Some remarks on Enactments of Local Law in Matters Concerning the Protection of the Environment

The paper is an attempt to analyse enactments of local law as a legal form of administrative activity in the field of protection of the environment. The author points to the legal basis for issuing enactments of local law, the forms of these enactments, and the bodies authorised to issue them. Enactments of local law provide the possibility of adapting the universally binding law to particular and, importantly, often changing local conditions, which is essential for the protection of the environment.

Key words: environment protection law, enactments of local law

„Environmental protection is always a local activity, whether on a larger or a smaller scale, and the lawmaking powers granted to local public administration in this area constitutes, for the field discussed [...], an additional reason for the constitutional regulation, which for the first time in the history of Polish constitutionalism provides a legal basis for acts of local legislation, by qualifying them as a source of universally binding law”¹.

Enactments of local law, according to the Constitution of the Republic of Poland of 2 April 1997\(^2\) are included in the catalogue of sources of universally binding law. Pursuant to Article 87, paragraph 2 of the Constitution, “Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments.” They are to be issued based on and within the limits of statutory delegation, by a local government body or a regional body of the central government administration, and are applicable in the area of responsibility of the body that issued them. Enactments of local law as a source of universally binding law are also normative acts\(^3\). The application of enactments of local law is limited territorially, and the purpose of this universally binding local law is to adapt the law to exceptional and often variable local conditions. This undoubtedly contributes to a better and more effective action. This is the case with the example of a regulation, which, due to a local phenomenon, does not occur simultaneously in the whole country\(^4\).

The question of enactments of local law should be regarded as a relatively new issue and related mainly to lawmaking by local government bodies. It should be noted that both in the Constitution and statutory legislation governing the system of local government there are no definitions or catalogues of enactments of local law. Consequently, there may be practical doubts involving the fact that the recognition of a given act as an enactment of local law by one of the local government units does not necessarily imply that another such unit assumes the same\(^5\). It is worth mentioning here the decision of the Constitutional Tribunal of 6 October 2004\(^6\), which reads that “Enactments of local law shall be issued under the rules and in the manner as set out in individual Acts (Article 94 of the Constitution). It not only concerns the specific statutory delegation for the enactment to be issued, but also the rules determining the general powers of the authority to issue a specific type of local law. Moreover, enactments of local law can be issued either by competent central government bodies or by local government bodies. By their nature, they also have a high degree of detail depending on various lo-

\(^3\) See: P. Lisowski, A. Ostapski, _Akty prawa miejscowego stanowione przez terenowe organy administracji rzadowej_, Wrocław 2008.
\(^6\) Order of the Constitutional Tribunal of 6 October 2004, case ref. no. SK 42/02, OTK-A 2004/9/97, LEX 127326.
cal conditions. The Constitution uses only the general definition of enactments of local law. Despite the wide diversity of these enactments both in subjective and objective terms (enactments issued by central government administration as well as local government bodies that are independent bodies, with a completely different political position within the public administration system). The Constitution does not mention their generic names. In individual Acts which form the basis for issuing enactments of local law, they are mentioned as resolutions, orders or ordinances, local spatial development plans, etc. Moreover, the mere fact of naming a governmental administration enactment a regulation and a local government body enactment a resolution is not sufficient to consider this document an enactment of local law. In each case, it must be established whether the given enactment, despite its subjective or objective characteristics and degree of concreteness, is or is not an enactment of local law. Such internally diverse spheres of legislation require also that each type of local law be considered separately when examining whether it falls within the requirements for normative acts referred to in Article 188, paragraphs 1-3 and 5 of the Constitution, read in conjunction with Article 79, paragraph 1 of the Constitution.\(^7\)

The authorisation to enact local law is found in the Acts on the system of particular units of local self-government, i.e. the Act of 8 March 1990 on municipal government\(^8\), the Act of 5 June 1998 on district (powiat) government\(^9\), the Act of 5 June 1998 on the regional government\(^10\) and in the Act of 23 January 2009 on Voivodes and the central government administration in voivodeships\(^11\), as well as in other specific Acts\(^12\).

The Act of 8 March 1990 on municipal government in its Chapter 4 *Local law enacted by municipalities* stipulates that under the statutory delegation, a municipality has the right to issue local law applicable within the territory of the municipality. The municipality authorities may issue enactments of local law regarding the internal system of the municipality and its auxiliary units, the organization of municipal offices and institutions, the rules for managing the municipal assets, the rules and procedures of using municipal facilities and utilities.

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According to the statutory regulations, local law is enacted by the municipal council in the form of resolutions. They have the form of executive regulations or public order provisions. In matters not regulated by separate Acts or other generally applicable regulations, the municipal council may issue public order provisions if necessary to protect the life or health of citizens and to ensure public order, peace and security/safety. In urgent cases, public order provisions may be issued by the Mayor in the form of an ordinance. The public order provisions are sent by the Mayor to the Mayors of the neighbouring municipalities and the head of the district (powiat) where the municipality is located, the next day after their enactment.

Another of the local government acts – the Act of 5 June 1998 on district (powiat) government, contains a similar regulation, stating that under and within the limits of the delegations contained in the acts, the district council enacts local law applicable within the district area. In particular, this applies to issues that need to be governed by the district statutes, public order issues not regulated by separate laws or other universally binding regulations. As reasonable, the District Council may issue district public order provisions for the protection of the life, health or property of citizens, protection of the environment or to ensure public order, peace and security/safety, provided that the causes for such regulation exist in more than one municipality. In urgent cases, the public order provisions may also be issued by the District Board. The District council enacts local law also in matters concerning the special procedure of managing the district’s property and the rules and procedure of using district facilities and utilities. Local laws are enacted by the District Council in the form of a resolution, unless the law authorising the issue of the law does not provide for otherwise.

According to B. Dolnicki, the issuing of enactments of local law acts of a public order regulation nature on the territory of the district will be possible in the case of the cumulative occurrence of three preconditions. The first one, “objective precondition - requiring an applicable legal status and determination that the matter to be regulated has not yet been regulated in statutory law or other universally binding regulations; the second, subjective – resulting from

13 Ordinance is subject to acceptance at the next Municipality Council session. Where the ordinance is rejected by the Municipality Council, it becomes ineffective, likewise in the event of failure to submit it to acceptance at the next Municipality Council session.

14 Public order provisions may provide for a fine for their infringement, which fine is to be imposed under the procedure and upon the rules defined in the petty offences law. See also: A. Szewc, T. Szewc, Wójt, burmistrz, prezydent miasta, ABC 2006; B. Malinowski, A. Bałaban, D. Dąbek, P. Kędziora, R. Pawelec, R. Piotrowski (eds.), Zarys metodyki pracy legislatora. Ustawy – akty wykonawcze – prawo miejscowe, Warszawa 2009; D. Dąbek, Prawo miejsowe, Warszawa 2015.

15 Like in the Act on municipal government, district public order provisions may provide for a fine for their infringement, which fine is to be imposed under the procedure and upon the rules defined in the petty offences law.
the assessment by the authority enacting the public order provisions that the items listed in the Act have been or may be violated and require protection; and third, territorial – indicating that the threats must cover an area larger than one municipality. Comparing the Act on district (powiat) government with the Act on municipal government, we can see that in the Act on district (powiat) government the legislature extended the catalogue of goods to be protected, by adding the environment and property of citizens. District public order provisions issued by the District Board are subject to acceptance at the next District Council session, and where they are not submitted for approval or rejected by the District Council, it becomes ineffective within the time limit set by the Council. The Starost (District Governor) sends the regulations to the executive bodies of the municipalities located within the district area and Starosts of the neighbouring districts the next day after the regulations are enacted. The Chairman of the District Council shall immediately sign the enactments of local law after their adoption and publish them.

The Act of 5 June 1998 on regional government, in its Chapter 8 Local law enacted by regional government stipulates that under the Act and under the authorisations granted in other Acts and within their scope, the Voivodeship Sejmik (Regional Assembly) enacts the local law binding in the area of the voivodeship or its part. The Chairman of the Voivodeship Sejmik (Regional Assembly) signs the local law, adopted by the Voivodeship Sejmik, immediately after its adoption and submits it for publication in the regional official gazette.

The legislature, when entrusting the power of making local law in the field of environmental protection to individual units of local government, argued that they would best know how to use environmental protection instruments to ensure the most effective protection in their area of responsibility.

The Act of 23 January 2009 on Voivodes and central government administration in voivodeships governs local law in its Chapter 6 Local law enacted by Voivodes and bodies of non-integrated central government administration, stating that under and within the limits of delegation contained in Acts, the Voivode (representative of the central government in the region) and bodies of non-integrated central government administration enact local law applicable in the voivodeship (region) or its part. The bodies of non-integrated central government administration operating in voivodeships have been obliged to agree with their Voivodes on enactments of local law issued by these bodies under separate regulations. Voivodes have been authorised to issue public order regulations.

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(rozporządzenia porządkowe), to the extent that is not regulated by universally binding law, if required to protect life, health or property and to ensure order, peace and public security/safety. Public order regulations shall be promptly submitted by the Voivode to the President of the Council of Ministers, the Marshal of the Voivodeship, and the Starosts and Mayors on whose territory the regulation is to be applied.

Local environmental law may also be enacted based on other specific Acts, such as the Act of 21 March 1991 on maritime areas of the Republic of Poland and maritime administration, by Directors of Maritime Offices – as maritime administration authorities in the regions. They may, to the extent that is not regulated by universally binding law, if required to protect life, health or property, the defence and security of the State, protect the marine environment at sea ports, harbours and in the technical belt, and as well protect navigation and sea ports, enact public order provisions prohibiting or ordering a specific behaviour, and establish zones that are temporarily closed for navigation and fishing, water sports and diving, located within the territorial jurisdiction of the office responsible and within the boundaries of the internal waters and the territorial sea. These provisions are in the form of public order ordinances (zarządzenia porządkowe), which become effective on the date specified therein, not earlier than on the day of their publication in the regional official gazette applicable for the territory covered by the ordinance. Where there is a need for immediate implementation of a public order ordinance, it may be published by means of announcements in the territory of its applicability, by radio or by other means that are customary in maritime navigation or in the area concerned. The day of publishing the ordinance is the day of its promulgation. The ordinance is then published in the applicable regional official gazette.

The Act of 13 September 1996 on the maintenance of cleanliness and order in municipalities includes the authorisation to enact local law for a Municipal Council, which, having consulted the district State Sanitary Inspector, passes a regulation for keeping the municipality clean and tidy, and this regulation is an enactment of local law. This regulation defines detailed rules for maintaining cleanliness and order in the area of the municipality. In subsequent articles, the Act provides that the Municipal Council may, by way of a resolution constituting an enactment of local law, take over all or defined obligations from property owners, to the extent defined in the law. By way of a resolution constituting an enactment of local law, the Municipality Council shall determine, taking into account the local conditions, the time, the frequency and the procedure of

17 Public order regulations, as well as public order provisions enacted by municipal and district authorities, may provide for fines for their infringement, imposed under the procedure and upon the rules specified in the petty offences code.

Some remarks on Enactments of Local Law in Matters Concerning the Protection of the Environment

Payment of the municipal waste management fee, including the determination whether the fee is to be paid in advance or in arrears, and also the Municipality Council may order, by way of a resolution not constituting local law, the collection of the municipal waste management fee and designate the collectors and set the remuneration for collection services. The legislature allowed individual Municipal Councils to decide on their own regulations for cleanliness and order. It seems that the reasons for such a solution were diverse needs in terms of cleanliness and order. The differences between municipalities, the presence of monuments, forests, parks, the number of inhabitants, the number of tourists, rivers, etc. were also of importance. As regards the maintenance of cleanliness in a municipality, the responsibilities in this scope should be placed as close as possible to the object of activity, because only such a direct action will ensure its effectiveness. Any indirect impact will undoubtedly be less efficient.

The Act of 27 April 2001 on Environmental Protection Law19 authorizes the District Council to adopt, by way of a resolution, restrictions or prohibitions on the use of watercraft or some of their types on specific surface water bodies with stagnant water and flowing water, if it is necessary to ensure proper acoustic conditions in areas designated for recreational and leisure purposes. Such a resolution is also an enactment of local law.

The Act of 16 April 2004 on the protection of nature20 contains an authorisation for Municipal Councils, which may, in the cases provided for in the law, establish by way of a resolution a nature monument, documentation site, ecological purpose site or natural landscape complex21. The legislature did not expressly grant the municipal resolution the quality of an enactment of local law. Any doubts about this question were cleared by the Supreme Administrative Court which stated that a resolution on the creation of a natural landscape complex adopted by a Municipal Council is an enactment of local law. “Therefore it contains legal norms of a general and abstract nature and is not addressed to an individually specified addressee. The provisions contained therein must be taken into account by public administration bodies when deciding about the management of the area covered by the resolution”22. Consequently, resolutions taken by a Municipal Council establishing the above mentioned forms of nature conservation will also be governed by local law.

The rules and procedure for the publication of local law, the official gazettes for its publication and the rules governing its entry into force or the manner

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21 A draft resolution needs to be consulted with the competent Regional Director for the Environmental Protection.
22 Judgement of the Supreme Administrative Court of 30 July 2010, case ref. no. II OSK 1053/10, LEX nr 694431.
of keeping collections of local law are set out in the Act of 20 July 2000 on the promulgation of normative acts and certain other acts. Enactments of local law shall be published in the Regional (Voivodeship) Official Gazette (Wojewódzki Dziennik Urzędowy), published by the Voivode. Public order provisions are promulgated by means of announcements, as well as in the customary manner practised in a given area or in the mass media, which does not release the authorities from the obligation to publish them in the regional official gazette. The day specified in the announcement is deemed to be the day of promulgation of the public order provisions.

In conclusion, the statutory authorisation for enacting local law in the field of environmental protection is very often more intensive than the constitutional requirements for Regulations (secondary legislation), whereas the local law itself, by increased dependence on Acts, is more closely reflected in the executive administrative acts as their legal bases. As regards the form of enactments of local law, we can see a certain inconsistency on the part of the legislature, which does not always adhere to the adopted solution. The legislature mentions, as a form of enactments of local law, such acts as ordinances (zarządzenia), public order ordinances (zarządzenia porządkowe), regulations (rozporządzenia), or resolutions (uchwały). Only the form of resolution was attributed to the organs of local government. It should be emphasized that it is not the name itself that determines the nature of the form of administrative activity, but the content of a given enactment. Nonetheless a considerable diversity in this regard makes it undoubtedly difficult to identify enactments of local law. Similarly, the Supreme Administrative Court pointed out that “for the qualification of a given resolution as an enactment of local law, the decisive factor is the nature of the legal norms and their impact on the legal situation of their addressees, not its name or the will of the issuing authority. Therefore, if a resolution contains at

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25 See: J. Boć, Przykłady prawnych form działania..., op. cit., p.441.
28 E.g. a regulation of the Director of the Regional Water Management Authority (Act of 19 December 2014 on inland fishing activities, Journal of Laws [Dz.U.] of 2018, item 1476 as amended), and since 1.01.2018 a regulation of the Voivode.
least one general and abstract norm, then we can deal with an enactment of local law in this case.\(^{30}\)

It should be noted that due to the territorial coverage of enactments of local law in the field of environmental protection, attention is drawn to natural systems, which were undoubtedly (as J. Boć puts it) one of the prerequisites for shaping the historical development of the administrative divisions. In matters concerning environmental protection we can see situations where the similarity of objects of protection is not a reason for similar protective activities. The value of local law for environmental protection is increasing, especially due to a diversified nationwide distribution of industrial facilities posing a threat to the environment or the uneven allocation of environment protection projects.

All types of local government bodies are authorised to enact local law in the field of environmental protection. The system of law-making powers as regards the enactment of local law in the field of environmental protection corresponds to historical values, and also to those that form the basis of the European Charter of Local Self-Government. Enactments of local law issued in the field of environmental protection give the possibility of adapting the universally binding law to specific and (more importantly) to often changing local conditions. Undoubtedly, this contributes to a quicker, more effective and more reasonable course of action, which is crucial for the protection of the environment. Enacting local law in the field of environmental protection, which is undoubtedly local action undertaken on a larger or smaller scale, responds to the need for a universally binding regulation, which does not need to be applied nationwide and seems to be the most appropriate way.

Bibliography

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\(^{30}\) Judgement of the Supreme Administrative Court of 27 July 2010, case ref. no. II OSK 1060/10, CBOSA.
Kilka uwag o aktach prawa miejscowego w ochronie środowiska

W artykule podjęto próbę analizy aktów prawa miejscowego jako prawnej formy działania administracji w ochronie środowiska. Autorzy zwracają uwagę na podstawy prawne stanowienia aktów prawa miejscowego, formy aktów oraz organy uprawnione do ich wydawania. Akty prawa miejscowego dają możliwość dostosowania prawa powszechnie obowiązującego do szczególnych i co ważne często zmiennych warunków lokalnych, co nie pozostaje bez znaczenia szczególnie dla ochrony środowiska.

Słowa kluczowe: Prawo ochrony środowiska, akty prawa miejscowego