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Internal Acts in Self-Government Systemic Acts

Akty wewnętrzne w samorządowych ustawach ustrojowych

ABSTRACT

The subject of the article is the issue of internal acts issued by self-governing bodies on the basis of authorizations contained in the local government laws. The article is of a scientific and research nature. In the scope related to its area, it includes the analysis of the applicable normative material and jurisprudence of administrative courts. The article focuses on internal acts from self-governing bodies issued on the basis of authorizations under local government laws. Internal acts of law in administrative law occupy an important position, both as a category of sources of administrative law and when discussing legal forms of administration. The justification for taking up the issue of internal acts issued by self-governing bodies is the pursuit of a broader understanding of legislative activity that goes beyond the issue of the acts of local law. Internal acts in administrative law are often discussed from the perspective of acts originating from government administration bodies. This observation also justifies considering in the indicated area. The aim of the conducted research is to: find out about the legal nature of internal acts issued by self-governing bodies on the basis of authorizations contained in local government laws; presentation of legal regulations and jurisprudence of administrative courts, as well as postulates *de lege ferenda* on the admissibility of supervision measures against internal acts in the form of ordinances of the commune head (starost, voivodeship marshal); drawing attention to the impact of internal acts on external entities. The considerations presented in the article may be a contribution to a broader and in-depth scientific reflection on the specification of the category of internal acts originating from self-governing bodies within internal acts. The criterion for distinguishing such a group is not only the category of the entity, but the conclusions indicated in the article referring in particular to the non-uniform legal nature of self-government internal acts and the legitimacy of supervising and controlling each internal act.

Keywords: internal acts; self-governing bodies; supervision measures; self-government systemic acts; administrative law

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INTRODUCTION

The issues presented in the article refer to the problems of the sources of administrative law, which is of constant interest to the doctrine and jurisprudence. The subject of the sources of law is related to the shaping of the legal situation of an individual and the structure of administration. In each of these areas, the legislator authorizes certain entities to issue generally applicable and internal acts. The subject of the article is the issue of internal acts issued by self-governing bodies on the basis of authorizations contained in the systemic acts. The basis for listing this category within internal acts in administrative law is the status of local self-government as an entity that performs law-making activities. It can be noted that in the literature, this aspect of local self-government activity is developed primarily in relation to the creation by local self-government bodies of acts of local law.[1] It is justified by the nature of these acts being the sources of universally binding law. However, the law-making activity of self-government is also carried out by issuing internal acts.[2] The justification for taking up this topic is also the presentation of internal acts in the doctrine mainly from the perspective of government administration bodies.[3]

Therefore, the article analyses the authorizations to issue internal acts contained in self-governmental systemic acts.[4] The article uses a formal-dogmatic method. The thesis adopted in the study is to determine that local government's internal acts are characterized by a variety of and ambiguous legal nature. The designated research area also justifies the consideration of issues related to the supervision and judicial control of internal acts and the impact of these acts for external entities.

LEGAL NATURE OF INTERNAL ACTS

Within internal acts, internal normative acts and internal acts without normative features can be distinguished. Internal normative acts are a part of a wider category of sources of administrative law, which is formed by normative legis-

[1] See, i.a., D. Dąbek, *Prawo miejscowe*, Warszawa 2020; *Źródła prawa w samorządzie terytorialnym*, ed. B. Dolnicki, Warszawa 2018 and the literature cited therein.

[2] See J. Mielczarek, *Źródła prawa wewnętrznego organów administracji samorządowej*, [in:] *Źródła prawa…*, pp. 486–496.

[3] See, i.a., M. Stahl, *Formy prawne w sferze działań zewnętrznych administracji publicznej*, [in:] *System Prawa Administracyjnego*, vol. 5: *Prawne formy działania administracji*, eds. A. Błaś, J. Boć, M. Stahl, K.M. Ziemski, Warszawa 2013, pp. 145–151.

[4] The term "systemic laws" used in the article includes the Acts: of 8 March 1990 on commune self-government (consolidated text, Journal of Laws 2020, items 713, 1378), hereinafter: the ACSG; of 5 June 1998 on district self-government (consolidated text, Journal of Laws 2020, item 920), hereinafter: the ADSG; of 5 June 1998 on voivodeship self-government (consolidated text, Journal of Laws 2020, item 1668), hereinafter: the AVSG.

lation of administration. In the literature on the subject, normative legislation of administration define legal acts with a different name originating from authorized administrative bodies, issued on the basis of variously constructed legal bases, if they contain normative content, i.e. they oblige the addressees to conduct a specific or specific behaviour.[5] One of the essential features of a normative act is its general-abstract character. The norms contained in this type of act are addressed to a generally defined addressee in an abstractly defined situation. A typical normative act is not consumed as a result of a one-off action, but applies whenever the situation defined in it occurs.[6] Due to the scope of application, a normative act of administration may be generally applicable or may apply in the so-called internal sphere of administration. The criterion that separates these two categories of administrative normative acts is the location of the addressee. In the case of internal normative acts, the standards contained therein shall be addressed to the organisational units and the staff of those bodies subordinated to the issuing authority. Internal normative acts may indirectly affect entities operating in the external sphere, i.e. not subject to the organisational and official issuing of the act.[7] Internal normative acts, therefore, have characteristics which are specific to acts which are universally binding, that is to say, contain rules of an abstract and general nature, but their addressee, unlike sources of generally applicable law, cannot be external entities towards administration.

In addition to internal normative acts, there are other internal acts which do not have the characteristics of normative acts. The group of those acts, distinguished by its heterogeneity, includes acts of a general nature – instructions, opinions, communications, notices, acts indicating the direction of action, as well as acts of an individual and specific nature addressed to entities subordinate to the authority issuing the act. This category of internal acts is not clearly defined. The terms "internal acts without normative characteristics",[8] "administrative provisions", "specific sources of law", "informal sources of law",[9] are used in literature.

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[5] A. Błaś, [in:] *Prawo administracyjne*, ed. J. Boć, Wrocław 2010, p. 335. See also P. Ruczkowski, *Pozytywistyczna koncepcja prawa a konstytucyjne akty prawa wewnętrznego oraz pozakonstytucyjne akty normatywne administracji*, "Przegląd Sejmowy" 2014, no. 1, pp. 63–78.

[6] B. Jaworska-Dębska, R. Michalska-Badziak, E. Olejniczak-Szałowska, M. Stahl, *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warszawa 2013, pp. 458–459.

[7] E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2018, p. 125; A. Błaś, *Formy prawne w sferze działań wewnętrznych administracji publicznej*, [in:] *System Prawa Administracyjnego*, vol. 5: *Prawne formy…*, p. 283.

[8] L. Garlicki, *Konstytucyjne źródła prawa administracyjnego*, [in:] *System Prawa Administracyjnego*, vol. 2: *Konstytucyjne podstawy funkcjonowania administracji publicznej*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, p. 78.

[9] R. Lewicka, *Znaczenie tzw. nieformalnych źródeł prawa w działaniach administracji publicznej*, [in:] *Nowe kierunki działań administracji publicznej w Polsce i Unii Europejskiej*, eds. P. Chmielnicki, A. Dybała, Warszawa 2009, pp. 95–106 and the literature cited therein. See also

Internal acts adopted on the basis of self-government acts, which are the subject of this article, shall take the form of resolutions or ordinances of a legal nature which are not uniform. In addition, an act called a resolution or an ordinance may also be an act of local law.[10] In the area discussed, there are resolutions and ordinances constituting internal normative acts, as well as resolutions and ordinances which are internal acts without normative features.

Resolutions, as acts coming from collective bodies, are adopted by legislative and executive bodies in the district and voivodeship. Resolutions may also come from the bodies of auxiliary units – resolutions of the district council and board, resolutions of the village assembly. These acts are taken in order to perform the tasks of the auxiliary unit specified in its statute.

An ordinance is an act of a one-man authority. In the local self-government, the entities issuing ordinances are the commune head, starost, voivodeship marshal, the so-called government commissioner, i.e. a person who performs the tasks and competences of local self-government units in the event of the occurrence of cases specified in the constitutional acts and a representative for the merger of communes (districts).[11]

On the basis of systemic acts, depending on the content of the provision authorizing the issuance of an internal act, there are acts regulating the matter specified in the authorization (resolution/executive ordinance) and acts issued on the basis of competence provisions (resolution/ordinance of a self-contained nature).[12] The type of authorization does not determine the legal nature of the act.

1. Internal normative acts

Internal normative acts issued by self-governing bodies contain normative content addressed to a generally defined addressee functioning in relation to the entity issuing the act in an organizational or official system. Such acts are the organizational regulations of offices – the ordinance of the commune head on the organizational regulations of the commune office and the resolution of the district

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Z. Duniewska, M. Górski, B. Jaworska-Dębska, E. Olejniczak-Szałowska, M. Stahl, *Plany, strategie, programy i inne zbliżone formy prawne działania administracji*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Eugeniusza Ochendowskiego*, Toruń 2005, pp. 142–149; J. Zimmermann, *Prawo administracyjne*, Warszawa 2016, p. 152.

[10] See M. Olszówka, *Konstytucyjny paradygmat aktu prawa wewnętrznego*, "Ius Novum" 2013, no. 2, p. 114.

[11] Article 4ea (1–3) of the ACSG; Article 3ca (1–3) of the ADSG.

[12] J. Zimmermann, *op. cit.*, p. 151. See also J. Kaczor, *Zasady państwa prawa a upoważnienia do stanowienia aktów prawnych wewnętrznie obowiązujących*, [in:] *Rządy prawa i europejska kultura prawna*, eds. A. Bator, J.J. Helios, W. Jedlecka, Wrocław 2014, p. 47.

(voivodeship) board on the organizational regulations of the district starosty (marshal's office). The content of the authorizations to issue the organizational regulations shows that the body is obliged to do so.[13] The organizational regulations of the office are an internal normative act of an executive nature, but the statutory authorization to issue them is not specific. This act should define the organization and functioning of the office. The legislator does not define the organizational structure of the office, which allows it to be adapted to the specifics of a given unit and is an expression of the independence of local self-government. Another example of an internal normative act is the ordinance of the head of the commune (starost, voivodeship marshal) on the organization of receiving and examining complaints, applications and petitions. The above-mentioned ordinances refer to general competence norms as legal grounds resulting from the system statutes, according to which the commune head (starost, voivodeship marshal) is the head of the competent office.[14]

The analysis of the constitutional acts shows that the constitutive organs are not authorized to issue internal normative acts. This is due to the lack of functioning towards the decision-making body of entities subordinated to it in terms of organization or service.

2. Internal acts without normative features

In the area of internal acts issued on the basis of authorizations contained in local government laws, internal acts without normative features prevail. Internal acts without normative features contain, in particular, general norms of an informative nature (data and forecasts) in order to stimulate the actions indicated in them. These include resolutions on the strategy of a local government unit, programs or expressions of a position, opinions.[15] In the jurisprudence of administrative courts, it is admissible to adopt such resolutions only on the basis of a standard presuming competence for the commune council, according to which the jurisdiction of the commune council includes all matters within the scope of the commune's activities unless the acts provide otherwise. As a condition of their legality, the courts assume that the matter that is the subject of the authority's statement falls within the tasks of a given local self-government unit. These resolutions are non-binding and do not create rights or obligations. They only contain the authority's declaration in a given case.[16]

[13] Article 33 (2) of the ACSG; Article 36 (1) of the ADSG; Article 41 (2) (7) of the AVSG.

[14] Article 33 (2) of the ACSG; Article 36 (1) of the ADSG; Article 41 (2) (7) of the AVSG.

[15] L. Garlicki, *op. cit.*, p. 77.

[16] Judgment of the Supreme Administrative Court of 28 April 2011, II OSK 269/11; judgment of the Voivodeship Administrative Court in Kraków of 6 December 2018, III SA/Kr 849/18.

For their implementation, the regulations contained in the local government laws may require authorizations contained in specific acts, as they themselves do not constitute a sufficient legal basis for issuing an internal act. As an example of such a situation, one can cite the regulation of the ACSG, according to which the commune's own tasks include environmental protection matters.[17] The enactment of legal acts in the field of environmental protection takes place on the basis of the Environmental Protection Law, which, i.a., authorizes the adoption of communal, district and voivodeship environmental protection programs.[18] These acts, as adopted in the activities of supervisory authorities[19] and the jurisprudence of administrative courts,[20] are not universally binding. As indicated by the supervisory authority, the program is planning in nature and sets certain directions and goals for the executive body. Due to the legal nature of these acts, the regulation raises doubts, according to which one of the obligatory grounds for refusal to issue a permit to use the environment is the inconsistency of the intended activity with the environmental protection program.[21] Thus, an internal act affects the legal sphere of an individual. The doctrine indicates that, based on the acts of internal law, "it is not allowed to impose obligations, deprive of entitlements, deny entitlements, or grant entitlements to an entity outside the organizational structure subordinate to the authority that issued a given normative act".[22] The discussed regulation raises reservations from the point of view of constitutional regulations concerning the sources of law. The doctrine indicated that the Polish Constitution does not allow for issuing decisions and refusal to issue them on the basis of acts of internal law.[23]

Internal acts without normative features based on local government laws addressed to individually designated addressees, have the form of resolutions or ordinances because they come from both legislative and executive organs. The addressee of a resolution as an act without normativity may be: the commune

[17] Article 7 (1) (1) of the ACSG.

[18] Articles 17–18 of the Act of 27 April 2001 – Environmental Protection Law (consolidated text, Journal of Laws 2020, items 1219, 1378, 1565, 2127, 2338; Journal of Laws 2021, item 802, as amended).

[19] Rozstrzygnięcie nadzorcze Wojewody Zachodniopomorskiego z dnia 18 stycznia 2019 r., https://www.szczecin.uw.gov.pl/systemfiles/articlefiles/1644/(20190118.105847).rozstrzygniecie_80_kd.pdf (access: 10.3.2022).

[20] Judgment of the Voivodeship Administrative Court in Kraków of 25 January 2005, II SA/Kr 1385/04.

[21] Article 186 (1) (4) of the Environmental Protection Law.

[22] J. Zaleśny, *Specyfika aktów prawnych o mocy wewnętrznego obowiązywania*, "Studia Politologiczne" 2009, vol. 14, p. 288. See also A. Korybski, *Prawo wewnętrznie obowiązujące: pojęcie i podstawowe problemy badawcze*, [in:] *Państwo, prawo, myśl prawnicza*, eds. A. Korobowicz, L. Leszczyński, A. Pieniążek, M. Stefaniuk, Lublin 2003, p. 134.

[23] Z. Bukowski, [in:] E.K. Czech, K. Karpus, B. Rakoczy, Z. Bukowski, *Prawo ochrony środowiska. Komentarz*, Warszawa 2013, commentary on Article 186.

head (e.g., a resolution on a vote of confidence), a treasurer (a resolution on dismissal or appointment of a treasurer), a councillor (a resolution on the election of a council chairman, a resolution on the election of council committee members). An ordinance that is an act without normativity is, e.g., an ordinance of the head of the commune regarding the appointment (dismissal) of his deputy. Addressees of the discussed internal acts may be entities remaining in relation to the authority issuing the act in various relationships, which, however, are not in each case a relationship of subordination resulting from service or organizational dependence. In some cases, there are no links between the addressee and the authority, as the addressee is a separate authority.

Internal acts without normativity features, due to the way in which the authorization to issue them is handled, may appear as executive acts and acts independently. We deal with an executive act when it is issued for the purpose of executing the authorization contained in the constitutional act, defining the subject of the act. Often, this type of authorization also implies the obligation to issue an act, although this is not a condition for treating the act as executive. The content of the authorization also determines the freedom of the authority issuing the act in shaping its content. This is important, in particular with regard to local self-government, whose organs should be legally autonomous. This group of acts includes a resolution on the definition of a detailed procedure and schedule for the development of a project of a commune development strategy. In the case of this resolution, the authorization to issue the act is detailed.[24] An ordinance of the commune head on entrusting certain matters to the secretary of the commune[25] can be indicated as an ordinance of an executive character. The scope of this authorization is wide, but it cannot lead to the assumption that the commune head is authorized to entrust the secretary with each of his tasks. The limits of this entrustment are determined by the function of the commune head as the head of the office.[26] Internal acts without normativity as self-contained acts include acts issued on the basis of general competence norms, e.g., a resolution of the commune council on the definition of the directions of the commune head[27] or the ordinance of the starost on the appointment of a team for assessing the availability of public utility facilities owned by the district for disabled people.[28]

[24] Pursuant to Article 10f (1) of the ACSG, the commune council, by way of a resolution, defines the detailed procedure and schedule for the development of the draft commune development strategy, including the consultation procedure referred to in Article 6 (3) of the Act of 6 December 2006 on principles of development policy.

[25] Article 33 (4) of the ACSG.

[26] Judgment of the Supreme Administrative Court of 14 November 2017, II GSK 273/16.

[27] Article 18 (2) (2) of the ACSG.

[28] Article 35 (2) of the ADSG.

The legal basis for issuing internal acts without normativity may result not only from systemic acts but also from acts issued on their basis. This applies in particular to ordinances issued on the basis of organizational regulations, e.g., an ordinance of the starost regarding the determination of the internal structure of organizational units in the department starosty.

When analysing systemic acts, it should be noted that the same legal basis may be used to issue a generally binding act and an internal act. The resolution specifying the principles and procedure for conducting public consultations[29] may be abstract or individual. The abstract resolution should define the form and rules of organizing and conducting all social consultations in the commune. An individual resolution will regulate specific consultations conducted in a specific factual state.[30]

SUPERVISION AND JUDICIAL CONTROL OF SELF-GOVERNMENT INTERNAL ACTS

The prerequisite for the validity of self-government legal acts, both universally and internally binding, is their legality. With regard to the supervision and judicial control of internal acts, it is worth paying attention to two issues. The first relates to the question whether the scope of the supervision and judicial control of internal acts also covers the ordinances of the commune head, starost and the voivodeship marshal. The second one concerns the judicial control of internal acts initiated by external entities such as members of a given self-government community.

1. The ordinance as a subject of administrative supervision and control

According to standardizations contained in the systemic acts, supervision covers the entire activity of a local self-government unit. On the other hand, regulations relating to supervision measures applied to legal acts, i.e., annulment of a resolution and complaints to an administrative court, may raise doubts related to the admissibility of applying these measures to internal acts such as ordinances. Therefore,

[29] Article 5a (1–2) of the ACSG.

[30] Judgment of the Voivodeship Administrative Court in Gliwice of 12 March 2007, IV SA/Gl 1456/06. The Court indicated that each of the above solutions has its own advantages. Adoption of the abstract resolution by the commune council makes it possible to adopt a permanent model for conducting consultations and to develop a certain practice in this regard. A thesis should be made that it will be a solution beneficial for large entities that prepare a large number of optional consultations. The second solution, assuming the adoption of the individual resolution on each initiative of conducting public consultations, has the advantage that it allows to create an optimal model of consultation in a given situation. This solution will be the best for municipalities where public consultations are carried out sporadically.

the question arises whether *de lege lata* we are dealing with internal acts that are not covered by the governor's supervision. The occurring doubts result both from the lack of adoption of a general competence norm in the systemic acts, according to which the commune head (starost, voivodeship marshal) issues ordinances in order to perform the tasks entrusted to him, as well as from omitting the fact that regulations concerning supervision include, apart from resolutions, also ordinances (this concerns the ADSG and AVSG).

The ACSG indicates only in a few exhaustively mentioned cases that the ordinance is an obligatory form of activity of the commune head (mayor, city president). Adoption of the above-mentioned competence norm would result in the fact that, apart from the cases of settling individual cases in the field of public administration by way of an administrative decision, the commune head acts in the form of an ordinance, regardless of whether it was standardized (*expressis verbis*). The lack of such regulation has resulted in discrepancies, both in the doctrine[31] and in the jurisprudence of administrative courts, related to each ordinance being subject to the supervision of the voivodeship governor and the control of administrative courts. Pursuant to the first position, all supervisory measures may be taken only in relation to the ordinances of the commune head concerning matters in relation to which the legislator explicitly mentions this form of activity. In one of the judgments the Voivodeship Administrative Court in Gliwice indicated that "since the legislator only in a few provisions of the constitutional act defined the legal form of the commune head, it must be assumed, in accordance with the principle of presumption of rational action by the legislator, that the use of the term 'ordinance' was intended to give him a specific normative content. This leads to the conclusion that an ordinance is a legal form of operation of the commune head, which may be used only in matters enumerated by the legislator".[32] As a result, in the opinion of the Court, only ordinances issued in cases in relation to which the legislator established an order or authorization to act in this form justify – in the event of a breach of the legality criterion – taking supervisory actions. In line with this position, it is permissible that there are acts originating from the commune's executive body, which are not covered by the scope of the subject matter of supervision, but they may be subject to control by an administrative court, but not on the basis of standardizations contained in systemic acts. The supervisory authority's complaint to the administrative court and the individual complaint referred to in Article 101 of the ACSG are excluded because in these provisions the legislator uses the term "ordinance". Pursuant to the judgment in question, the

[31] P. Chmielnicki, *Akty nadzoru nad działalnością samorządu terytorialnego w Polsce*, Warszawa 2006, p. 131.

[32] Judgment of the Voivodeship Administrative Court in Gliwice of 18 May 2009, II SA/Gl 104/09.

means of initiating the control is a complaint to the administrative court pursuant to Article 50 in conjunction with Article 3 § 2 (6) of the Law on proceedings before administrative courts, pursuant to which a complaint may be filed against acts of local self-government units undertaken in matters related to public administration, which are not acts of local law. The adoption of this view indicates that the acts issued by the commune head are not covered to the same degree by the scope of the subject of judicial supervision and control. Excluding the competence of the supervisory authority to initiate judicial control would leave a significant part of ordinances beyond the possibility of verifying their legality. Such a solution does not serve to implement the basic function of supervision which is to protect the law.

According to the second position, an ordinance is a legal form of the commune head's action through which he/she may take authoritative decisions in matters falling within the scope of this authority's activity, regardless of whether the legislator directly indicates this form of action. As a result, each ordinance of the commune head is an act in relation to which it is possible to cover it both under the supervision of the voivodeship governor and the control of administrative courts. This view can be considered as dominant in the jurisprudence of administrative courts and the activities of supervisory authorities. In one of the judgments, the Supreme Administrative Court indicated that "the ordinances of the commune head should be understood as all acts of this authority, except for administrative decisions and provisions, regardless of the name that the commune head gives to his decision. These ordinances are, next to administrative decisions, a legal form in which the commune head may take authoritative decisions". In the opinion of the Court, "if it were assumed that only ordinances issued in cases in which the legislator provided for such a form of settlement of the case, it would violate Article 171 of the Polish Constitution. This provision of the fundamental act subjects to supervision from the point of view of legality of all activities of local self-government, regardless of their form". As pointed out by the Court, "supervision is used to examine the resolution – which now also applies to the ordinances of the commune head – as an administrative act to ensure compliance with the law in the interest of both the state and the interested persons, while only to protect their rights".[33]

The issue of the ordinance as the subject of judicial supervision and control also applies to ordinances issued by the starost and the voivodeship marshal. In this area, this issue seems to be more complex for three reasons: firstly, the relevant systemic acts do not contain authorizations to act in this form (*expressis verbis*); secondly, system provisions do not specify the starost or the voivodeship marshal as district bodies (voivodeship self-governing bodies); thirdly, regulations con-

[33] Judgment of the Supreme Administrative Court of 14 November 2018, I OSK 2189/18.

cerning supervision do not mention ordinance as an act against which supervision measures may be applied.[34]

The legal nature of the ordinances of the starost (voivodeship marshal) is not uniform. Acts in this form may be, in cases permitted by acts, local law. Then it is allowed to take supervisory and control measures against ordinances. In the jurisprudence of administrative courts, it is assumed that the voivodeship governor, as the supervisory body, has the power to annul those ordinances of the starost (voivodeship marshal) that have the properties of generally applicable acts. This may apply to ordinances issued on the basis of authorizations contained in legally substantive acts, if the scope of the matter submitted for regulation corresponds to the requirements for acts of local law.[35]

However, there is no uniformity as regards ordinances that are internal acts. It is indicated that a supervisory interference in the form of declaring an ordinance invalid or a complaint against this act to the administrative court is allowed, if the ordinance of the starost (voivodeship marshal) is an act of a general nature, equivalent to a resolution of a self-governing body in the material sense.[36] This position leaves outside the scope of supervision other ordinances that are internal acts, which may be specific and issued as self-contained or executive ordinances. It should be added that such a limitation does not occur in the case of resolutions of self-governing bodies, the internal nature of which does not lead to differentiation in the supervisory powers of the voivodeship governor. It seems that the adoption of an extensive interpretation of the applicable legal standardizations in favour of granting the voivodeship governor supervisory powers over ordinances of the starost (voivodeship marshal) with specific properties does not exclude its application also to other orders issued by these bodies. This is justified, in particular, in the case of issuing by the starost (voivodeship marshal) an internal ordinance without a legal basis. The necessity to subject each ordinance to supervision and judicial control is also justified by the classification by the body as an internal act of an ordinance having in fact the features of an act of local law[37] and regulating of the matter reserved for act[38] by an internal act. Depriving the voivodeship governor of the

[34] Pursuant to Article 79 (1) sentence 1 of the ACSG (Article 82 (1) of the AVSG), an unlawful resolution of a district body is invalid.

[35] Judgment of the Voivodeship Administrative Court in Bydgoszcz of 12 February 2017, II SA/Bd 1156/16; judgment of the Voivodeship Administrative Court in Opole of 30 September 2014, II SA/Ol 773/14.

[36] See *Komentarz do ustawy o samorządzie województwa*, ed. P. Chmielnicki, Warszawa 2005, p. 395; judgment of the Voivodeship Administrative Court in Lublin of 31 January 2006, III SA/Lu 533/05.

[37] Judgment of the Voivodeship Administrative Court in Kraków of 14 April 2014, III SA/Kr 1623/15.

[38] K. Ziemski, *Trudności z ustaleniem relacji terminów „prawo miejscowe", „prawo wewnętrznie obowiązujące" oraz „prawo powszechnie obowiązujące"*, [in:] *Źródła prawa*..., p. 817.

supervision measure in the form of annulment of the act would result in the operation of illegal ordinances. With regard to the ordinances of the starost (voivodeship marshal), the control of their legality by the administrative court is usually triggered by the complaint of the voivodeship governor, which is admissible after the expiry of the period for declaring the act invalid. The adoption of the concept limiting the supervisory powers of the voivodeship governor with regard to the discussed acts also means that the supervisory body is not authorized to bring a complaint to the administrative court against each ordinance of the starost (voivodeship marshal).

2. Internal acts as the subject of an individual complain

Internal law acts may influence external entities, such as members of a self-governing community. Undoubtedly, therefore, these entities should be able to initiate judicial control of such acts, as is the case with acts of local law. Systemic acts standardize one legal measure, which is a complaint to an administrative court, without making it dependent on the legal nature of the act. Although the regulations concerning this complaint contained in Article 87 of the ADSG and Article 90 of the AVSG indicate its admissibility only with regard to resolutions, however, in the jurisprudence of administrative courts there is a position according to which the ordinance of the district starost, having a general character, may be appealed against to the administrative court in this manner.[39] The condition for the admissibility of the complaint is to show that the challenged act infringes the applicant's legal interest. Thus, not every internal act may be appealed against to an administrative court.

Judicial control initiated by way of an individual complaint is important in the case of internal acts without normative features and addressed to an individually identified addressee. The entities interested in judicial control of these internal acts are persons performing functions of an authority or occupying other positions in the structures of a given local self-government unit. For example, a resolution of the commune council on the refusal to grant a vote of confidence to the commune head or a resolution on dismissal of the chairman of the council can be mentioned here. In this way, the subject to which the act relates may exercise the constitutional right to a fair trial. In administrative law, the judicial protection of individual rights in substantive law is of fundamental importance, but it also occurs in standardizations of a legal and systemic nature. Persons performing specific functions in local self-government are interested in judicial control of an internal act in cases where the premise for issuing the act was allegations of violation of the law. Then, an independent entity – the administrative court – assesses the legality of the act taken and, depending on its result, the individual may, if the complaint is granted,

[39] Judgment of the Supreme Administrative Court in Kraków of 8 June 2001, II SA/Kr 1797/99; judgment of the Voivodeship Administrative Court in Lublin of 19 December 2006, III SA/Lu 505/06.

perform the current function in the self-governing body or, in the event of its dismissal, obtain confirmation of the correctness of the body's operation.

An important element affecting both the decision to bring a complaint and necessary for judicial control of an internal act is its justification. The legislator does not introduce an obligation to justify an act, but this issue is raised in doctrine[40] and the jurisprudence of administrative courts and the activity of supervisory authorities in the context of the legality of an internal act. In the jurisprudence of administrative courts, threads relating to justifying internal acts are raised with regard to internal acts in the form of both resolutions and ordinances. In the opinion of the courts, the obligation to justify internal acts results from the principle of open proceedings of public administration bodies, which is an element of the constitutional principle of a democratic state ruled by law. Lack of justification is also a violation of the principle of citizens' trust in the state and its organs.[41] "In a democratic state ruled by law, a lawless, arbitrary decision of public authorities cannot be accepted, not subject to the goals of this order and values to be served by the public authority. This rule belongs to the very essence of the rule of law. From this principle, it is possible to derive the obligation for public authorities to prepare justifications for their decisions in such a way that it is possible to assess whether they were taken as a result of a comprehensive and careful analysis of the factual and legal status of a given case".[42]

The administrative court has the right to examine the reasons underlying each decision challenged in the court. Therefore, it is important that the authority draws up a justification of the issued act. It is a precondition for supervision by supervisory bodies and control exercised by the administrative court.[43] The obligation to justify a self-government act is important not only for the addressee of the act. The justification of the resolution which is an internal act also enables the residents to learn about the motives of the decision, usually of a negative nature. The jurisprudence indicates the obligation to justify a resolution on refusal to grant a vote of confidence to the commune head.[44] It is emphasized that to assess the motives of the authority's actions, the content of the resolution alone cannot be sufficient,

[40] M. Stahl, *Samorząd terytorialny w orzecznictwie sądowym. Rozbieżności i wątpliwości*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2006, no. 6(9), p. 45.

[41] Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 19 November 2015, II SA/Go 649/15.

[42] Judgment of the Voivodeship Administrative Court in Olsztyn of 14 November 2019, II SA/Ol 785/19; judgment of the Voivodeship Administrative Court in Kraków of 24 September 2009, III SA/Kr 421/09.

[43] Judgment of the Supreme Administrative Court in Kraków (until 31 December 2003) of 6 May 2003, II SA/Kr 251/03.

[44] Judgment of the Voivodeship Administrative Court in Olsztyn of 14 November 2019, II SA/Ol 785/19.

which does not indicate the reasons of the authority taking the decision addressed to the addressees outside the administration and regarding their legal situation.[45]

Failure to justify an act is assessed as a premise which affects the validity of the act. It is indicated that an undoubted fault of the body is depriving the act of factual and legal justification.[46] The issue of failure to state reasons for an internal act is not the subject of a uniform assessment expressed in the assumption that failure to justify a legal act is always an infringement of the law resulting in the annulment of a resolution (ordinance). At the same time, however, it is emphasized that the lack of a justification for the act gives grounds for its annulment if it is not possible to establish the reasons for adopting it.[47] Therefore, if it is possible to learn the arguments of the body on the basis of other documents, e.g. the minutes of the session or additional explanations of the body, this may be sufficient material to assess the legality of the act.[48] In the jurisprudence, with regard to the lack of justification for the resolution on the failure to grant a vote of confidence to the head of the commune head, it is indicated that the justification of the resolution cannot be replaced by the justification of the response to the complaint or the course of the debate on the report on the state of the commune recorded with the use of video and sound recording devices (available on the website commune website). Without knowing the position of the commune council as to the reliability of the report, or as to the fulfilment of detailed requirements by the report, provided that the council of a given commune has specified such requirements, judicial control of the legality of the resolution is not possible.[49]

It is possible to postulate an obligation to justify internal acts having the nature of an individual decision. This is due to the need to implement the above-mentioned constitutional principles. Moreover, getting to know the reasons for taking a given act is conducive to the principle of convincing the addressee about the correctness of the decision made and enables polemics with the arguments of the body in the event of appealing against the act to the administrative court.

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[45] Judgment of the Voivodeship Administrative Court in Wrocław of 5 November 2020, III SA/Wr 283/20.

[46] Judgment of the Supreme Administrative Court of 5 August 2010, I OSK 41/10.

[47] Judgment of the Supreme Administrative Court of 18 June 2020, I GSK 496/20; judgment of the Voivodeship Administrative Court in Gliwice of 28 May 2020, I SA/Gl 157/20; judgment of the Supreme Administrative Court of 27 August 2010, II OSK 1074/10; judgment of the Supreme Administrative Court of 8 June 2006, II OSK 410/06.

[48] Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 19 November 2015, II SA/Go 649/15; judgment of the Voivodeship Administrative Court in Kraków of 1 December 2020, III SA/Kr 1277/19.

[49] Judgment of the Voivodeship Administrative Court in Białystok of 9 March 2021, II SA/Bk 855/20.

CONCLUSIONS

The analysis of authorizations contained in local government laws to issue internal acts confirms that the legal nature of these acts is varied and ambiguous, which allows for a positive verification of the adopted thesis. The article assumes that internal self-government acts are divided into normative acts and acts without normative features, which form the most heterogeneous group including acts of general and individual nature and diversified in terms of the subject matter.

Both normative acts and acts without normativity, issued on the basis of systemic acts, may be executive acts and acts of a self-existent nature. Authorizations to issue an internal act are either specific or general. The legal basis for issuing an internal self-government act may be a statutory basis or a sub-statutory basis (statutes, regulations). The scope of the freedom to create internal law varies depending on the way in which the authorization to issue an act is formulated. By introducing specific authorizations, the legislator significantly restricts this freedom, thus interfering with the sphere of legislative independence of local government.

Based on the considerations presented in the article, it can be assumed that *de lege lata* the answer to the question whether supervisory measures and control of administrative courts can be applied to each internal act is not clear. The shortcomings of self-government acts in this area justify postulate *de lege ferenda* concerning the introduction of a general norm indicating that the commune head (starost, voivodeship marshal) issues ordinances in order to perform the tasks entrusted to him. On the other hand, in the ADSG and AVSG, it is worth considering a change in the subject-matter of supervision by adopting that the declaration of invalidity may apply, apart from the resolution, also to an ordinance of the starost (voivodeship marshal). This will allow for the elimination of doubts related to the admissibility of supervisory interference by the voivodeship governor, and then the assessment of the legality of self-government acts and supervision acts by administrative courts. Although, as indicated in the article, there is a predominant line of jurisprudence according to which, despite the lack of explicit regulation, ordinances may be subject to supervision measures and a complaint to the administrative court, however, the presented positions are not binding, so the situation of excluding ordinances from the scope of supervision or control cannot be ruled out when adopting a different view on these issues.

Supervisory activity should relate to each internal act emanating from self-governing bodies, regardless of its legal nature and the entity that issues it. This results from the wide scope of the subject-matter supervision, which is the entire activity of a local self-government unit, and the obligation to take supervisory actions in the event of a breach of the law. Control and supervision over local government internal files are of a special nature as compared to internal files issued by other entities, especially government administration bodies. It can be indicated that

a characteristic feature of this control is its exercise by bodies superior to the bodies issuing the acts using various criteria: legality, purposefulness, reliability, compliance with government policy.[50] In a local self-government, due to the principle of decentralization, the evaluation of resolutions and ordinances issued by its organs belongs to entities not related to it, which are supervision and control bodies, in particular the voivodeship governor and administrative courts.

The law-making activity of self-government related to issuing internal acts is not "strictly" internal in nature. This is evidenced by the above-indicated examination of the legality of these acts by entities operating outside the structure of self-government, as well as the impact of internal acts on external entities. In the case of internal normative acts, this influence can be described as indirect, while in the case of internal acts without normativity, directed at an individually designated subject, one can speak of their direct impact on the addressee. This jurisdiction justifies the need for judicial protection of the unit carried out, in the form of a complaint to the administrative court, which assesses the legality of the act.

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ABSTRAKT

Przedmiotem artykułu jest problematyka aktów wewnętrznych wydawanych przez organy samorządowe na podstawie upoważnień zawartych w ustawach ustrojowych. Artykuł ma charakter naukowo-badawczy. W zakresie związanym z jego obszarem obejmuje analizę obowiązującego materiału normatywnego oraz orzecznictwa sądów administracyjnych. W artykule skoncentrowano się na aktach wewnętrznych pochodzących od organów samorządowych wydawanych na podstawie upoważnień wynikających z ustaw ustrojowych. Akty prawa wewnętrznego w prawie administracyjnym zajmują istotną pozycję, zarówno jako kategoria źródeł prawa administracyjnego, jak i przy omawianiu prawnych form działania administracji. Uzasadnieniem podjęcia problematyki aktów wewnętrznych wydawanych przez organy samorządowe jest dążenie do szerszego poznania działalności prawotwórczej wychodzącej poza zagadnienie aktów prawa miejscowego. Akty wewnętrzne w prawie administracyjnym są niejednokrotnie omawiane z perspektywy aktów pochodzących od organów administracji rządowej. Ta konstatacja także uzasadnia podjęcie rozważań we wskazanym obszarze. Celem przeprowadzonych badań jest: poznanie charakteru prawnego aktów wewnętrznych wyda-

wanych przez organy samorządowe na podstawie upoważnień zawartych w ustawach ustrojowych; przedstawienie regulacji prawnych oraz orzecznictwa sądów administracyjnych, a także postulatów *de lege ferenda* na temat dopuszczalności środków nadzoru wobec aktów wewnętrznych mających formę zarządzenia wójta (starosty, marszałka województwa); zwrócenie uwagi na oddziaływanie aktów wewnętrznych na podmioty zewnętrzne. Zaprezentowane w artykule rozważania mogą być przyczynkiem do szerszej i pogłębionej refleksji naukowej nad wyszczególnieniem w ramach aktów wewnętrznych kategorii aktów wewnętrznych pochodzących od organów samorządowych. Kryterium wyróżnienia takiej grupy nie jest wyłącznie kategoria podmiotu, lecz także wskazane w artykule wnioski, odnoszące się w szczególności do niejednolitego charakteru prawnego samorządowych aktów wewnętrznych oraz zasadności objęcia nadzorem i kontrolą każdego aktu wewnętrznego.

Słowa kluczowe: akty wewnętrzne; organy samorządowe; środki nadzoru; samorządowe ustawy ustrojowe; prawo administracyjne