Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XVIII, 2025, no. 1, pp. 395-409
https://doi.org/10.32084/tkp.9659

PECULIAR NORMATIVE CHARACTER OF A COMMUNE COUNCIL RESOLUTION ON THE SALE OF REAL ESTATE WITH THE "PREMISES FOR LAND" SETTLEMENT

Dr. Szymon Słotwiński

University of Szczecin, Poland
e-mail: szymon.slotwinski@usz.edu.pl; https://orcid.org/0000-0002-9763-6747

Abstract. The analysis carried out in this publication aims to answer the question about the legal nature of a commune council resolution (analogously, a poviat council resolution) on the sale of real estate with the "premises for land" settlement. The purpose and function of the resolution defining the terms for the sale of real estate with the "premises for land" settlement is to clarify the most important conditions for such a transaction. It is therefore not only a formal requirement of the "premises for land" settlement sale procedure, but also has effects under civil law, especially in determining the maximum extent for offsetting cash benefits by the transfer of ownership of real estate. In this light, the status of this resolution as an act of universal law or an intra-organisational act or qualified as expressing a will by a collegial body as an indispensable element of shaping the future legal relationship with the buyer of real estate is not clear. This analysis proves that contrary to the intentions of the drafters, expressed in the explanatory memorandum to the draft act on the sale of real estate with the "premises for land" settlement ("the resolution specified in this draft will not contain abstract norms, thus it will not be an act of local law and will not require promulgation in the voivodeship official journal"), this resolution goes beyond the structure dedicated to internally binding acts and beyond the understanding of specific and individual norms. The scholarly debate herein relies on the method of investigation of the law in force.

Keywords: premises for land; legal nature of a resolution on the sale of real estate; a resolution defining the terms for the sale of real estate with the "premises for land" settlement.

INTRODUCTION

The legal provisions governing the competence of the commune council to adopt a resolution in a particular case are so diverse in terms of the legal nature of such an act that this issue inspires much debate. Uncertainty related to the classification of a particular resolution as an act of local law or an act that is internally binding has been and will be an inspiration for

ISSN 1899-7694
e-ISSN 2719-7379

conducting many research studies on this issue [Maroń 2016, 112; Węgrzyn 2014; Gruszecki and Lorych 2019, 22; Sondej 2019; Szafrańska and Szyszka 2009, 56; Marchaj 2017, 12-13; Nogieć-Karwot 2018, 95; Mrożek 2022, 87] and is the reason for the inconsistent positions of the judiciary.[1] Rarely in legal regulations does the legislator determine precisely the normative nature of a resolution in a way that does not raise doubts. The very content of Article 40 of the Act of 8 March 1990, the Commune Self-Government Law[2] and the indicated categories of resolutions that constitute acts of local law also do not allow for a precise determination of the normative character of these acts. Therefore, the legislator's clear approach is so crucial in this matter. Without a doubt, the following types of legislative acts have been expressly recognised as acts of local law: a resolution on the rules for the acquisition, disposal and encumbering of real estate and leasing it (under a regular lease or a lease with the right to collect fruits) for a fixed period longer than 3 years or for an indefinite period (Article 18(9)(a) CSGL), a resolution on proceeding to draft a zoning plan and the general plan of the commune,[3] rules for maintaining communes clean and in order,[4] a resolution on granting subsidies to water companies and their settlement.[5] There are also known cases in which the legislator allows the commune council itself to prejudge the legal nature of the adopted resolution. This was done in the case of a resolution on the granting of discounts on the real estate sale price. In the light of Article 68(1b) of the Act of 21 August 1997 on real estate management,[6] this resolution may constitute an act of local law or may concern individual real estate. One can also name a category for which it is necessary to conduct extensive legal analyses in order to determine the normative nature of such resolutions, such as in the case of a resolution granting consent to waive the obligation to tender when executing contracts of use or lease for a fixed period longer than 3 years or for an indefinite period (Article 37(4) REMA).[7] However, there are also examples among legal regulations in which the legislator emphasises a specific circumstance that may indicate the importance of this legal act, but without explicitly prejudging it. In the case

[1] Judgment of the Supreme Administrative Court of 13 January 2022, ref. no. I OSK 690/19, Lex no. 3335968; judgment of the Supreme Administrative Court of 31 August 2022, ref. no. I OSK 949/19, Lex no. 3443033; Parchomiuk 2013, 52-72.

[2] Journal of Laws of 2023, item 40 as amended [hereinafter: CSGL].

[3] Article 13a and 14(8) of the Act of 27 March 2003 on spatial planning and development, Journal of Laws of 2023, item 977 as amended.

[4] Article 4(1) of the Act of 13 September 1996 on maintaining communes clean and in order, Journal of Laws of 2023, item 1469 as amended.

[5] Act of 20 July 2017, the Water Law, Journal of Laws of 2023, item 1478 as amended.

[6] Journal of Laws of 2023, item 344 as amended [hereinafter: REMA].

[7] Judgment of the Voivodship Administrative Court in Kielce of 26 August 2020, ref. no. II SA/Ke 353/20, Lex no. 3053879; judgment of the Voivodship Administrative Court in Gliwice of 29 July 2019, ref. no. II SA/Gl 730/19, Lex no. 2704408.

of a resolution on determining the location of a residential housing investment, Article 8(2) of the Act of 5 July 2018 on facilitating the preparation and implementation of housing investments and accompanying investments[8] requires promulgation in the voivodship official journal, although another resolution regulated by the same act, adopted on the establishment of local urban standards, was explicitly considered to be an act of local law (Article 19(4)). The same applies to the resolution (discussed here) regulated in the Act of 16 December 2020 on the sale of real estate with the "premises for land" settlement.[9] Article 4(1)(1) of the Settlement Act indicates that in the case of real estate from commune's real estate assets , the sale of real estate with the "premises for land" settlement is decided by the commune council in accordance with the jurisdiction referred to in Article 18(2)(9)(a) CSGL or, in the case of poviat real estate assets, the poviat council in accordance with the jurisdiction referred to in Article 12(8)(A) PSGL,[10] which could suggest that these legal acts should be considered local law acts. In addition, another important circumstance was highlighted in this act. In the light of Article 6(1) of the Settlement Act, the tender for the sale of real estate from commune real estate assets with the "premises for land" settlement is announced no earlier than after the expiry of a period not longer than 30 days from the date of delivery of the resolution to the supervisory authority (Article 91(1) CSGL or the second sentence of Article 79(1), respectively). This structure corresponds to Article 93(1) CSGL (Article 82 PSGL), pursuant to which after the expiry of the period indicated in Article 91(1) CSGL (Article 79(1) PSGL), the supervisory authority cannot independently declare the resolution invalid, which only underlines the importance of the sale resolution for the correctness of tender operations and the validity of the contract concluded as a result of a positively settled tender.

Lack of clarity in the approach of the Settlement Act provisions to the legal nature of resolutions of local government bodies, in particular those relevant for civil law transactions, as well as inability to clearly resolve this status solely on the basis of the content of legal provisions and the need to search for purpose-related and systemic grounds and arguments, justifies the calling of resolutions on the sale of real estate with the settlement of "premises for land" as peculiar.

Given the importance of the resolution in question for investment processes and the legislator's unobvious approach to its legal status, a question should be asked whether it constitutes an act of local law. If the answer to this question is negative, it will be necessary to consider its other possible

---

[8] Journal of Laws of 2024, item 195.

[9] Journal of Laws of 2023, item 1525 [hereinafter: Settlement Act].

[10] Act of 5 June 1998 Poviat Self-Government Law, Journal of Laws of 2024, item 107 [hereinafter: PSGL].

legal nature. There is no doubt that a resolution is part of the legislative activity of an LGU's decision-making body, but in this case it may constitute only an internal act. However, given the unusual approach of the silent legislator in terms of its legal nature, but emphasising its importance for the correct choice of the contractor and the distribution of obligations between the parties to the future contract for the sale of real estate (commune – investor) one cannot rule out that the analysed resolution may be an example of an act that fits into the new legal form of public administration activity diagnosed by Dolnicki, i.e. individual normative acts, but at the level of local government [Dolnicki 2017, 56].

1. RESOLUTION'S FEATURES ENABLING IT TO BE CONSIDERED AN ACT OF LOCAL LAW

The need to use the form of the resolution in the activities of the commune's decision-making body does not raise doubt.[11] First of all, because it is a collegial body in the structure of a legal person accumulating in itself the roles of a participant in civil law transactions (*dominium)* and an entity exercising public authority (*empire*). This is therefore a basic form of a multi-member body expressing its position. In the case of acts of local law, a resolution is also the only possible form of settling matters used by the decision-making authority that follows directly from Article 41(1) CSGL. The obligation to adopt resolutions as acts of local law raises interpretative problems that directly affect the legal classification of the resolution itself. On the one hand, pursuant to Article 40(2) CSGL the catalogue of acts of local law established by the commune council_in the form of a resolution is internally highly diverse. The literature lists the following categories [Dąbek 2020, 126; Kaczocha 2022, 35; Przybysz 2020, 101]: 1) executive acts of local law; 2) ordinal acts of local law; 3) systemic and organisational acts of local law. This should therefore imply that a resolution falling within the above-mentioned *ex lege* scheme should constitute a source of universal law, in this case limited by territory, naturally (Article 87(1) and (2); Article 91(2) of the Constitution of the Republic of Poland). As a result, an act of local law should be established on the basis and within the limits of the laws on the basis of an express statutory competence to adopt it [Dąbek 2020, 103; Przybysz 2020, 99]. This assumption contains the basic feature of this type of legal acts as exclusively lower-order acts, which directly determines its function as clarifying the provisions of the act on the basis of which it is issued. Another feature will be its universality, which means that it is addressed to a generally defined

[11] This does not mean, however, that the issue of resolutions remains legally irrelevant, see Szewc and Szewc 1999, 48-49.

category of entities, motivated, however, by its content. This makes it possible to distinguish directly an act of local law from an act of internal law (an act of internal management[12]), which will be addressed only to the recipients within the structure of the entity issuing the act. Moreover, the normative character of this act is complemented by these features. The content of a local law act must be the basis for decoding the legal norms contained in that act. Among its features, this one causes numerous disputes in the judiciary. There is no doubt that a model act of local law as a universal act on the one hand and a normative act on the other, should constitute the basis for interpreting general and abstract norms from its content. It is therefore clear that the nature of legal norms and the formation by those norms of the legal situation of the addressees are decisive for the classification of a given act as an act of local law.[13] However, judicial decisions present a debatable view that if the content of the act in question contained "individual and specific provisions, it itself deprives such an act of the character of a local law act. It should be pointed out that at least one provision of the resolution should be general and abstract for the whole act to bear the attribute of an act of local law."[14] Therefore, in administrative court decisions, a resolution need only have at least one norm of general and abstract proceedings for it to be qualified as an act of local law.[15] In this light, a clear model of a local law act, which must be universal and executive and have of a normative content that is general and abstract, ceases to be a monolithic construction, because in the light of the above a mixed abstract-concrete content does not negate the attribute of a resolution as an act of local law. Due to the lack of clear and generally acceptable guidelines as to the requirements, primarily formal (who is the addressee and what is the basis for adopting a resolution), which each act of local law should meet, the boundary between this category and acts of a different nature, but in the same form (resolution) becomes extremely fluid; this only makes it difficult to determine the status of acts falling within this boundary. If we consider that an act of local law in its content is to glorify only general and abstract norms, the inclusion of other norms in its content will constitute a violation of the law, and such an act should be considered invalid by the supervisory authorities. On the other hand, if we adopt the concept resulting from some decisions of administrative courts with a more liberal tone,

---

[12] Judgement of the Supreme Administrative Court in Warsaw of 6 March 1991, ref. no. I SA 1251/90, Lex no. 25961.

[13] Judgement of the Supreme Administrative Court in Warsaw of 15 April 2002, ref. no. VI SA 2160/01, Lex no. 81765.

[14] Judgement of the Supreme Administrative Court of 13 March 2013, ref. no. II OSK/ 37/13, ONSAiWSA 2014, no. 6, item 100; judgement of the Supreme Administrative Court of 14 June 2017, ref. no. II OSK 1001/17, Lex no. 2346710.

[15] Judgement of the Supreme Administrative Court in Warsaw of 15 April 2002, ref. no. I SA 2160/01, Lex no. 81765.

then if the commune decision-making authority considers the act to be internally binding, and there is even one general and abstract norm in there, this is enough to make the status of the act completely opposite. This will cause further problems, as an act of universal law requires promulgation in a relevant official journal to be effective. Failure to promulgate such an act leads to the question of its legal existence in legal transactions.

Therefore, if it is assumed that the normative character of a resolution adopted by a competent commune authority depends on the analysis of the legal basis for its issuance (the formal aspect) and how it is regulated by this resolution (the substantive aspect) and that solving specific legal problems with a generally clear concept of a local law act also seems impossible. The best example of the fact that radical and firm adherence to these two guidelines prevents a comprehensive solution to the problem is, for example, a resolution under Article 36(4) REMA, which allows for the withdrawal from the conclusion of contracts of use or lease (with or without the right to collect the fruits) by tender for a fixed period longer than 3 years or for an indefinite period. Many communes,[16] following the competence norm expressed in the second sentence of this provision, which reads: "The governor or the appropriate council or assembly may agree to waive the obligation to execute contracts through tender", adopt resolutions of a general and abstract nature, for the future and in relation to unspecific cases. In this light, one of the basic conditions for an act of local law is, after all, fulfilled. Unfortunately, however, in the majority of decisions of administrative courts[17] and decisions of the supervisory

[16] Full text of Article 36(4) REMA: "Contracts of use or lease (with or without the right to collect fruits) for a fixed period longer than 3 years or for an indefinite period shall be concluded by tender. The governor or a competent council or assembly may agree to waive the obligation to follow a tender procedure for concluding these contracts."

[17] Judgement of the Supreme Administrative Court of 13 January 2022, ref. no. I OSK 690/19, Lex no. 3335968; judgement of the Supreme Administrative Court of 31 August 2022, ref. no. I OSK 949/19, Lex no. 3443033; judgement of the Supreme Administrative Court of 8 December 2020, ref. no. I OSK 2033/19, Lex no. 3220324; judgment of the Voivodship Administrative Court in Kielce of 27 September 2023, ref. no. II SA/Ke 368/23, Lex no. 3617137; judgement of the Voivodship Administrative Court in Krakow of 16 April 2021, ref. no. II SA/Kr 177/21, Lex no. 3185236; judgment of the Voivodship Administrative Court in Kraków of 9 July 2020, ref. no. II SA/Kr 508/20, Lex no. 3034953; judgment of the Voivodship Administrative Court in Gliwice of 29 July 2019, ref. no. II SA/Gl 730/19, Lex no. 2704408; against this view: judgment of the Voivodship Court in Wrocław of 5 December 2018, ref. no. II SA/Wr 643/18, Lex no. 2595617; judgment of the Voivodship Administrative Court in Wrocław of 13 December 2018, ref. no. II SA/Wr 615/18, Lex no. 2653902 repealed in part by the judgement of the Supreme Administrative Court of 13 January 2022, ref. no. I OSK 690/19, Lex no. 3335968; judgement of the Voivodship Administrative Court in Wrocław of 27 December 2018, ref. no. II SA/Wr 603/18, Lex no. 2651398.

authority,[18] the legal basis for issuing this act does not offer the authority to adopt acts of local law, but only for an act concerning specific, individual cases described in the executive body's proposal. Therefore, relying on the content of an act can only provide confirmation of whether the authority has acted correctly in the light of the competence granted to it to create law-making facts. This is also part of the doubts expressed in the literature that the boundary between abstract-general and concrete acts is not sharp and obvious [Milczarek-Mikołajów 2020, 44; Filipek 2001, 133; Gromski 1993, 81]. Hence, there are concepts that opt for the construction of a normative act of a general and concrete character [Ruczkowski 2013, 106; Ura, 2015, 112]. It is also worth adding that internal acts as normative acts should also consist of general and abstract norms [Milczarek-Mikołajów 2020, 47]. In this light, the content of the analysed resolution allows only for distinguishing normative resolutions from other resolutions lacking this feature (e.g. those expressing a position). Therefore, a discussion on a legal act depends solely on the scope of the competence to issue it expressed in the legal provision. However, the problem arises when the provision itself is unclear. Therefore, the quoted Article 36(4) REMA seems to be an excellent example of a discrepancy in the assessment of its application. The Voivodship Administrative Court in Kielce[19] issued 7 judgements within 21 days on the determination of the legal nature of resolutions that opted to resign from the tender procedure pursuant to Article 37(4) REMA. Five supported the view that such a resolution was general and[20] the remaining two judgements were in favour of its individualised character.[21] Inspired by the criteria set out in the resolution of seven judges of the Supreme Administrative Court of 29 November 2010,[22] one can point to a certain hierarchy of guidelines enabling the settlement

---

[18] For most recent decisions see: Supervisory decision of the Governor of Świętokrzyskie Voivodhsip of 10 January 2024, ref. no. PNK.I.4130.5.2024, Lex no. 3650912; Supervisory decision of the Governor of Wielkopolskie Voivodeship of 4 January 2024, ref. no. NP-III.4131.1.635.2023.7, Lex no. 3651450.

[19] Between 6 October 2020-27 October 2020.

[20] Judgment of the Voivodship Administrative Court in Kielce from 27 October 2020, ref. no. II SA/Ke 502/20, Lex no. 3088128, Lex no. 3088128; judgment of the Voivodship Administrative Court in Kielce from 14 October 2020, ref. no. II SA/Ke 438/20, Lex no. 3083645; judgment of the Voivodship Administrative Court in Kielce from 14 October 2020, ref. no. II SA/Ke 439/20, Lex no. 3076769; judgement of the Voivodship Administrative Court in Kielce of 7 October 2020, ref. no. II SA/Ke 550/20, Lex no. 3075050; judgement of the Voivodship Administrative Court in Kielce of 6 October 2020, ref. no. II SA/Ke 472/20, Lex no. 3071479.

[21] Judgment of the Voivodship Administrative Court in Kielce of 6 October 2020, ref. no. II SA/Ke 469/20, Lex no. 3096421; judgement of the Voivodship Administrative Court in Kielce of 6 October 2020, ref. no. II SA/Ke 474/20, Lex no 3083735.

[22] Resolution of the Supreme Administrative Court (7 judges) of 29 November 2010, ref. no. I OPS 2/10, Lex no. 621106 concerning in particular the nature of the resolution on the intention to close down a school and the resolution on the closing down of the school.

of doubts in the ambiguity of a competence norm. First of all, provisions of the systemic law should determine the outcome. If they do not allow for unambiguous classification of the resolution into a specific category of local law acts, internal acts or organisational acts, then substantive law provisions should be relied on, which will specify the purpose, functions or tasks of the resolution adopted. As a last resort, it is in the totality of substantive provisions relating to the requirement to adopt a specific resolution and its content that will accommodate the circumstances determining the legal nature of the resolution under consideration, and in particular whether they constitute a legal act or merely an act of application of the law. However, these general conclusions should therefore be confronted with specific legal conditions in order to verify their correctness, as will be done below.

2. LEGAL NATURE OF A RESOLUTION ON THE SALE OF REAL ESTATE FROM COMMUNE ASSETS WITH THE "PREMISES FOR LAND" SETTLEMENT

Article 4 of the Settlement Act regulates the key issue, which is also a *sine qua non condition* for the application of the "premises for land" settlement mechanism. Undoubtedly, subsection 1 of Article 4 of the Settlement Act indicates the legal basis for the issuance by the commune council of a new normative act, which fits within the issue of tasks entrusted to the exclusive competence of the commune council or poviat council pursuant to Article 18(2) CSGL or Article 12(8)(a) PSGL. This resolution also related to the issue of the property tasks of the commune (poviat) exceeding the scope of ordinary management specified in Article 18(2)(9)(a) CSGL (Article 12(8)(a) of the PSGL) concerning terms of acquisition, disposal and encumbering of real estate and leasing it for a fixed period longer than 3 years or for an indefinite period. Its purpose and function is to clarify the most important conditions for the disposal of commune real estate using the "premises for land" settlement. In this regard, it breaks the established line of views on resolutions under Article 18(2)(9)(a) CSGL, which are to constitute a set of basic rules of conduct binding the executive body of the commune in the scope of their acquisition, selling and encumbering real estate and leasing it without the possibility of determining the future content of legal acts performed on behalf of the commune by this authority.[23] It should be noted that it is up

[23] Judgment of the Voivodship Administrative Court in Olsztyn of 24 August 2021, ref. no. II SA/Ol 394/21, Lex no. 3215488; judgement of the Supreme Administrative Court of 7 October 2020, ref. no. I OSK 2141/18, Lex no. 3090714, which stated that "[…] the Council may not bind the executive body with effect against third parties in matters involving the conclusion of contracts (including lease contracts) by the commune, if the law does not grant such powers to the council;" judgement of the Voivodship Administrative Court in Olsztyn

to the executive body of the commune to manage the commune property on a daily basis, including taking actions aimed at disposing of or limiting the right of ownership to commune real estate. For this reason, the commune council cannot undertake activities that belong to matters related to the representation of the commune by its executive body. Otherwise, such actions would constitute a violation of the constitutional principle of division of local government units into executive and decision-making units.[24] On the other hand, if terms for the acquisition, selling and encumbering of land real estate by the commune council are not specified in a resolution, consent needs to be given each time the executive body intends to carry out one of the above-mentioned activities in real estate trading.

In addition to the recognition that the resolution under Article 4(1) of the Settlement Act sets out a formal requirement of the disposal procedure with the "premises for land" settlement and in this regard has consequences under civil law, especially in determining the maximum extent of offsetting the cash benefit by the transfer of ownership of real estate, its status as an act of universal law or an intra-organisational act or an expression of will by a collegial body as an indispensable element of shaping the future legal relationship with the buyer of real estate is not clear. This is related to, for example, the legal qualification of the legal provisions contained therein (universally binding, binding only internally or not involving any legal obligations), as well as its challengeability by entities that have an interest in it but are not supervisory authorities or guardians of the protection of the rule of law and human rights and freedoms.

It is therefore important whether in the light of the above such a resolution may be the subject of proceedings before administrative courts as part of the review of the activity of public administration in cases of complaints against acts of local law of bodies of local self-government units pursuant to Article(2)(5) of the Act of 30 August 2002, the Proceedings before administrative courts[25] and supervisory authorities from the perspective of the legality criterion. The problem is even more interesting because REMA

---

of 17 February 2015, ref. no. II SA/Ol 1354/14, Lex no. 1653266, in which it was found that: "The decision-making body, by imposing, by way of a resolution, on purchasers the obligation to bear the costs related to the valuation of real estate, infringes Article 18(2)(9)(a) CSGL by introducing a regulation which enters into the scope of statutory regulations and the sphere of competence of the commune's executive body]" Order of the Supreme Administrative Court of 22 November 2018, ref. no. I OSK 2884/16, Lex no. 2632371, where the following view was expressed: "the commune, as the owner of commune property, has the right under Article 18(2)(9a) CSGL to determine the terms for the sale of real estate, because the decision to trade the real estate belongs exclusively to its owner."

[24] Judgement of the Voivodship Administrative Court in Opole of 10 October 2019, ref. no. II SA/ Op 254/19, Lex no. 2733989.

[25] Journal of Laws of 2019, item 2325 as amended.

distinguishes acts of local law from individual acts.[26] In turn, Article 40(2) CSGL provides the basis for commune authorities to issue local law acts on the basis of this Act for rules of commune property management, which are classified as structural and organisational acts [Szewc and Szewc 1999, 53-54; Dolnicki 2004, 5]. The domain of these regulations is that they are not addressed to an unspecified group of entities, but mainly to the commune's executive body. However, indirect effects of such acts concerning or affecting the legal situation of other addressees may not be denied. As in the present case, the resolution on the sale of real estate under the "premises for land" scheme not only will determine the main content of the tender documents (especially the tender notice), but it will also affect potential investors whose offers will have to correspond to the content of the resolution, not to mention attempts to challenge the results of the tender in the event of possible shortcomings or incorrectly defined tender conditions (discrepancy between the resolution and the tender notice). However, an analysis of Article 40(2) CSGL together with Article 4(1) of the Settlement Act, which links the said resolution with Article 18 (2)(9)(a) CSGL, confirms the classification of this resolution as a resolution whose purpose and role is to clarify in technical terms the provisions of the Settlement Act, and the scope of matters regulated by this resolution is not limited only to the units that make up the organisational structure of a given commune [Sidorowska-Ciesielska 2018; Dolnicki 2010].[27] At this point, the position of the Supreme Administrative Court should also be pointed out, according to which "commune councils that make commune regulations in accordance with Article 40(2) of Local Self-Government Law shall adjust the content of their regulations strictly to the scope of their authority and the powers conferred on them, tasks thereunder, and in case of doubt as to the scope of that authority, clarify those doubts by applying a restrictive interpretation."[28] However, it is worth emphasising once again that the nature of this resolution and its content go beyond the discussed scheme of separation of powers of the decision-making and executive body of the commune in terms of the degree of detail of determining the conditions for the sale of given property. The role of the commune council in the management of commune property should usually end with the establishment of a set of basic rules of conduct for the executive body without specific content proposals, which should

[26] This is especially the case with regard to granting a discount on the sale price of real estate in the light of Article 68(1b).

[27] A. Sidorowska-Ciesielska, who, addressing the broader issue of acts adopted by the community, indicates the possibility of regulations specified in those acts projecting on the implementation of public subjective rights of citizens and other entities not subordinate (organisation-wise and work-wise) to this authority. See also Dolnicki 2010, commentary on Article 40, thesis 3.V.

[28] Judgement of the Supreme Administrative Court of 26 May 1992, ref. no. SA/Wr 310/92, Legalis.

be used in the contract concluded by the commune represented by its executive body.[29] In turn, such a position is based on an analysis of the content of, for example, Article 18(2)(9) and Article 30(2)(3) CSGL. However, in that case, the commune council has a clear legal basis to direct, with effect on third parties, the powers of the executive body aimed at concluding and initially shaping the content of a future contract concluded by the commune.

However, it should be added that the commune is not only a local government unit established to perform public administration tasks, but also a legal person who participates in civil law transactions by making decisions concerning management of its property. One must agree with the views expressed in the literature that the distinction between civil law acts and administrative law acts will be largely impossible due to the co-existence in the commune of the sphere of *the imperium* and *the dominium*, which means that actions taken by the commune authorities, be it directly or indirectly, have civil law consequences [Matan 2021]. The convergence of these functions and effects will be particularly visible in the management of commune property, as the resolution under discussion provides an example here.

The reflections presented above are in clear contradiction to the content of the explanatory memorandum to the Settlement Act, which explicitly states that: "The resolution on the sale of real estate will not be a local act. Such an act must contain at least one general and abstract norm. The resolution specified in this draft will not contain abstract norms, therefore it will not be an act of local law and will not require promulgation in the voivodship official journal."[30] It is regrettable that such key decisions have not taken a normative form which would prevent any discussion in this respect, clearly establishing the legal nature of the act.

As already indicated in the second part, the absence of abstraction does not necessarily mean that the nature of a given act as an act of local law is ruled out. The distinction between *imperium* and *dominium* acts in the activity of a commune as a legal person and a public authority unit is highly problematic, as this discussion has tried to show. Therefore, if the intention of the legislator is to exclude this resolution from the category of acts of local law and to refrain from promulgating it, this should be expressed directly in the legal provision. Especially so since Article 4(1) of the Settlement Act in conjunction with Article 18(2)(9)(a), Article 40(2)(3), Article 41(1) and Article 42 CSGL and Article 13(10) of the Act of 20 July 2000 on the promulgation of normative acts and certain other legal acts[31] give grounds for classifying this act as a broader category of legal acts

[29] Judgement of the Supreme Administrative Court of 17 July 2014, ref. no. I OSK 873/14, Legalis.
[30] Explanatory memorandum, p. 12.
[31] Journal of Laws of 2019, item 1461.

concerning the principles of commune property management. One should agree with the position expressed in administrative courts' decisions, according to which "the mere fact of a local government decision-making authority adopting a resolution cannot yet be interpreted to mean that we are dealing with an act of local law."[32] It is worth noting that the analysed resolution will also set – in accordance with the provisions of Article 4(3) *in fine* – a deadline binding on the investor for the transfer of premises or buildings to the commune as part of the "premises for land" settlement, where under Article 2(1)(a) and (b) an investor should be understood not only as the entity that acquired commune property, but also the person who seeks to purchase the property from the commune real estate assets. The mere fact that the resolution will concern a specific and, by definition, one-off situation does not negate the existence in it of at least one general and abstract norm. Pursuant to the analysed Article 4(3) of the Settlement Act, the resolution on the sale of real estate is ultimately intended to create a general model for future settlement with the investor. The very description of the property required by the commune or the land on which a building is erected requires maintaining a certain indeterminacy by indicating only minimum requirements with expected standards, as well as a comprehensive approach to the minimum and maximum number and area. In this perspective, the required subject will be far from concretising and individualising future properties in a way that allows only one to be identified. These guidelines will only serve to indicate the expected category of real estate, which will be the basis for mutual settlements between the investor and the commune in the future. This resolution will also address the aforementioned issue of the date of transfer of ownership of these premises or buildings to the commune, calculated from the date of transfer of the ownership of the sold property to the investor. It will be crucial for determining the content of a specific obligation arising from the content of the contract specified in Article 9(4)(b) of the Settlement Act, the investor's non-performance of which will be subject to a normative penalty of 150% of the price of premises or buildings which he undertook to transfer to the commune as part of the "premises for land" settlement and which he will be obliged to pay to the under Article 11(1) of the Settlement Act.

---

[32] Judgement of the Supreme Administrative Court in Warsaw of 15 April 2002, ref. no. I SA 2160/01, Lex no. 81765; for more recent judicial decisions see Judgment of the Voivodship Administrative Court in Kielce of 24 March 2021, ref. no. II SA/Ke 191/21, Lex no. 3162536, in which the court stated that the existence of a statutory authorisation to issue an act does not mean that it is necessary to state unequivocally in a provision of the statutory rank that a resolution of the commune council constitutes an act of local law. For the classification of an act as an act of local law, the character of legal norms and these norms' formation of the legal situation of the addressees are decisive. If it is confirmed that a resolution contains at least one general and abstract rule, it is an act of local law.

CONCLUSIONS

Taking into account, therefore, that the competence to establish this resolution allows the legislative body to indicate, in a binding manner, the grounds but also the conditions of the future contract for the sale of real estate, which are in principle the powers of the executive body, as well as the fact that it refers to issues binding on potential investors by setting standards and criteria for the categories of real estate expected by the commune, thus co-shaping the content of the future contractual obligation, it may be said that the intentions expressed in the explanatory memorandum to the act have not been fulfilled, because the analysed resolution goes beyond the structures binding on internal acts. Moreover, the mere regulation of the technical specification of the expected real estate will go beyond the understanding of specific and individual standards. In this perspective, the analysed resolution fulfils most of the premises for an act of local law approved in literature, presented in detail by Dąbek [Dąbek 2022; Idem 2020, 85]. Without a doubt, it is a normative, universal, general act issued for the purpose of exercising a statutory mandate containing legislative competence. Arguments that may discredit this proposal concern the issue of the abstractness of standards and self-consumption of this legal act after a successful tender and the conclusion of a relevant contract with the investor. Thus, these conditions do not determine the case. To confirm this thesis, the example of resolutions giving street names[33] or resolutions on giving or depriving a road of a certain category may be used.[34]

There is no doubt that this resolution enables the achievement of the objectives of the Settlement Act, and its key importance for mutual settlements between the commune and the investor is precisely emphasised in the fact that the tender for the sale of commune real estate may take place only after the deadlines for the review of resolutions designated for the supervisory authorities have expired. Therefore, an act was created which can formally be considered as an act of local law in the light of the above-mentioned examples and constitute an individual normative act regulating the rules for the purpose of a specific tender procedure and shaping the content of a future contract, which means that indirectly its effectiveness extends beyond the commune's organisational structure.

In the light of the above arguments, it may be assumed that the resolution under discussion will constitute an act of local law contrary to the intentions of its drafters.

---

[33] Judgement of the Supreme Administrative Court of 29 June 2011, ref. no. II OSK 633/11, Lex no. 1165429.

[34] Judgement of the Supreme Administrative Court of 4 April 2008, ref. no. II OSK 102/08, Lex no. 453213; interestingly, it points out directly that local law acts may contain both provisions of universal force and regulations of an internal nature.

It is therefore necessary to submit a *de lege ferenda proposal* to amend the provisions of REMA and to adapt the content of the provisions to the actual – expressed directly in the explanatory memorandum – intention for the resolution to have a legal nature. The current analysis of the content of statutory solutions, views of legal scholars and commentators and the established line of judicial decisions in similar cases (as, for example, on the basis of the repeatedly cited Article 37(4) of the REMA) allows the creation and justification of an internally contradictory stance on the legal status of the analysed resolution. Such a situation should be considered contrary to the standards of a democratic rule of law, and in particular to the principle of decent legislation resulting from them. It is not surprising, therefore, that there is little interest in using this solution (innovative for commune real estate management) if the legal nature of a commune council's act, fundamental for this procedure, is unclear.

REFERENCES

Dąbek, Dorota. 2020. *Prawo miejscowe*. Warszawa: Wolters Kluwer.

Dąbek, Dorota. 2022. "Komentarz do art. 40." In *Ustawa o samorządzie gminnym*, edited by Paweł Chmielnicki. Warszawa. Lex el.

Dolnicki, Bogdan. 2004. "Akty prawa miejscowego samorządu terytorialnego." *Samorząd Terytorialny* 5:5-21.

Dolnicki, Bogdan. 2010. "Komentarz do art. 40." In Bogdan Dolnicki, *Ustawa o samorządzie gminnym. Komentarz*. Warszawa. Lex el.

Dolnicki, Bogdan. 2017. "Indywidualny akt normatywny." *Przegląd Prawa Publicznego* 6:56-64.

Filipek, Józef. 2001. *Prawo administracyjne. Instytucje ogólne*. Part II. Kraków: Wolters Kluwer.

Gromski, Włodzimierz. 1993. "W sprawie pojęcia aktu normatywnego (Uwagi na tle glos do orzeczenia TK z 19 VI 1992 r., U6/92)." *Państwo i Prawo* 9:80-84.

Gruszecki, Krzysztof, and Marta Lorych. 2019. "Charakter prawny uchwał w sprawie pomników przyrody." *Samorząd Terytorialny* 12:20-30.

Kaczocha, Mateusz. 2022. *Akty prawa miejscowego. Tworzenie. Procedura. Kontrola*. Warszawa: Wolters Kluwer.

Marchaj, Roman. 2017. "Charakter prawny uchwały rady gminy w sprawie budżetu obywatelskiego." *Samorząd Terytorialny* 11:5-14.

Maroń, Grzegorz. 2016. "'Uchwały problemowe' organów stanowiących jednostek samorządu terytorialnego na przykładzie uchwał dotyczących zagadnień bioetycznych." *Samorząd Terytorialny* 1-2:111-26.

Matan, Andrzej. 2021. "Komentarz do art. 91." In *Ustawa o samorządzie gminnym. Komentarz*, 3rd edition, edited by Bogdan Dolnicki. Warszawa. Lex el.

Milczarek-Mikołajów, Justyna. 2021. *Akty prawa wewnętrznego organów administracji publicznej*. Wrocław. https://www.bibliotekacyfrowa.pl/publication/139607

Mrożek, Jakub. 2022. "Charakter prawny uchwał w przedmiocie ustalenia sieci (planów sieci) publicznych przedszkoli, szkół podstawowych oraz ponadpodstawowych podejmowanych na podstawie art. 32 ust. 1 oraz art. 39 ust. 5 i 7 ustawy – Prawo oświatowe." *Samorząd Terytorialny* 1-2:82-93.

Nogieć-Karwot. Edyta. 2018. "Charakter prawny uchwał podjętych na podstawie art. 4 ust. 1 pkt 2 ustawy o gospodarce komunalnej w świetle orzecznictwa sądów administracyjnych." *Przegląd Prawa Publicznego* 3:93-99.

Parchomiuk, Jerzy. 2013. "Granice rozpoznania i orzekania sądu administracyjnego w sprawach kontroli uchwał organów jednostek samorządu terytorialnego." *ZNSA* 6:52-72.

Przybysz, Piotr. 2020. *Instytucje prawa administracyjnego*. Warszawa: Wolters Kluwer.

Ruczkowski, Piotr. 2013. *Koncepcja aktów (źródeł) prawa wewnętrznego w polskim prawie administracyjnym*. Kraków: Księgarnia Akademicka.

Sidorowska-Ciesielska, Anna. 2018. "Komentarz do art. 40." In *Ustawy samorządowe. Komentarz*, edited by Sebastian Gajewski, and Aleksander Jakubowski. Warszawa: C.H. Beck.

Sondej, Marek Z. 2019. Charakter prawny uchwały rady gminy w przedmiocie programu opieki nad zwierzętami bezdomnymi oraz zapobiegania bezdomności zwierząt domowych. Lex el.

Szafrańska, Anna, and Anna Szyszka. 2009. "Charakter prawny regulaminu organizacyjnego urzędu gminy." *Przegląd Prawa Publicznego* 6:54-61.

Szewc, Andrzej, and Tomasz Szewc. 1999. *Uchwałodawcza działalność organów samorządu terytorialnego*. Warszawa: Difin.

Ura, Elżbieta. 2015. *Prawo administracyjne*. Warszawa: Wolters Kluwer.

Węgrzyn, Gabriel. 2014. "Prawny charakter uchwał samorządu terytorialnego w sprawie wysokości cen i opłat za korzystanie z usług i urządzeń użyteczności publicznej." Lex el.