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ENTITIES PERFORMING PUBLIC ADMINISTRATION AS ADDRESSEES OF ACTS OR IMPERIOUS ACTIVITIES IN THE FIELD OF PUBLIC ADMINISTRATION

MIROSŁAW WINCENCIAK*

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Abstract

The subject of this article is the analysis of acts and activities referred to in Article 3 § 2(4) of the LPAC, from a subjective perspective – namely, the entity they concern, which is also an entity performing public administration. This type of analysis is heuristically valuable for the following reasons: firstly, at both ends of the administrative-legal relationship to which the act or activity pertains, there are entities performing public administration. Secondly, the concepts of 'right' and 'obligation', as used in Article 3 § 2(4) of the LPAC, have a well-established meaning within the doctrine of administrative law. The question therefore arises: how should these terms be interpreted when analysing Article 3 § 2(4) of the LPAC?

Key words: administrative right, obligation, action, act

INTRODUCTION

According to Article 3 § 2(4) of the Act on Administrative Court Procedure,[1] the control exercised by administrative courts over public administration activities includes ruling on complaints concerning acts or activities within the scope of public administration, other than those specified in paragraphs 1–3, which affect rights or obligations arising from legal provisions. This excludes acts or activities undertaken

* LLD hab., Professor of University of Białystok (Poland); e-mail: m.wincenciak@uwb.edu.pl, ORCID: 0000-0003-3099-1012

[1] Act of 30 August 2002 – Law on Proceedings before Administrative Courts; consolidated text, Journal of Laws of 2024, item 935, hereinafter referred to as 'LPAC'.

within administrative proceedings governed by the Code of Administrative Procedure,[2] proceedings under Sections IV, V and VI of the Tax Ordinance,[3] proceedings referred to in Section V, Chapter 1 of the Act of 16 November 2016 on the National Fiscal Administration,[4] and proceedings to which the provisions of these acts apply. Defining the acts or activities referred to in this provision has given rise to numerous controversies in both doctrine and judicial decisions. These range from debates over the validity of dividing such forms into acts and activities,[5] to questions concerning the effects they produce. It is generally accepted that the criteria for classifying specific conduct as so-called 'other acts and activities' are imprecise. The phrase 'other acts or activities in the scope of public administration concerning rights or obligations resulting from legal provisions' is often described as enigmatic and controversial.[6] The cited provision contains a legal definition of acts or activities, which simultaneously forms part of the enumeration of public administration activities subject to the jurisdiction of administrative courts, as set out in Article 3 § 2 LPAC. For comparison, it is worth noting that the decisions and provisions listed in Article 3 § 2 LPAC are formally defined, *inter alia*, in the Code of Administrative Procedure and the Tax Ordinance. Their constitutive elements and classification have long been addressed in academic doctrine and case law – these decisions were already subject to judicial review during the interwar period. The history of acts or activities as forms subject to such review is, by contrast, much shorter, dating back only to 1995.[7]

The subject of this article is the analysis of acts and activities from a subjective perspective – namely, the entity they concern, which is also an entity performing public administration. Examining acts and activities from this perspective is heuristically valuable for the following reasons: at both ends of the administrative-legal situation to which the act or activity pertains,[8] there are entities performing public administration. As Z. Kmieciak points out, one party enforces the law concerning the act or activity,[9] while the other is its 'beneficiary'. Examples of

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[2] Act of 14 June 1960 – Code of Administrative Procedure; consolidated text, Journal of Laws of 2024, item 572, hereinafter referred to as 'CAP'.

[3] Act of 29 August 1997 – Tax Ordinance; consolidated text, Journal of Laws of 2023, item 2383, hereinafter referred to as 'the Tax Ordinance'.

[4] Act of 16 November 2016 on the National Revenue Administration, consolidated text, Journal of Laws of 2023, item 615, as amended.

[5] A. Skoczylas, 'Glosa do uchwały NSA z dnia 4 lutego 2008 r., I OPS 3/07', *Orzecznictwo Sądów Polskich*, 2008, No. 7–8, item 89; B. Adamiak, 'Z problematyki właściwości sądów administracyjnych (art. 3 § 2 pkt 4 p.p.s.a.)', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2006, No. 2, p. 7.

[6] J. Zimmermann, 'Prawo do sądu w prawie administracyjnym', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2006, Issue 2, pp. 307 et seq.

[7] Article 16(1)(4) of the Act of 11 May 1995 on the Supreme Administrative Court, Journal of Laws No. 74, item 368, as amended.

[8] Following J. Boć, by the term 'administrative-legal situation' I understand any social situation of a given entity, the constituent elements of which have been shaped in law, directly or indirectly, due to a specific factual event, cf. J. Boć, in: Boć J. (ed.), *Prawo administracyjne*, Wrocław, 2005, p. 378.

[9] According to Z. Kmieciak, in cases where certain rights or obligations arise by virtue of the law itself, there is no application of the law, but merely its execution, i.e. the initiation of

acts or activities which, according to case law, concern the rights or obligations of an entity performing public administration include: information on the refusal to grant financial assistance to a local government unit;[10] post-inspection order issued by a provincial environmental protection inspector towards a local government unit;[11] recommendations made by a provincial conservator of monuments to a local government unit;[12] dismissal of a protest against a negative assessment of a project funding application;[13] result of a tax audit carried out with respect to a local government unit;[14] action by the Prime Minister in approving the final list of tasks selected for funding from the local government road fund;[15] failure to take into account a simplified road traffic organisation project; and ordering substantive changes to that project.[16] Secondly, the concepts of 'right' and 'obligation' used in Article 3 § 2(4) LPAC already have a well-established meaning within the doctrine of administrative law. The question therefore arises: how should these terms be understood when interpreting Article 3 § 2(4) LPAC? Is it justified to adopt the meanings developed in the doctrine of administrative law, or should they be interpreted in a specific manner, tailored to the characteristics of an entity performing public administration? Doctrine and case law have identified the constitutive elements of acts or actions. According to T. Woś, they must meet the following criteria: (1) the act or action cannot be of the nature of a decision or order issued in jurisdictional, enforcement or security proceedings, and must not be appealable under Article 3 § 2(1)–(3) LPAC; (2) the act or action must be external in nature; (3) it must be addressed to an individual entity; (4) it must be of a public law character; (5) it must 'concern' rights or obligations resulting from legal provisions.[17]

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factual actions that allow for the achievement of the purpose of the legal norm, cf. Z. Kmieciak, 'Efektywność sądowej kontroli administracji publicznej', *Państwo i Prawo*, 2010, No. 11, p. 29.

[10] Judgment of the Regional Administrative Court in Łódź of 29 March 2023, ref. No. III SA/Łd 28/23; judgment of the Regional Administrative Court in Szczecin of 24 November 2022, ref. No. I SA/Sz 542/22.

[11] Judgment of the Regional Administrative Court in Kraków of 5 October 2022, ref. No. II SA/Kr 887/22.

[12] Judgment of the Supreme Administrative Court of 7 December 2012, ref. No. II OSK 521/21.

[13] Judgment of the Supreme Administrative Court of 12 April 2018, ref. No. I GSK 1907/18.

[14] Judgment of the Supreme Administrative Court of 11 April 2014, ref. No. II GSK 160/14.

[15] Order of the Supreme Administrative Court of 14 July 2020, ref. No. I GSK 486/20 – the order was issued with a dissenting opinion, which expressed the view that approval of the final list of tasks does not fall within the jurisdiction of the administrative courts.

[16] Judgment of the Regional Administrative Court in Białystok of 21 October 2014, ref. No. II SA/Bk 619/14.

[17] T. Woś, in: Woś T. (ed.), Knysiak-Molczyk H., Romańska M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, 6th edn, Warszawa, LEX, 2016, thesis 47; similarly: A. Kabat, in: Dauter B., Kabat A., Niezgódka-Medek M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, 9th edn, Warszawa, LEX, 2024, theses 24–32. In turn, J. Chmielewski indicates three additional features, which essentially serve as a supplement or further specification of those already mentioned. These are: both direct and indirect basing of the right or obligation on a legal provision; basing the acts (activities) in question on provisions that do not require authoritative specification; and the potential repeatability of such acts (activities) – J. Chmielewski, 'Glosa do wyroku WSA w Białymstoku z 21.10.2014 r., II SA/Bk 619/14', *Orzecznictwo Sądów Polskich*, 2015, No. 11, pp. 1512 et seq.

In the following analysis, I will verify these features from the perspective of the entity performing public administration as the 'beneficiary' of such acts or activities. I will omit the first and third criteria, as they are not particularly relevant to the subject of this study. This is because the *differentia specifica* consisting in the fact that entities performing public administration are the addressees of acts or activities does not, in my view, affect the assessment of these two elements. By entities performing public administration, I refer to public administration in both the objective and subjective sense, along with the inherent diversity entailed by this dual understanding.

PUBLIC LAW NATURE

One of the features of acts or actions is their public law nature,[18] which should be understood in relation to the nature of the actions undertaken by the entity performing public administration. Acts and actions undertaken by such entities are subject to judicial review – public administration bodies in the systemic or functional sense – i.e. entities that are not government administration bodies or local government bodies, but which, either on the basis of special provisions or under an agreement transferring competences, are appointed to deal with matters falling within the scope of public administration.[19] Additionally, such acts may be undertaken by authorised employees of these bodies.[20]

The management of public property is directed towards the implementation of public tasks specified in legislation. The activities of public administration concerning state and municipal property are based on norms of administrative law, to which civil law regulations apply accordingly. Actions taken by the administration in relation to public property constitute the exercise of public administration, despite the fact that they may produce civil law effects.

It is generally accepted that the concept of 'within the scope of public administration' does not encompass legal actions undertaken by public administration that are of a purely civil law nature – i.e. actions which produce effects solely within the domain of civil law relations.[21] It is emphasised that the admissibility of legal action is determined by the criterion of the exercise of competences in authoritative forms.[22]

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[18] J.P. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa, 2006, pp. 29 and 30; A. Kabat, in: Dauter B., Kabat A., Niezgódka-Medek M., *Prawo o postępowaniu*…, op. cit., p. 24; T. Woś, H. Knysiak-Molczyk, M. Romańska, *Prawo o postępowaniu*…, op. cit., p. 60.

[19] T. Woś., H. Knysiak-Molczyk, M. Romańska, *Prawo o postępowaniu*…, op. cit., p. 60; M. Bogusz, 'Glosa do wyroku NSA z dnia 20 listopada 2008 r., I OSK 611/08', *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa*, 2009, No. 3; M. Bogusz, 'Pojęcie aktów lub czynności z zakresu administracji publicznej dotyczących przyznania, stwierdzenia albo uznania uprawnienia lub obowiązku wynikających z przepisów prawa w rozumieniu art. 16 ust. 1 pkt 4 ustawy o NSA', *Samorząd Terytorialny*, 2000, No. 1–2, pp. 177 et seq.

[20] M. Bogusz, 'Pojęcie aktów…', op. cit., pp. 177 et seq.

[21] T. Woś, H. Knysiak-Molczyk, M. Romańska, op. cit., p. 60; J. Borkowski, B. Adamiak, *Metodyka pracy sędziego w sprawach administracyjnych*, Warszawa, 2009, p. 55.

[22] J. Borkowski, B. Adamiak, *Metodyka pracy*…, op. cit., p. 55.

Within legal doctrine, the public law nature of a case is associated with the exercise of competences assigned to the administration, and even with the possibility of undertaking actions based on so-called task norms.[23] Actions undertaken by entities performing public administration, which amount to declarations of will in civil law relations, do not possess this public law character. In performing its tasks, public administration – particularly local government – acts both as a bearer of *imperium* conferred by the state and as an entity holding property, i.e. *dominium*. Public law corporations carrying out public tasks and therefore possessing the attribute of public law subjectivity are, irrespective of this status, vested with legal personality necessary for independent participation in civil law relations.[24]

The public law nature of an act or activity is therefore not determined by the fact that it is carried out by an entity performing public administration, but by its subject matter. This distinction also appears to be clear from the perspective of safeguarding the right to a court: civil law activities, in the event of a dispute, may be subject to review by a common court in various procedural contexts, such as assessment of the effectiveness of a submitted declaration of will, or assessment of the existence or non-existence of a legal relationship, for instance in an action for a declaratory judgment. Moreover, a dispute between two entities performing public administration in the context of civil law relations does not fall within the jurisdiction of administrative courts, which, under Article 184 of the Constitution, exercise judicial control over public administration, but only in relation to the legal forms of its operation as defined by positive legislation.[25]

THE EXTERNAL NATURE OF AN ACT OR ACTIVITY

The external nature of an act or activity means that it is addressed to an entity that is neither organisationally nor officially subordinate to the body issuing it. The external nature of an act is regarded by most administrative law doctrines as a constitutive feature of an administrative decision.[26] The external nature of a decision is defined by its basis in generally applicable legal provisions and its direction to an entity that is independent of public administration within the framework of a given legal relationship.[27] A further relevant feature is the legal effect the decision has on the situation of organisationally independent entities.[28] The absence of a link of

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[23] K. Klonowski, 'Kontrola sądowoadministracyjna „innych aktów lub czynności z zakresu administracji publicznej dotyczących uprawnień lub obowiązków, wynikających z przepisów prawa" z art. 3 § 2 pkt 4 p.p.s.a.', *Przegląd Prawa Publicznego*, 2012, No. 5, p. 53.

[24] H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa, 1998, p. 123.

[25] P. Szustakiewicz, *Komentarz do Konstytucji RP*, Articles 184 and 185, Warszawa, 2022, passim.

[26] M. Masternak, *Czynności materialno-techniczne jako prawna forma działania administracji publicznej*, Toruń, 2018, p. 439.

[27] Ibidem.

[28] A. Wiktorowska, 'Kierunki zmian w teorii prawnych form działania administracji', in: Zimmermann J. (ed.), *Koncepcja systemu prawa administracyjnego*, Warszawa, 2007, p. 376.

organisational dependence or official subordination indicates the external nature of the act.[29] Pursuant to Article 3 § 3 CAP, matters falling within the so-called internal sphere of administration are excluded from the Code's scope of application.[30] These include matters arising from the official subordination of employees of state bodies and other state organisational units (Article 3 § 3(2) CAP).

The above comments on the meaning of the external nature of an administrative decision should also apply to acts or activities. This is justified by the similarity in systemic features of the compared forms of public administration activity, including: authoritativeness, reliance on generally applicable legal provisions, and the individual nature of the act.[31] The aforementioned external nature of an act implies the ability to affect the legal situation of an organisationally independent entity. Internal acts, carried out in the context of administration, may be modified and reviewed by the administration itself under internal procedures. Influence over an organisationally subordinate entity is exercised through two types of acts: general acts (orders, instructions, circulars) and individual acts (official orders). Where acts or actions are undertaken within the framework of official or organisational subordination, there is no requirement for judicial review. Their verification is conducted under the rules and norms of organisational subordination applicable between entities performing public administration. The binding force of internal acts applies to entities situated within the framework of organisational subordination, and may extend across entire organisational structures and to subordinate employees (including officers).

The concept of 'organisational subordination' is understood as a legally defined type of relationship (or bond) between two entities performing public administration. The characteristics of such a relationship should be determined based on legal provisions regulating the relationship between the entities in question.[32] This includes forms such as hierarchical subordination, systemic-legal bonds, and functional subordination. In administrative law doctrine, various forms of mutual interaction between administrative entities are distinguished, beginning with the strongest organisational form – management – and extending through supervision, control, authority and integration, coordination, and cooperation.[33] Each of these forms possesses its own specific features. The scope of this publication does not permit

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[29] J. Świątkiewicz, 'Zakres kontroli Naczelnego Sądu Administracyjnego (w świetle orzecznictwa sądowego)', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1984, Issue 1, pp. 23–30; E. Ochendowski, *Prawo administracyjne*, Toruń, 1999, p. 166; J. Starościak, *Prawo administracyjne*, Warszawa, 1977, p. 230. This feature of an administrative decision is also indicated in the definition proposed by the expert team appointed by the Commissioner for Human Rights in Article 5(1)(1) of the draft Act – General Provisions of Administrative Law, *Biuletyn RPO*, 2008, No. 60, p. 54.

[30] I. Lipowicz, *Pojęcie sfery wewnętrznej administracji państwowej*, Katowice, 1991, p. 86.

[31] According to M. Jaśkowska, the concept of acts or activities should also be applied to acts of a general nature, see: M. Jaśkowska, 'Właściwość sądów administracyjnych (zagadnienia wybrane)', in: Zimmermann J. (ed.), *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006 r.*, Warszawa, 2007, p. 587.

[32] See order of the Supreme Administrative Court of 7 September 2017, ref. No. II OSK 1790/17, LEX No. 2348658.

[33] J. Zimmermann, *Prawo administracyjne*, Warszawa, 2020, pp. 215–222.

a broader presentation of their particularities. These relationships can be categorised as organisational and functional. Organisational relationships refer to links between organisational units involving a direct and decisive influence by a higher-level unit on staffing in a lower-level unit, and the authority to assess and review the activities of the lower-level unit based on the criterion of purposefulness. Functional relationships, on the other hand, refer to all legal relationships between entities of public administration arising from the performance of public administrative tasks.[34]

The norms of an internal act cannot be addressed to an individual, nor can they shape the legal situation of an entity outside the organisational structure subordinate to the body issuing the act. The implementation of an internal norm cannot produce effects upon a citizen, as it cannot authorise or oblige the subordinate entity (as the addressee of the internal norm) to directly influence citizens' behaviour.[35] According to Article 5(1) LPAC, cases 'resulting from organisational superiority and subordination in relations between public administration bodies' are excluded from the jurisdiction of administrative courts.

To distinguish between external and internal acts or activities, it is not sufficient to establish whether the addressee is or is not an entity performing public administration. The external nature of an act is determined by the type of legal relationship existing between the entities and the nature of the right or obligation to which the act or activity relates. Assessing this relationship requires an analysis of the legal provisions governing it. Given the complexity of constitutional and substantive law provisions, and the diversity of legal solutions they entail, it is difficult to identify a clear demarcation line between forms of cooperation between administrative entities to which acts or activities may definitively be assigned the character of externality or internality. Nevertheless, a certain regularity may be observed: the more developed the legal framework governing mutual interaction between two administrative entities, the greater the likelihood of the existence of organisational subordination, and thus, of the internal nature of the acts or activities concerned.

RIGHT OR OBLIGATION AS THE SUBJECT OF AN ACT OR ACTION

It is generally accepted that acts or actions must be based on provisions of generally applicable law that simultaneously define rights or obligations.[36] Such rights or obligations must arise from a provision of generally applicable law, which is a consequence of the constitutional order and the prohibition – expressed in the

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[34] R. Michalska-Badziak, in: Duniewska Z., Jaworska-Dębska B., Michalska-Badziak R., Olejniczak-Szałowska E., Stahl M. (eds), *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warszawa, 2000, pp. 202–204.

[35] S. Wronkowska, 'System źródeł prawa w nowej Konstytucji', *Biuletyn RPO. Materiały*, Warszawa, 2000, Issue 38, p. 89, cited in: A. Kidyba (ed.), *Skarb Państwa a działalność gospodarcza*, Warszawa, Lex/el., 2014.

[36] A. Kabat, in: Dauter B., Gruszczyński B., Kabat A., Niezgódka-Medek M., *Prawo o postępowaniu…*, op. cit., pp. 23 and 25.

Constitution – on establishing generally applicable norms in domestic legal acts. As already noted, the addressees of domestic legal norms are limited to entities that are organisationally subordinate to the authority issuing those acts. Domestic legal acts cannot regulate matters reserved for statutory provisions, regulations, or local legal acts. Consequently, they cannot interfere with the rights or freedoms of entities that are organisationally independent of the administration. Article 93(2), second sentence, of the Constitution of the Republic of Poland provides that domestic legal acts do not constitute grounds for decisions or similar authoritative determinations concerning citizens, legal persons, or other entities. At the same time, it should be acknowledged that the source of a right or obligation need not be a regulation that is doctrinally classified as public law. The division between substantive and procedural regulations is also irrelevant. According to the interpretative principle *lege non distinguente nec nostrum est distinguere* – where the statute does not differentiate between the types of universally binding acts from which a right or obligation may be derived – it is not for the interpreter to introduce such a distinction. Furthermore, the line between substantive and procedural acts is inherently blurred, as most normative acts contain elements of both.

THE CONCEPT OF RIGHT

A right is defined as the ability of an entity to obtain, from the state or other entities exercising public authority, actions that place it in a favourable and legally protected position.[37] An administrative right, in turn, is the ability to obtain or remain in a situation that obliges the administrative apparatus to take action in order to confer a benefit upon an individual.[38] A right does not require protection through the imposition of additional obligations. Rather, the protection of a right takes institutional form, namely, the ability to compel the relevant authorities to undertake enforcement actions on behalf of the entitled entity.[39]

Rights in administrative law constitute a heterogeneous category. They may arise directly from the law (*ipso iure*), or from an act of applying the law based on provisions of generally applicable legislation.[40] By their nature, administrative rights are assigned to a specific entity and only to that entity. With few exceptions,

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[37] D.R. Kijowski, 'Uprawnienia administracyjne', in: Wróbel A., Hauser, R., Niewiadomski Z. (eds), *System prawa administracyjnego. Tom 7. Prawo administracyjne materialne*, Warszawa, 2017, p. 250.

[38] Ibidem, pp. 250–251.

[39] S. Wronkowska, *Analiza pojęcia prawa podmiotowego*, Poznań, 1973, p. 34.

[40] The following typology of administrative rights has been proposed in the doctrine:
– rights strictly linked to the personal status of an individual;
– rights to conduct business and other gainful activities;
– rights to perform assigned tasks and functions within the scope of public administration;
– rights to receive support from public funds;
– property rights;
– rights to use public facilities and goods;
– rights to compensation for damage caused by administrative action; cf. D.R. Kijowski, 'Uprawnienia administracyjne…', op. cit., p. 253.

they are not transferable by legal act to other entities.[41] The personal nature of an administrative right means that, in principle, the granting of such a right to one entity does not preclude the granting of an analogous right to another.[42] According to D.R. Kijowski, the concept of administrative rights should apply to both natural persons and legal persons.[43]

THE CONCEPT OF OBLIGATION

According to P. Przybysz, an administrative obligation is a distinct type of obligation. It may be defined as a requirement to undertake a specific action, imposed by an order of a state body acting within the limits of its competence and issued in the appropriate legal form. The order relates to a matter regulated by generally binding provisions of administrative law.[44]

W. Jakimowicz links the concept of legal obligation to the category of legal situation, understood as a situation designated by applicable legal norms, in which generically defined entities are clearly and directly instructed to undertake specific conduct in particular circumstances. The mere prohibition or command of specific conduct by a legal norm is sufficient for that conduct to be regarded as the subject of an obligation.[45] An obligation may arise directly from a substantive legal norm or be specified by an individual administrative act. According to this author, procedural regulation may serve as the source of obligations only within specific proceedings, and thus only within a defined time frame. Obligations resulting from such regulation concern legal relationships governed by administrative law.[46] W. Jakimowicz further notes that obligations imposed upon authorities constitute a category of administrative law obligations, whereas obligations imposed on entities whose conduct is directed toward an administrative authority are public law obligations, arising within relationships characterised by public law subjectivity.[47]

According to L. Klat-Wertelecka, the concept of an administrative law obligation, within the discipline of administrative law, applies solely to obligations imposed on administered entities, not on those exercising administrative authority. Obligations imposed on public administration bodies take the form of tasks and competences. The author states that the content of an administrative law obligation consists of three elements: identification of the entity upon which the duty to act is imposed;

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41 Exceptions include, for example, the transfer of a land development decision to another entity, based on an administrative decision transferring the administrative right resulting from the original decision.

42 M. Wincenciak, *Przedawnienie w prawie administracyjnym*, Warszawa, 2019, p. 251.

43 D.R. Kijowski, 'Uprawnienia administracyjne…', op. cit., p. 251.

44 P. Przybysz, 'Obowiązek administracyjny – pojęcie, rodzaje, konkretyzacja', *Organizacja – Metody – Technika*, 1990, No. 8–9, p. 14.

45 W. Jakimowicz, 'Obowiązek administracyjny w egzekucji administracyjnej', in: Niczyporuk J., Fundowicz S., Radwanowicz J. (eds), *System egzekucji administracyjnej*, Warszawa, 2004, pp. 129–131.

46 Ibidem, p. 132.

47 Ibidem.

specification of the type of behaviour required; and the determination of the time for its performance.[48]

According to P. Szreniawski, an obligation exists at a specific point in time and also becomes due at a specific time. The author considers that the moment from which the obligation becomes due may be identified as the point at which it becomes possible to request its performance, so that, in the event of refusal, it becomes permissible to apply to the enforcement body to initiate execution of the obligation.[49]

Obligations of administered entities, including those arising directly from provisions of generally applicable law, may be subject to administrative enforcement (Article 3 § 1 of the Act on Administrative Enforcement Proceedings).

TASK NORM AS A LEGAL BASIS FOR THE RIGHT OR OBLIGATION OF THE ENTITY PERFORMING ADMINISTRATION

Task norms are defined as norms that mandate the pursuit of a specific goal – the goal of the norm-maker, rather than that of the norm's addressee. A distinguishing feature of such norms is that they do not prescribe a specific method of conduct or course of action to achieve the goal, but merely indicate the goal to be attained.[50] Task norms are addressed to entities performing public administration by assigning them a task, which typically formulated in connection with the overall objectives of administrative activity. The definition of the task – and, in turn, the definition of the administrative entity's objective – imposes upon that entity an obligation either to carry out the assigned task or to accomplish the intended aim.[51] Thus, a task norm gives rise to a task framed in general terms. It cannot, however, serve as a source of competence for an entity performing public administration. It does not authorise the entity to take action by undertaking a specific conventional legal act, because defining a task is not equivalent to conferring the authority to act in a particular legal form.[52] The purpose established by task norms is not implemented through a single action, but rather through a series of individual or multiple actions, whether legal or factual in nature.[53]

As already indicated, a task norm does not constitute a basis for competence on the part of a public administration body, because competence to act in a specific form must be expressed directly. The structure of a task norm, by contrast, establishes only a general area of administrative activity in relation to the intended purpose of that activity. This statement appears less self-evident in the reverse situation,

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[48] L. Klat-Wertelecka, 'Przedawnienie obowiązku administracyjnoprawnego', *Opolskie Studia Administracyjno-Prawne*, No. VII, Opole, 2010, p. 18.

[49] P. Szreniawski, *Obowiązek w prawie administracyjnym*, Lublin, 2014, p. 80.

[50] T. Gizbert-Studnicki, A. Grabowski, 'Normy programowe w konstytucji', in: Trzciński J. (ed.), *Charakter i struktura norm konstytucji*, Warszawa, 1997, p. 97.

[51] J. Zimmermann, *Prawo administracyjne*…, op. cit., p. 65.

[52] K. Defecińska, *Spory o właściwość organu administracji publicznej*, Warszawa, 2000, p. 8.

[53] J. Filipek, 'Elementy strukturalne norm prawa administracyjnego', *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze*, Warszawa–Kraków, 1982, Vol. 99, p. 65.

namely, where an entity performing public administration, relying on the area of activity assigned to it under a task norm, demands that a competent authority undertake a specific act or activity. Can a task norm serve as the source of a right or obligation for an entity performing public administration? Can the mere fact of exercising public administration within a given area or sector of social life justify a demand for the undertaking of a specific act or activity? In a simplified sense, it could be argued that the task norm may serve as the basis for the legal interest of the entity performing public administration in obtaining an act or action. Unlike competence – which cannot be presumed – the entity carrying out the task could rely on the task norm as the source of its authorisation. However, it should be noted that such a request for the performance of an act or activity would only be effective if it were possible to reconstruct a competence norm – i.e. to identify the authority competent to undertake the act or activity. The absence of a substantive norm establishing the right or obligation (other than the task norm itself) renders the reconstruction of a competence norm impossible.

COMPETENCE NORM AS A LEGAL BASIS FOR THE RIGHT OR OBLIGATION OF AN ENTITY PERFORMING PUBLIC ADMINISTRATION

Competence norms authorise bodies to act in specific categories of administrative matters within a defined area.[54] In the sphere of internal administrative relations, competence norms may serve as a sufficient legal basis for the operation of a public administration body without the need to refer to other legal norms.[55] A competence norm is characterised by the following features: it is addressed to an administrative body, and it defines both the type and scope of activities that entitle the body to undertake an act.[56] The competence arising from the norm entails the body's obligation to act under specific conditions, using the form prescribed by law.[57] Competence is vested in public administration bodies, not in the addressees of administrative actions.[58] The competence of an authority is defined as both the ability and the duty to act either in a clearly defined legal form or in the form assigned to that authority.[59] The administrative body is not the recipient of the conduct of the administered entity, which exercises its rights or obligations not in relation to the administrative body itself, but under its supervision.[60] The conduct of a body acting under a competence norm is always an obligation of that body, regardless of whether the rights or obligations being exercised concern a private individual or a public entity (e.g. the State or a local government unit). The legal doctrine emphasises that an authority's competence should not be equated with

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54 J. Zimmermann, *Prawo administracyjne*…, op. cit., p. 65.
55 Ibidem, p. 66.
56 W. Jakimowicz, *Wykładnia w prawie administracyjnym*, Zakamycze, 2006, p. 405.
57 J. Boć, *Prawo administracyjne*…, op. cit., p. 145.
58 W. Jakimowicz, *Wykładnia w prawie*…, op. cit., p. 408.
59 J. Zimmermann, *Polska jurysdykcja administracyjna*, Warszawa, 1996, p. 36.
60 W. Jakimowicz, 'Obowiązek administracyjny…', op. cit., p. 132.

administrative power.[61] A similar distinction should be made in relation to the concept of obligation. The sources of public administration obligations are twofold. The first category comprises competence norms, which serve as an independent basis for the functioning of the administrative apparatus – most often in matters concerning so-called internal administration – or competence norms typical of authoritative administrative relations within the state–citizen relationship. The second category consists of norms that establish an administrative obligation in the strict sense. Examples include: a post-inspection order issued by the provincial environmental protection inspector to a commune,[62] or a recommendation issued by the provincial conservator of monuments to a commune.[63]

CLOSING REMARKS

The analysis of court decisions indicates that the acts or actions referred to in Article 3 § 2(4) LPAC may be divided into three categories: those which may concern only entities independent of the administration (such as acts or actions addressed solely to natural persons); those which may concern only entities performing public administration; and those which may apply to all categories of entities. A review of case law shows that acts in the second category most often concern local government units, which reflects the systemic principles currently in force. Local government possesses both legal personality and public-law subjectivity. Local government bodies serve as organs of a legal person and, simultaneously, as public administration authorities. As organs of public law corporations, they undertake, among other things, activities typical of civil law relations, which are non-authoritative in nature. However, when acting on the basis of *imperium*, they operate in authoritative forms prescribed by law. Article 165 of the Constitution establishes the principle of the independence of local government units. This means, *inter alia*, that local government units are granted legal personality and possess the right of ownership (Article 165(1)). Article 165(2) provides for judicial guarantees of this independence. According to the Constitutional Tribunal, the exercise of rights by a local government unit is carried out autonomously, within the limits set by law. The commune's exercise of the rights granted to it is aimed at fulfilling public tasks. In assessing judicial protection of local government independence, the Constitutional Tribunal held that such protection should not be equated with the constitutional right to a court. The function of Article 165(2) of the Constitution is to guarantee the proper performance of public tasks by local government, while the right to a court serves to protect the constitutional freedoms and rights of the individual.[64]

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[61] D.R. Kijowski, 'Uprawnienia administracyjne…', op. cit., p. 251.

[62] Judgment of the Regional Administrative Court in Kraków of 5 October 2022, ref. No. II SA/Kr 887/22.

[63] Judgment of the Supreme Administrative Court of 7 December 2012, ref. No. II OSK 521/21.

[64] Order of the Constitutional Tribunal of 23 February 2005, Ts 35/04, *Orzecznictwo Trybunału Konstytucyjnego – Zbiór Urzędowy*, 2005, No. 1B, item 26.

The independence of local government means freedom from arbitrary interference by other public authorities, particularly bodies of government administration. Any interference in the sphere of activity of local government units must comply with the Constitution and statutory provisions, and must be justified by the need to ensure that the activities of local government units conform to the law. In the positive sense, independence means the ability to freely choose the methods for implementing public tasks. The limits of this freedom are defined by the Constitution of the Republic of Poland and by statutes consistent with constitutional norms.[65]

The right to appeal to a court against an act or action concerning an entity performing public administration is not equivalent to the constitutional right to a court enjoyed by individuals, as set out in Article 45(1) of the Constitution of the Republic of Poland. That provision states: 'Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.' Similarly, Article 77(2) of the Constitution provides that: 'Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights.' These provisions appear in Chapter II of the Constitution, entitled 'Freedoms, Rights and Obligations of Persons and Citizens'. It therefore seems evident that public administration does not fall within the scope of the term 'everyone' as used in these constitutional provisions.[66] This does not mean, however, that entities performing public administration tasks are excluded from judicial protection. The right of an administrative body to appeal to an administrative court against forms of action undertaken by other public administration bodies may be granted, provided it arises directly from a statutory provision.[67] Moreover, there appear to be no systemic obstacles to granting such a right in cases where the legal position of the entity performing public administration is, in general terms, the same as that of the entity to which the form of administrative action is directed, and where the act in question assigns jurisdiction to the courts in such matters. The ability to be the subject of administrative rights and obligations is determined by the provisions of substantive law. Whether a particular entity possesses such rights or obligations depends on the structure of the relevant substantive legal norms. From a systemic perspective, a necessary condition for participation in legal transactions is the organisational separation of the entity, as provided for by law. Organisational separation, combined with the presence of a legal interest, supports the conclusion that an organisational unit has administrative and legal capacity. It is worth recalling that, pursuant to Article 29 CAP, a local government organisational unit without legal personality may also be a party to administrative proceedings. This provision does not grant party status in all administrative proceedings ending in an administrative decision, but it does allow such a unit to be a party where the provisions of substantive law show that the case concerns its legal interest. Referring

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[65] M. Masternak-Kubiak, in: Haczkowska M. (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Lexis Nexis, 2014, Article 165.

[66] See judgment of the Constitutional Tribunal of 29 October 2009, ref. No. K 32/08, *Orzecznictwo Trybunału Konstytucyjnego. Seria A*, 2009, No. 9, item 139.

[67] For example, Article 98(3) of the Act on Municipal Self-Government in conjunction with Article 3 § 2(7) LPAC.

to the postulate of systemic coherence in administrative law, it should be assumed that local government organisational units without legal personality may possess administrative capacity in matters referred to in Article 3 § 2(4) LPAC. The capacity to be the subject (addressee) of acts or actions undertaken by the administrative apparatus must be assessed in light of the substantive and systemic legal provisions governing the administrative relationship.

In referring to the concepts of 'right' and 'obligation', as used in Article 3 § 2(4) LPAC, it is important to emphasise that these cannot be equated with competence norms of administrative bodies.[68] The rights and obligations of public administration, in the material sense, arise primarily from the exercise of ownership rights over public property. Therefore, when analysing specific actions or conduct of the administrative apparatus from the perspective of their legal characterisation, the distinction between the *dominium* and *imperium* spheres must be taken into account.

BIBLIOGRAPHY

Adamiak B., 'Z problematyki właściwości sądów administracyjnych (art. 3 § 2 pkt 4 p.p.s.a.)', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2006, No. 2.

Boć J. (ed.), *Prawo administracyjne*, Wrocław, 2005.

Bogusz M., 'Glosa do wyroku NSA z dnia 20 listopada 2008 r., I OSK 611/08', *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa*, 2009, No. 3.

Bogusz M., 'Pojęcie aktów lub czynności z zakresu administracji publicznej dotyczących przyznania, stwierdzenia albo uznania uprawnienia lub obowiązku wynikających z przepisów prawa w rozumieniu art. 16 ust. 1 pkt 4 ustawy o NSA', *Samorząd Terytorialny*, 2000, No. 1–2.

Borkowski J., Adamiak B., *Metodyka pracy sędziego w sprawach administracyjnych*, Warszawa, 2009.

Chmielewski J., 'Glosa do wyroku WSA w Białymstoku z 21.10.2014 r., II SA/Bk 619/14', *Orzecznictwo Sądów Polskich*, 2015, No. 11.

Dauter A., Kabat A., Niezgódka-Medek M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, 9th edn, Warszawa, LEX, 2024.

Defecińska K., *Spory o właściwość organu administracji publicznej*, Warszawa, 2000.

Duniewska Z., Jaworska-Dębska B., Michalska-Badziak R., Olejniczak-Szałowska E., Stahl M. (eds), *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warszawa, 2000.

Filipek J., 'Elementy strukturalne norm prawa administracyjnego', *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace Prawnicze*, Warszawa–Kraków, 1982, Vol. 99.

Gizbert-Studnicki T., Grabowski A., 'Normy programowe w konstytucji', in: Trzciński J. (ed.), *Charakter i struktura norm konstytucji*, Warszawa, 1997.

Izdebski H., Kulesza M., *Administracja publiczna. Zagadnienia ogólne*, Warszawa, 1998.

Jakimowicz W., 'Obowiązek administracyjny w egzekucji administracyjnej', in: Niczyporuk J., Fundowicz S., Radwanowicz J. (eds), *System egzekucji administracyjnej*, Warszawa, 2004.

Jakimowicz W., *Wykładnia w prawie administracyjnym*, Zakamycze, 2006.

Jaśkowska M., 'Właściwość sądów administracyjnych (zagadnienia wybrane)', in: Zimmermann J. (ed.), *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006 r.*, Warszawa, 2007.

Kidyba A. (ed.), *Skarb Państwa a działalność gospodarcza*, Warszawa, Lex/el., 2014.

[68] Cf. order of the Supreme Administrative Court of 8 December 2020, case No. I OSK 2293/20.

Kijowski D.R., 'Uprawnienia administracyjne', in: Wróbel A., Hauser R., Niewiadomski Z. (eds), *System prawa administracyjnego. Tom 7. Prawo administracyjne materialne*, Warszawa, 2017.

Klat-Wertelecka L., 'Przedawnienie obowiązku administracyjnoprawnego', *Opolskie Studia Administracyjno-Prawne*, No. VII, Opole, 2010.

Klonowski K., 'Kontrola sądowoadministracyjna „innych aktów lub czynności z zakresu administracji publicznej dotyczących uprawnień lub obowiązków, wynikających z przepisów prawa" z art. 3 § 2 pkt 4 p.p.s.a.', *Przegląd Prawa Publicznego*, 2012, No. 5.

Kmieciak Z., 'Efektywność sądowej kontroli administracji publicznej', *Państwo i Prawo*, 2010, No. 11.

Lipowicz I., *Pojęcie sfery wewnętrznej administracji państwowej*, Katowice, 1991.

Masternak M., *Czynności materialno-techniczne jako prawna forma działania administracji publicznej*, Toruń, 2018.

Masternak-Kubiak M., in: Haczkowska M. (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Lexis Nexis, 2014.

Ochendowski E., *Prawo administracyjne*, Toruń, 1999.

Przybysz P., 'Obowiązek administracyjny – pojęcie, rodzaje, konkretyzacja', *Organizacja – Metody – Technika*, 1990, No. 8–9.

Skoczylas A., 'Glosa do uchwały NSA z dnia 4 lutego 2008 r., I OPS 3/07', *Orzecznictwo Sądów Polskich*, 2008, No. 7–8.

Starościak J., *Prawo administracyjne*, Warszawa, 1977.

Szreniawski P., *Obowiązek w prawie administracyjnym*, Lublin, 2014.

Szustakiewicz P., *Komentarz do Konstytucji RP*, Articles 184 and 185, Warszawa, 2022.

Świątkiewicz J., 'Zakres kontroli Naczelnego Sądu Administracyjnego (w świetle orzecznictwa sądowego)', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1984, Issue 1.

Tarno J.P., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa, 2006.

Wiktorowska A., 'Kierunki zmian w teorii prawnych form działania administracji', in: Zimmermann J. (ed.), *Koncepcja systemu prawa administracyjnego*, Warszawa, 2007.

Wincenciak M., *Przedawnienie w prawie administracyjnym*, Warszawa, 2019.

Woś T. (ed.), Knysiak-Molczyk H., Romańska M., *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, 6th edn, Warszawa, LEX, 2016.

Wronkowska S., *Analiza pojęcia prawa podmiotowego*, Poznań, 1973.

Wronkowska S., 'System źródeł prawa w nowej Konstytucji', *Biuletyn RPO. Materiały*, Warszawa, 2000, Issue 38.

Zimmermann J., *Polska jurysdykcja administracyjna*, Warszawa, 1996.

Zimmermann J., *Prawo administracyjne*, Warszawa, 2020.

Zimmermann J., 'Prawo do sądu w prawie administracyjnym', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2006, Issue 2.

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