

Monika A. Król

Professor of the University of Łódź
University of Łódź

REVIEW

**Of the monograph by A. Barczak, A. Ogonowska,
“Działalność uchwałodawcza rady gminy w zakresie ochrony
środowiska. Wzory uchwał z komentarzem” [Resolution-making
activity of a commune council in terms of environmental
protection. Sample resolutions with commentary],
C.H. Beck, Warsaw 2019**

Adequacy of the title and subtitles to the publication’s content

In my opinion, both the work’s title and its individual subtitles correspond to its content. Commune tasks in term of environmental protection are presented from the perspective of the resolution making activity of its constitutive and review body – the commune council. The work also has a pragmatic value as it includes practical examples of sample resolutions on matters discussed in theory. The work presents both acts of local law given by the commune and the manner of performance of tasks resulting from the provisions in special statutes dealing with environmental protection law. Special focus is given to principles of constructing commune council resolutions and to the commune resolution-making procedure.

Text composition

The work is divided into two parts. The first part addresses general issues including a discussion of the subject matter of local law provisions given by communes with emphasis on resolutions, their classification, principles of constructing resolutions and the procedure of providing them. The second part refers specifically to commune council resolutions in terms of environmental protection. In my opinion, one more introductory chapter in the second part of the study could have been added in which the Authors could expand the introduction

to the subject matter of tasks of a commune (or perhaps even broader, of local government units) as regards environmental protection or their classification. These specific issues are them discussed in each chapters included in part two.

These two parts comprise 9 chapters in total, where each next chapter develops and supplements thought expressed earlier. Chapter one – Commune council resolutions – notion, types, review and supervision – is aptly opened by the Authors by demonstrating the notion of a resolution and its types, by differentiating between act of local law from acts of internal management. The explicit second part of chapter one concerns review carried out by administrative courts and the Constitutional Tribunal over the resolution-making activity of communes and the supervision carried out by the President of the Council of Ministers, a voivode as well as regional chambers of audit. The Authors do not omit the important issue of review measures. Chapter two – Classification of commune council resolutions in terms of environmental protection. The chapter opens with introductory issues concerning the notion of the environment and its protection and a general characteristic of commune council resolutions in terms of environmental protection. Chapter three – Principles of constructing commune council resolutions – concerns the legislative technique of constructing resolutions, whereas chapter four – Commune resolution-giving procedure – concerns i.e. the procedure of preparing draft resolutions, giving opinions on them, participation of the society in commune resolution-giving activity and strategic assessments of environmental impact.

The second part of the study comprises five chapters referring to the following, respectively: chapter five – Commune council resolutions concerning the quality of the environment and emissions law; chapter six addressing waste management; chapter seven – Commune council resolutions concerning waste management; chapter eight – commune council resolutions concerning nature conservation and protection of animals; chapter nine – Commune council resolutions in terms on land-use planning.

In my opinion the study is of appropriate volume, the relationship between the breadths of individual chapters seems correct. Chapters four and nine are slightly lengthier, but their volume is substantively justified. The Authors have selected illustrative material correctly using examples of decisions of administrative courts. The study does not contain repetitions.

Language accuracy

The work does not cause reservations in linguistic terms. It is written in a clear and communicative language. Minor editorial errors will be certainly eliminated at the editing stage (i.a. erroneous numbering of chapter three and four or providing both the initial and the full name in note 24 in chapter five (“P. Korzeniowski”). It would be advisable to streamline the position of the initial before or after the cited surname in notes throughout the study.

Substantive quality

The reviewed work carries a significant scientific value. It is a study of the subject-matter of commune council's performance of environmental protection tasks approached from the side of resolution-making activity. The reflections illustrate sample resolutions with appropriate commentary. The juxtaposition of theoretical and practical problems is the work's quality as it presents the manner in which the analysed institutions operate. This procedure has a positive impact on expanding the monograph's circle of readers.

Legitimacy of the research

The purpose of the reviewed study is to analyse commune law-giving tasks which were expressed in self-government systemic regulations and legal acts included in the block of environmental laws. An analysis of the above-mentioned acts indicates that social relations which are attributed a legal value present complicatedness and complexity of problems. Commune, being a local lawmaker, encounters ever-greater difficulties in expressing its will by way of environmental legal norms. The degree of complicatedness of environmental regulation causes great interpretational obstacles by erroneous reading of laws frequently adopted by communes. Such a situation produces numerous complaints for acts of local law concerning environmental regulations adopted by communes. Therefore, the choice of the subject-matter should be regarded excellent and the examples of sample resolutions are unquestionably helpful in the practice of application of the law.

Methodology

The method of the legal doctrine applied by the Authors is the basic methodology. The Authors analyse: legal acts indispensable in this scope, basic available literature (including monographs, text books, but also commentaries to statutes) as well as a broad scope of decisions of administrative courts and rulings of public administration authorities, especially voivodes' supervisory decisions. It needs to be highlighted that each chapter closes with a conclusion.

Correctness of formulated findings, presentation method

While presenting their own views the Authors maintained due respect for other researchers' assertions. The Authors' views deserve to be agreed with. For instance, they rightly note that calling an act of a commune council a resolution does not prejudge that one is dealing with an act of local law. This is why they distinguish two categories of resolutions: those that are acts of local law and those that are acts of internal management.

The regulation of the substantive environmental law is the criterion classifying resolutions in the second part of the study, and thus chapter five addresses commune council resolutions in terms of the quality of the environment and emissions law, chapter six – waste management, chapter seven – water management, chapter eight – nature conservation and protection of animals, chapter nine – land use planning. The work is in accordance with the state of law as at 5 June 2019.

Validity of publication

In light of the comments presented above the validity of publishing the reviewed monograph should not raise doubt.

Circle of potential readers

The book is dedicated primarily to all employees of commune bodies who prepare draft environmental resolution in the day-to-day operation of the offices, but it will also be an excellent educational position for students of the following courses: law, administration or environmental protection. It can be also safely recommended to practitioners who wish to advance their knowledge in the discussed field.

Examples of competition literature

Studies addressing a theoretical basis of local government tasks in terms of environmental protection are authored by one of its co-authors – A. Barczak, *Zadania samorządu terytorialnego w zakresie ochrony środowiska* [Local government tasks in terms of environmental protection], Warsaw 2006 or A. Barczak, Ewa Kowalewska, *Zadania samorządu terytorialnego w ochronie środowiska, Aspekty materialne i finansowe* [Local government tasks in environmental protection. Substantive and financial aspects], Wolters Kluwer 2015. A monograph by M. Górski must also be mentioned – *Ochrona środowiska jako zadanie administracji publicznej* [Environmental protection as a public administration tasks], Łódź 1992, where the entire theoretical and legal fundamentals maintain their up-to-date status.

This issue was also given a significant amount of reflection in the following scholarly works, e.g. Janina Ciechanowicz, *Kompetencje samorządu terytorialnego w zakresie ochrony i kształtowania środowiska* [Local government powers in terms of protection and shaping of the environment], *RPEiS* 1991, No. LIII(2), or by the same author, *Zadania i kompetencje gminy w zakresie ochrony środowiska – Kierunki zmian* [Commune tasks and powers in terms of environmental protection – directions of change], “Gdańskie Studia Prawnicze” 2015, Vol. XXXIV.

The reviewed monographs clearly stands out due to its practical value, which makes it an interesting position that deserves to be recommended on the publishing market. Those interested in the subject matter will be able to reach more broadly for further scholarly reflections in this regards.

Final assessment

The book is the first such comprehensive study of the issues of commune law-making activity in terms of environmental protection. Gradually, for almost thirty years, the legislator has been entrusting local government with further environmental tasks.

The Authors took into account the most recent regulations addressing i.a. emissions law and waste management. The publication takes into account the resolution-making activity in terms of: land-use planning; quality of the environment and emissions law; waste management; water management; nature conservation and protection of animals.

These detailed issues are preceded by more general issues concerning the legal nature of commune council resolutions, their classification, principles of reviewing them and the commune resolution-making procedure. Apart from its scholarly values, the study's practical character is its immense value.

Due to the convention adopted by the Authors, part one which in essence is a theoretical and legal introduction to the issues of commune resolution-making activity is supplemented in part two by a discussion of legal basis for environmental protection, and then by a sample draft resolution together with a commentary. This approach makes the presented monograph stand out on the publishing market.