguard state security. Similarly, Article 53(5) of the Constitution provides for the possibility of restricting, by statute, the freedom to manifest one's religion when it is necessary to protect state security. There is no doubt that the tasks defined under the Common Defence Act, which are imposed on all organs of state authority, government administration, local government bodies, other institutions and every citizen, primarily serve the purpose of ensuring state security.

The decision issued by the President of the City of Ś., which was reviewed by the Voivodship Administrative Court, was based on Article 203 of the Common Defence Act, which provides that, in peacetime, the mayor or city president issues

administrative decisions that assign civilian duties to individuals, including those planned for execution in the event of mobilisation and war, upon the request of the bodies and organisational units referred to in Article 202(1). This leads to the conclusion that the authorities of both instances adjudicating in the complainant's case did not have legal grounds to grant his request for exemption from the obligation to perform civilian duties, as Article 206a of the Common Defence Act was not applicable to his situation.

In light of the foregoing considerations, and contrary to the cassation allegations, neither norms of international law (such as Article 9 of the ECHR, Article 18 of the ICCPR and Article 10 of the CFR) nor the Constitution provide grounds for questioning the constitutionality of Article 206a of the Common Defence Act on the grounds that it does not account for individuals refusing to perform civilian duties due to conflict with their conscience or religious beliefs. As stated above, the regulations protect the freedom of conscience and religion, but allow for their restriction by statute when necessary, including for the protection of public security.

In the case at hand, there were no grounds to apply protection derived directly from Article 53(1) of the Constitution to safeguard the complainant's rights resulting from freedom of conscience and religion. Regarding the cassation allegations related to Article 53(1) of the Constitution, it is also necessary to reference the Act of 17 May 1989 on the Guarantees of Freedom of Conscience and Religion, whose Article 3(1) states that the exercise of freedom of conscience and religion cannot justify avoiding public duties imposed by law. For individuals with religious or moral convictions, Article 3(2) of the Act allows them to apply for alternative civilian service under the Act of 28 November 2003 on Alternative Civilian Service.

The constitutional and statutory provisions outlined above establish that civilian duties, as a form of the universal defence obligation, are mandatory even for individuals for whom performing such duties conflicts with their conscience and beliefs. The analysis of the specific circumstances of the case, in the context of these constitutional and statutory provisions, did not support the conclusion that there was excessive interference with the complainant's rights related to freedom of conscience and religion, which could render the decisions illegal. Consequently, the Voivodship Administrative Court rightly upheld the decisions issued by the authorities of both instances.

For the reasons stated above, the allegations asserted in point 2 of the cassation basis – regarding the violation of Article 3 § 1 and Article 145 § 1(1)(a) and (c) of the LPAC – through the failure of the Voivodship Administrative Court to fully annul the decisions of the Voivode, as well as the preceding decision of the first-instance [administrative] authority, could not undermine the court's positions.

In the case under review, the absence of a legal provision that would exempt the complainant from the obligation to perform civilian duties due to conscientious objection was decisive. The cassation complaint incorrectly alleged that the complainant's desired legal protection could be derived from the direct application of Article 53(1) of the Constitution or a pro-constitutional interpretation of Article 206a of the Common Defence Act. As established above, such an approach would, in essence, amount to creating legal provisions – a function reserved for the legislature.

It must be noted that analogous positions under similar legal and factual circumstances were adopted by the Supreme Administrative Court in the judgments of 12 March 2020 (case no. II OSK 1259/18) and of 28 September 2022 (case no. III OSK 1402/21).

For all the above reasons, the cassation appeal, being devoid of justified grounds, was dismissed pursuant to Article 184 of the LPAC.