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Piotr Świerczyński
Jan Kochanowski University in Kielce, Poland
ORCID: 0000-0001-5260-9625
piotr.swierczynski@ujk.edu.pl

The Admissible Use of Self-Control by the Local Government Body in Relation to Resolutions Appealed against to the Administrative Court – Theoretical and Empirical Analysis of Selected Issues

Granice dopuszczalności stosowania przez organ stanowiący jednostki samorządu terytorialnego instytucji autokontroli w odniesieniu do uchwał zaskarżonych do sądu administracyjnego – analiza teoretyczno-empiryczna wybranych zagadnień

ABSTRACT

This article presents the issue of using the institution of self-control in a situation where a complaint to the administrative court concerns resolutions of the constitutive bodies of local government units. As part of the legal analysis of the institution in question, the author paid special attention to its constraints with significant limitations, which constitute the limits of its admissibility. The paper also indicates practical aspects and nodal problems resulting from the various mechanisms used, which, due to its heterogeneity, have been subjected to in-depth empirical analysis and constructive criticism. The article presents the results of research carried out on the basis of the evaluation of numerous responses to requests for disclosure of public information, formulated by voivodeship marshals, poviat starosts and city presidents. The study is therefore scientific and research and practical in nature. The results of the research performed during the interpretation of the research findings are original and

CORRESPONDENCE ADDRESS: Piotr Świerczyński, PhD, Assistant Professor, Jan Kochanowski University of Kielce, Faculty of Law and Social Sciences, Uniwersytecka 15, 25-406 Kielce, Poland.

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innovative, as such studies have not been conducted so far. This makes this study a valuable source of knowledge for representatives of science and practice.

Keywords: self-control; scope of jurisdiction; self-control powers; supervision over resolutions; complaint to the administrative court

INTRODUCTION

Self-control, understood as the authority's right to review its previously issued legal act, is an instrument of the economics of trials, which was transposed to the Polish legal system from Austria.[1] In the administrative law system, it is encountered and exercised in the majority of statutory procedures, including proceedings before administrative courts. This article refers to self-control as provided for in Article 54 § 3 of the Law on Proceedings before Administrative Courts.[2] Its subject matter, therefore, is not self-control as applied in mediation proceedings, referred to in Article 117 § 1 LPAC. The area of consideration has been narrowed down to self-control as applied by local government bodies in relation to resolutions appealed against to the administrative court. It is in these situations that the application of the instrument in question creates most doubts, which in the clerical practice of local government bodies are cleared in an inconsistent manner. This inconsistency of the applied practice poses a threat of instrumental use of self-control for purposes other than facilitating the economics of trials. For this reason, it is particularly important to make attempts to standardise the solutions applied by regional and local authorities within the framework of adversarial and administrative proceedings.

In this article, the notion of the local government body is understood as the municipal council, the district council, and the voivodeship assembly. These are the bodies of local government authority defined in the applicable local government acts as decision-making and inspection bodies.[3] The author of this publication uses the abbreviated term "decision-making body" to simplify the terminology.

The publication begins with considerations concerning the legal forms of action which may be employed by decision-making bodies, as well as statements relating

[1] See J. Kopeć, *Autokontrola decyzji administracyjnej w postępowaniu sądowoadministracyjnym w prawie polskim, austriackim i niemieckim*, "Zeszyty Naczelnego Sądu Administracyjnego" 2018, no. 3, p. 74.

[2] Act of 30 August 2002 – Law on Proceedings before Administrative Courts (consolidated text, Journal of Laws 2019, item 2325, as amended), hereinafter: LPAC.

[3] See Article 15 (1) of the Act of 8 March 1990 on municipal self-government (consolidated text, Journal of Laws 2020, item 713, as amended); Article 9 (1) of the Act of 5 June 1998 on district self-government (consolidated text, Journal of Laws 2020, item 920, as amended); Article 16 (1) of the Act of 5 June 1998 on voivodeship self-government (consolidated text, Journal of Laws 2020, item 1668, as amended).

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to the legal nature of resolutions adopted in the course of exercising self-control. Then, the limits of admissible use of self-control are determined, with special emphasis being placed on the scope of competence vested in the decision-making body. Finally, elements of the procedure of implementation of the discussed instrument are described, where, in addition to the extensively quoted jurisprudence and statements made by representatives of legal science, the results of a study conducted by the author involving 15 voivodeships, 15 districts and 15 cities with district rights are also presented. The results of this study, obtained through access to public information, clearly show the heterogeneous character of the practice applied by local government authorities. The author, however, does not end here, but he goes on with presenting certain *de lege ferenda* postulates which, in his opinion, would best reflect the purpose of the instrument in question, transposed to administrative court proceedings, i.e. the increased economics of trials.

The text in question concerns an issue widely analysed in the literature on the subject matter, as is proven by the extensive list of references and jurisprudence quoted in the publication. Nonetheless, the author deals with the subject matter in a completely new way, placing a clear emphasis on the practical issues that give rise to significant doubts in the process of applying the law, the uniform clarification and ordering of which is in the society's best interest.

RESEARCH AND RESULTS

1. Legal forms of action of the decision-making bodies of local government units

It should be noted that the decision-making bodies of local government units are not, in principle, public administration bodies but bodies of local government authority,[4] which only sometimes assume the role of a public administration body within the meaning of Article 5 § 2(3) and (6) of the Administrative Procedure

[4] Formerly, the notions of "administrative body" and "authority" were considered tantamount. See also A. Okolski, *Wykład prawa administracyjnego obowiązującego w Królestwie Polskim*, Warszawa 1880, p. 54 ff. However, as early as in a textbook on administrative law by M. Jaroszyński, M. Zimmermann and W. Brzeziński dated 1956, the notion of a state administrative body and the notion of a state authority were clearly separated from each other, although the situation in which the state authority was empowered to take a number of measures falling within the administrative category was not ruled out, as supported by the example of the State Council. See M. Jaroszyński, M. Zimmermann, W. Brzeziński, *Polskie prawo administracyjne*, Warszawa 1956, pp. 166–167. Currently, the distinction applied in the local government system into local government bodies (decision-making and executive bodies) and public administration bodies of the local government (essentially monocratic: the marshal of the voivodeship, the district governor, and the municipal head/mayor) seems to be indispensable and very useful for convenience reasons. See also S. Bułajewski,

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Code.[5] For this reason, complaints against resolutions of these bodies generally concern not so much public administration acts or actions (Article 3 § 2 (6) LPAC), but acts of local law which constitute normative acts (Article 3 § 2 (5) LPAC).

Therefore, as regards the acts issued by the decision-making bodies of local government units, it is necessary to distinguish between law-making acts (normative acts, including acts of local law), law enforcement acts and public administration acts.[6] An example of the first category would be a resolution of the municipal council on a local development plan or a resolution of the voivodeship assembly defining an area of protected landscape – these are acts of general and abstract nature (double generality), adopted on the basis of statutory delegation, regulating the legal situation of members of a given local government community. Examples of law enforcement acts include a resolution of the district council on appointing the district governor, a resolution of the voivodeship assembly on appointing the province treasurer, and a resolution of the municipal council giving a vote of confidence to the municipal head. Such resolutions are not acts of local law; nor do they constitute settlements of administrative matters. In these cases, the decision-making body acts as a body executing rather than making laws, but it does so in matters that are essential for the entire voivodeship and not for individual cases. The latter are resolved, in principle, in the form of individual administrative acts and sometimes in other forms of public administration activity,[7] while they occur occasionally in the activities of the decision-making bodies of local government units, and if so – only with regard to situations in which this body considers complaints or applications governed by Chapter VIII APC or petitions within the meaning of the Petitions Act.[8] In doing so, it acts as a body dealing with specific and individual administrative matters, i.e. as a public administration body within the meaning of Article 5 § 2 (3) and (6) APC.

A situation in which a resolution of a decision-making body of a local government unit is appealed against to the administrative court, and this body intends to

Legalność uchwał organów stanowiących jednostek samorządu terytorialnego, "Studia Ełckie" 2010, no. 12, p. 230.

[5] Act of 14 June 1960 – Administrative Procedure Code (consolidated text, Journal of Laws 2025, item 1691, as amended), hereinafter: APC.

[6] Nonetheless, the doctrine of administrative law makes a customary dichotomous division of resolutions passed by local authorities into acts of local law and internal normative acts. See also S. Bułajewski, *op. cit.*, p. 235.

[7] As regards complaints, motions and petitions, these matters are not resolved by way of individual administrative acts, but through material and technical activities – notifications on the manner of resolving the case. See judgment of the Supreme Administrative Court of 1 December 1998, III SA 1636/97, LEX no. 37138; decision of the Voivodeship Administrative Court in Kielce of 18 February 2021, II SA/Ke 31/21, LEX no. 3125347.

[8] Act of 11 July 2014 on petitions (consolidated text, Journal of Laws 2018, item 870, as amended).

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exercise self-control under Article 54 § 3 LPAC, constitutes a special case which is hard to assign to any of the above categories. The author of this article claims that any such assignment would depend on the type of the resolution appealed against. For example, if the appeal concerns an act of local law, the self-control resolution granting the appeal in its entirety also constitutes an act of local law.[9]

2. The limits of admissible use of self-control

The use of self-control entails many limitations. Due to the level of restrictions as to its application with respect to resolutions of decision-making bodies, this instrument is *de facto* reserved for exceptional situations. First of all, pursuant to Article 54 § 3 LPAC, the decision-making body whose resolution has been appealed against may only grant the appeal. Second, it may only grant the appeal in its entirety. Third, it may do so within its competence. Finally, it may use self-control within no more than 30 days of receipt of the appeal. Due to all these factors, the exercise of self-control is subject to some significant restrictions and is inadmissible in certain cases. This, in turn, lets us speak of the limits of admissible use of this instrument. These conditions have a direct bearing on the practical aspects related to processing an appeal, especially when the body by hand of which the appeal is submitted to the Voivodeship Administrative Court is a decision-making body of a local government unit, and the subject of the appeal is a resolution passed by that body. It, therefore, appears justified to analyse in detail each of the above-mentioned conditions determining the admissibility of the use of the instrument in question.

The first condition for the decision-making body to exercise self-control under Article 54 § 3 LPAC is that the settlement should be aimed at granting the appeal. Thus, the decision-making body may not adopt a resolution on rejecting the appeal under the self-control procedure. This is because such a resolution would be adopted without a legal basis and, in consequence, could be declared invalid. Despite the fact that, in the vast majority of cases, local government bodies do not adopt such resolutions, some of them use this practice.[10]

Pursuant to Article 54 § 3 LPAC, the body whose action, negligence or procrastinated conduction of proceedings has been appealed against may exercise self-control in respect of that appeal no later than within 30 days from the date of its receipt. This implies that, upon expiry of this time limit, that right no longer

[9] This view was not shared by the Governor of the Kuyavian-Pomeranian Voivodeship who, in his supervising authority's resolution of 21 November 2018 (128/18, LEX no. 2583156), claimed that a resolution upholding the Governor's complaint against a resolution of the municipal council on a local development plan did not constitute an act of local law.

[10] An example of this is Resolution of the Lublin Voivodeship Assembly No. XXXVIII/509/2018 of 29 October 2018 (https://umwl.bip.lubelskie.pl/upload/pliki//XXXVIII_509_2018.pdf, access: 13.4.2021).

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applies. This is due, i.a., to the fact that, within the same 30-day period, the body concerned is obliged to refer the appeal to the court together with complete and orderly case files and its response to the appeal.

Another condition pertains to the scope of granting the appeal. Generally speaking, the decision-making body, while exercising self-control in respect of its own resolution, can only grant the appeal in its entirety. This implies that, in order for the instrument in question to be used, the body must recognise as valid all the objections listed in the appeal and the legal basis invoked by the appealing party, as well as grant all the demands so expressed.[11] As stressed by D. Strzelec and K. Sobieralski, if the analysis of the case and the content of the complaint justifies only a partial acceptance thereof, then the body concerned is not allowed to exercise self-control.[12] First of all, this means that the body acting within the framework of self-control, taking into account motions contained in the appeal, also agrees to reimburse the appealing party for all the costs of the proceedings,[13] if such a demand has been made therein. Second, the wording of Article 147 LPAC should be borne in mind at this point, under which "the Court, granting an appeal against the resolution or act referred to in Article 3 § 2 (5) and (6), shall declare such resolution or act invalid in whole or in part, or declare that it has been issued in violation of the law, if a specific provision precludes their being declared invalid". Pursuant to Article 147 LPAC, the party appealing against a resolution may, therefore, only demand that the resolution be declared invalid or in violation of the law. This, in turn, raises another question: In the event that the subject-matter of the appeal to the administrative court is a resolution of a decision-making body of a local government unit, and – as indicated above – the decision-making body against whom the appeal has been lodged can only grant it in its entirety, is self-control at all permissible and applicable? This

[11] See J.P. Tarno, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, Warszawa 2006, p. 162; H. Knysiak-Sudyka, *Skarga i skarga kasacyjna w postępowaniu sądowoadministracyjnym*, Warszawa 2016, p. 98. See also judgment of the Voivodeship Administrative Court of 11 May 2011, II OSK 810/10, LEX no. 1081914.

[12] D. Strzelec, *Uprawnienia autokontrolne organów podatkowych*, LEX/el. 2020, p. 4; K. Sobieralski, *Uprawnienia samokontrolne organu w postępowaniu sądowoadministracyjnym*, "Państwo i Prawo" 2004, no. 1, p. 57. A similar view was expressed by the Governor of the Lower Silesian Voivodeship in his supervising authority's resolution of 4 May 2016 (NK-N.4131.196.2.2016.GD1, LEX no. 2042665): "The appeal may not be deemed granted if a part of the resolution is repealed" in the event that the supervisory body, in its appeal against that resolution, "requested that the entire Appendix no. 3 be declared invalid, and not only items 4 and 10".

[13] See judgment of the Voivodeship Administrative Court in Kielce of 29 July 2019, I SA/Ke 246/19, LEX no. 2701081: "The mere fact that the appeal is granted by the relevant body is not a sufficient premise to refrain from awarding the costs of the proceedings to the appealing party". See also D. Malinowski, *Uchylenie decyzji w trybie autokontroli a koszty postępowania*, "Przegląd Podatkowy" 2019, no. 9, pp. 3–5.

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question, however, concerns yet another restriction on the admissibility of exercising self-control, namely the scope of self-control competence.

Another restriction on the application of self-control is that the decision-making body is bound by the scope of its competence, and only within this scope may it satisfy the demands expressed in the appeal. Thus, if a motion contained in the appeal exceeds the scope of competence vested in that body, a self-control resolution may not be adopted. The jurisprudence of administrative courts and supervisory bodies contains the view that if the appealing party demands that the resolution be declared invalid, the decision-making body may not apply the self-control procedure in respect of that resolution, as it is not the body competent for declaring invalidity of its resolutions – this competence has been reserved for supervisory bodies and the administrative court. Reference can be made at this point to the judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 13 July 2016, which emphasised that "Article 54 § 3 LPAC does not constitute a competence metanorm granting the right to the municipal council to declare invalidity of its own resolutions. (…) Granting to a municipal body the authority to declare invalidity of its own resolutions would lead to a situation where a municipal government body would replace the administrative court in exercising its jurisdiction to adjudicate on the invalidity or illegality of resolutions being appealed against".[14]

Both the Governor of the Greater Poland Voivodeship and the Governor of the Kuyavian-Pomeranian Voivodeship claimed that "the possibility of declaring invalidity under Article 54 § 3 of the afore-mentioned Act is treated as an exception requiring a clear statutory regulation, which in this case is lacking. Neither the constitutional act nor any acts on the political system envisage an instrument of 'self-supervision' assigned to the decision-making bodies of local government".[15]

The Governor of the Kuyavian-Pomeranian Voivodeship additionally remarked that there was no "authority which, within the framework of self-control procedures, might verify its own action, i.e. issue an act replacing the one being appealed against, regarding both its form and character. (…) Granting to a municipal body the authority to declare invalidity of its own resolutions would lead to a situation where a municipal government body, acting in the mode prescribed in Article 54 § 3 LPAC, would replace the administrative court in exercising its jurisdiction to adjudicate on the invalidity or illegality of resolutions being appealed against. (…)

[14] See judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 13 July 2016, II SA/Go 405/16, LEX no. 2104740. See also judgment of the Voivodeship Administrative Court in Wrocław of 30 March 2016, III SA/Wr 81/16, LEX no. 2085928.

[15] See supervising authority's resolution of the Governor of the Greater Poland Voivodeship of 26 June 2018, KN-I.4131.1.273.2018.3, LEX no. 2509739; supervising authority's resolution of the Governor of the Kuyavian-Pomeranian Voivodeship of 21 November 2018, 128/18, LEX no. 2583156. See also supervising authority's resolution of the Governor of the Lower Silesian Voivodeship of 4 May 2016, NK-N.4131.196.2.2016.GD1, LEX no. 2042665.

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The form of the self-control activity of a public administration body will always be identical to the form of activity to which it is meant to refer. (…) In view of the need to act within the scope of competence, self-control should not be viewed as constituting a new, independent instrument with which the public administration body can review its own decisions. (…) This is because procedural regulations may not constitute the basis for establishing competence norms, as it is the substantive and legal system norms that constitute the source of competence of the body to issue a legally grounded decision".[16]

Moreover, the Governor of the Greater Poland Voivodeship expressed the opinion that "self-control refers only to administrative matters dealt with by way of a decision, an order or other acts or activities falling within the scope of public administration (…)".[17] A similar view was shared by the Supreme Administrative Court in its judgment of 18 September 2018: "On the grounds of the constitutional principle of the rule of law, one cannot assume that the municipal council is competent to grant the appeal, under the self-control procedure – pursuant to Article 54 § 3 LPAC, against a resolution on a local development plan by declaring that resolution invalid",[18] while the Voivodeship Administrative Court in Gliwice, in its judgment of 2 April 2014, ruled that "In the event of establishing that a resolution has been passed in material breach of the law, a judgment declaring such a resolution invalid, pursuant to Article 147 LPAC, is the only way to eliminate the consequences brought by this resolution (…)".[19] In simple terms, the advocates of this view consider the competence norm contained in Article 54 § 3 LPAC as non-autonomous.[20]

However, contradictory views can also be found in the doctrine and jurisprudence of administrative courts. The Supreme Administrative Court, in its judgment of 18 November 2014, found that "the municipal council, acting pursuant to Article 54 § 3 LPAC in conjunction with Article 147 § 1 LPAC, may grant the appeal filed with the administrative court against its own resolution on the local development plan and declare it invalid. The opposite view would lead to ruling out the application of Article 54 § 3 LPAC in cases where the subject-matter of the appeal is a resolution of the municipal council (and, similarly, also a resolution of

[16] See supervising authority's resolution of the Governor of the Kuyavian-Pomeranian Voivodeship of 21 November 2018, 128/18, LEX no. 2583156.

[17] See supervising authority's resolution of the Governor of the Greater Poland Voivodeship of 26 June 2018, KN-I.4131.1.273.2018.3, LEX no. 2509739.

[18] See judgment of the Supreme Administrative Court of 18 September 2019, II OSK 2630/17, LEX no. 2743067.

[19] See judgment of the Voivodeship Administrative Court in Gliwice of 2 April 2014, II SA/Gl 18/14, LEX no. 1454752.

[20] See also J. Borkowski, *Glosa do wyroku NSA z 24 lutego 1995 r.*, "Orzecznictwo Sądów Polskich" 1997, vol. 6, item 112, p. 292. The judgment is available in the Central Database of Administrative Court Decisions (http://orzeczenia.nsa.gov.pl/doc/3CCA065495, access: 28.4.2021). See also A. Krawiec, *Autokontrola decyzji administracyjnej*, Kraków 2012, pp. 136–137.

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the district council and of the voivodeship assembly) constituting an act of local law, or other resolutions or acts referred to in Article 3 § 2 (5) and (6) LPAC. Such an extensive exclusion of the application of Article 54 § 3 LPAC cannot be applied by way of interpretation, but it would require a clear statutory regulation".[21]

In turn, the Voivodeship Administrative Court in Kraków, in its judgment of 12 December 2017, found that "The provision of Article 54 § 3 LPAC, despite being included in the procedural act, is a competence-awarding provision that provides the body, within the framework of the pending administrative court proceedings, with a special power to make a decision on granting the appeal by resorting to the types of decisions made before the administrative court in the event of granting the appeal. The premises for this provision to be applied by the body concerned include granting the appeal in its entirety and meeting the deadline (by the proceedings commencement date). The power to act under the self-control procedure with regard to the choice of forms and types of decisions is connected with the content of the demand expressed in the appeal and its subject-matter. (…) The fact that the provisions of the Municipal Government Act grant the power to declare a resolution of the municipal council invalid solely to the supervisory body does not rule out the application of Article 54 § 3 LPAC. The supervisory proceedings conducted by the supervisory body under Articles 85–92 of the Municipal Self-Government Act and the administrative court proceedings initiated through an appeal filed by the supervisory body are two different things. (…) The municipal council, acting pursuant to Article 54 § 3 in conjunction with Article 147 § 1 Act of 30 August 2002 – Law on Proceedings before Administrative Courts (Journal of Laws 2017, item 1369, as amended), may grant the appeal lodged to the administrative court against its own resolution and declare it invalid".[22]

A similar position is also taken by representatives of doctrine. As noted by J.P. Tarno, referring to the resolution of the seven-judge panel of the Supreme Administrative Court,[23] "since the explained provision constitutes an independent basis for the proceedings conducted within the framework of self-control, then – when considering the possibility of granting the appeal – the administrative body should assess its legitimacy based on the same criteria as the administrative court".[24] In turn, J. Kopeć

[21] See judgment of the Supreme Administrative Court of 18 November 2014, II OSK 2377/14, LEX no. 1657777.

[22] See judgment of the Voivodeship Administrative Court in Kraków of 12 December 2017, III SA/Kr 1027/17, LEX no. 2414130.

[23] See resolution of the seven-judge panel of the Supreme Court of 5 July 1999, FPS 20/98, ONSA 1999, no. 4, item 120. In this resolution, the Supreme Administrative Court found, i.a., that the possibility of annulling a decision is contained in the special power vested in the public administration body to exercise self-control in respect of its own administrative decisions. See also resolution of the Supreme Court of 15 December 1984, III AZP 8/83, OSNCP 1985, no. 10, item 143.

[24] J.P. Tarno, *op. cit.*, p. 162. See also A. Kabat, *Skarga do sądu administracyjnego na decyzje Komisji Nadzoru Bankowego (zagadnienia wybrane)*, "Prawo Bankowe" 2004, no. 12, p. 33 ff. and the literature cited therein.

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claimed that "The provision of Article 54 § 3 LPAC is applicable irrespective of the form of public administration action being reviewed by the administrative court.[25] (…) The body must observe the underlying principle of the self-control procedure, i.e. granting the appeal in its entirety, understood as leading to a state in which the essence of the case is resolved in such a way that it meets the expectations of the party".[26]

Also the Supreme Court, speaking on the issue in question, stated that the self-control of the appealed decision by the issuing body constitutes a new and independent authorisation of the public administration body to review its own decisions.[27]

The author of this paper shares the first of the above-mentioned interpretations of the provisions, noting that neither the decision-making body nor the public administration body are competent to declare invalidity of their own resolutions, and that Article 54 § 3 LPAC does not constitute a competence metanorm.[28] One should, therefore, agree with the statement expressed by the Supreme Administrative Court in the above-cited judgment of 18 November 2014 that this finding leads to ruling out the possibility of applying Article 54 § 3 LPAC in cases where the subject-matter of the appeal is a resolution of a decision-making body of a local government unit. An appeal against a resolution of a decision-making body may be limited to declaring that resolution either invalid or adopted in violation of the law. However, the decision-making body whose resolution has been appealed against does not have the competence to satisfy either the first or the second demand under Article 54 § 3 LPAC; nor does any other norm expressly vests such a right in that body, while such a far-reaching prerogative as the possibility of eliminating a resolution from operation

[25] See also judgment of the Supreme Administrative Court of 23 November 2010 r., I GKS 587/10, LEX no. 686394.

[26] See J. Kopeć, *op. cit.*, p. 79.

[27] See resolution of the Supreme Court of 15 December 1984, III AZP 8/83, OSNCP 1985, no. 10, item 143. See also judgment of the Voivodeship Administrative Court of 12 July 2005, I SA/Wa 735/04, LEX no. 190723; judgment of the Voivodeship Administrative Court of 13 December 2005, VII SA/Wa 851/05, LEX no. 190835.

[28] Similar views were expressed by T. Woś, [in:] H. Knysiak-Sudyka, M. Romańska, T. Woś, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, WK 2016, p. 27; T. Kiełkowski, *Uprawnienia autokontrolne organu administracji w postępowaniu sądowoadministracyjnym*, „Przegląd Sądowy" 2004, no. 7–8, p. 187; R. Mikosz, *Skutki prawne uwzględnienia przez organ administracji publicznej skargi wniesionej do sądu administracyjnego*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2007, no. 5–6, pp. 15–16; M. Bik, *Autokontrola decyzji administracyjnej w postępowaniu sądowoadministracyjnym*, "Przegląd Prawa Publicznego" 2007, no. 11, pp. 54–56; A. Kabat, [in:] B. Dauter, A. Kabat, M. Niezgódka-Medek, *Prawo o postępowaniu przed sądami administracyjnymi. Komentarz*, LEX/el. 2019, p. 15. See also A. Krawiec, *op. cit.*, p. 137, where the author put forward an interesting argument: "A public administration body may not decide on declaring its own decision invalid under the self-control procedure, if the decision appealed against to the court was issued in the ordinary mode".

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with the *ex tunc* effect may not be presumed.[29] The argument of the economics of trials, which is put forward by advocates of the latter interpretation,[30] is not sufficient for applying this presumption of the competence norm and going beyond the statutory competence of the decision-making body. It is for this very reason that the decision-making body has no possibility of exercising self-control in respect of its own resolutions appealed against to the administrative court. This is also confirmed in the view expressed by T. Woś based on the arguments presented by many other authors and theses of administrative court judicature: "This is because this provision [Article 54 § 3 LPAC] authorises the body to exercise self-control powers only 'within the scope of its competence' (as was also noted by Z. Kmieciak, *Glosa do wyroku WSA w Gliwicach z 18 stycznia 2007 r.*, II SA/Gl 385/06, OSP 2008, vol. 4, p. 254). An opposite statement was made in relation to the judgment of the Supreme Administrative Court of 18 November 2014, and the view expressed therein met with strong criticism from B. Jaworska-Dębska (Glosa do wyroku NSA z 18 listopada 2014 r., II OSK 2377/14, "Samorząd Terytorialny" 2015, No. 9, pp. 83–92). The view that the municipal council is not competent to declare invalidity of its own acts and that

[29] With the instrument of self-control in question, we are dealing with administrative discretion, which is indicated directly by the phrase used in the provision of Article 54 § 3 LPAC: "the body (…) may within the scope of its competence". Administrative discretion presumes a certain leeway but not arbitrariness of the body. In the reference case, this leeway is limited to the competence within which a given authority may function and, notably, it is not within the competence of local government bodies to declare their own resolutions invalid. The inference that such competence arises from Article 54 § 3 LPAC is groundless. As already noted by M. Zimmermann in 1959: "Where (…) there are any doubts as to interpretation – free discretion does not exist. (…) Free discretion (…) may only arise from a legal norm authorising an administrative authority to act at its own discretion in a given case. (…) In a law-abiding country, the state administration may not act in a sphere that has not been legally regulated, based merely on its free will, in the same way as an individual – so long as it does not violate acts of law" (see M. Zimmermann, *Pojęcie administracji publicznej a swobodne uznanie*, Warszawa 2009, p. 71, 81, 110). A similar view on this issue was expressed by M. Mincer (*Uznanie administracyjne*, Toruń 1983, pp. 76–77), pointing out the need to strictly regulate administrative discretion, especially as regards the application of supervisory acts. See also Z. Leoński, *Zarys prawa administracyjnego. Działalność administracji*, Warszawa 2001, p. 47. This view was also shared by Z. Duniewska, who wrote: "Whether the common law, civil law or mixed system applies, the exercise of administrative power – including discretionary power – is limited by law. It is law that determines the recognition, its grounds and its limits" (Z. Duniewska, *Uznanie administracyjne – władza dyskrecjonalna*, [in:] Z. Duniewska, B. Jaworska-Dębska, R. Michalska-Badziak, E. Olejniczak-Szałowska, M. Stahl, *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warszawa 2004, pp. 76–77). Administrative discretion, therefore, cannot be presumed or derived from a legal norm using, e.g., the rules of *contra legem* or *sensu largo* interpretation. See Z. Witkowski, who wrote: "The principle of lawfulness was stipulated in Article 7 of the new Constitution. It requires that all bodies of the state act only on under the law; thus, when undertaking any act of state power, they must be able to demonstrate a clear (not implied) legitimacy (legal basis) for their action" (Z. Witkowski, *Wybrane zasady prawa konstytucyjnego Rzeczypospolitej Polskiej*, [in:] *Prawo konstytucyjne*, ed. Z. Witkowski, Toruń 1998, pp. 65–66). See also S. Bułajewski, *op. cit.*, p. 230.

[30] See, e.g., J. Kopeć, *op. cit.*, p. 77.

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the possibility of exercising self-control, as arising from Article 54 § 3, is, therefore, excluded also appears prevalent in the judicature of voivodeship administrative courts (cf. judgments of the Supreme Administrative Courts: in Łódź of 5 March 2013, II SA/Łd 1069/12, LEX no. 1303638; in Gliwice of 2 April 2014, I SA/Gl 18/14, LEX no. 1454752; and in Gliwice of 8 May 2014, II SA/Gl 348/14, LEX no. 1522563)".[31]

It is also worth noting that, in the case when the decision-making body acts as a public administration body processing appeals, motions and petitions, the provision of Article 19 APC also applies, under which the public administration bodies observe their substantive and local jurisdiction *ex officio*. A special situation takes place when the appeal against a resolution considering a petition is submitted to the Voivodeship Administrative Court as, pursuant to Article 13 (2) of the Petitions Act, the manner of handling a petition cannot be subject to appeal. As far as this provision refers rather to an appeal regulated in Section VIII APC, the administrative court control of resolutions considering petitions is excluded by virtue of Article 3 § 2 LPAC. At this point, a question of practical importance should be posed – whether it is possible to exercise self-control in respect of appeals against activities not included in the catalogue provided in Article 3 § 2 LPAC. The author of this paper believes that admitting this would contradict the principle of the rule of law, as the scope of competence vested in the decision-making body would be broader than that of the administrative court itself. It is, therefore, necessary to support the statement that a decision-making body exercising self-control may not go beyond the scope of cognition of an administrative court, since the legal basis for action is, in this case, Article 54 § 3 LPAC, which regulates the possibility of action to be taken by the body against which an appeal was lodged to the administrative court. Therefore, if the appeal is not subject to consideration by the administrative court due to the fact that the case referred to in it does not belong to the jurisdiction of that court, it is not possible to exercise self-control. It seems just to go a step further in deducing that also other prerequisites, listed in Article 58 § 1 LPAC, which constitute grounds for rejecting the appeal, make it impossible to exercise self-control. Considering that even the administrative court is bound by the provisions of Article 58 § 1 LPAC and may not act with respect to the appeal in any other way than by dismissing it, it is all the more impossible for the body against which the appeal has been lodged to grant the appeal by exercising self-control.

3. Procedure for exercising self-control by a decision-making body

The framework of the admissible use of self-control by a decision-making body, as described above, leads inevitably to the following question: What should the procedure look like in the event of that body exercising self-control, and how would it differ if

[31] T. Woś, *op. cit.*, p. 27.

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this instrument were considered inadmissible? Responding to this question appears all the more desirable as some local government units recognise the possibility of exercising self-control in respect of resolutions of their decision-making bodies. We should start with elements as to which there is no doubt. Both in the first and second case, it would certainly be necessary for the authority to carry out procedural actions referred to in Article 54 § 2 LPAC, i.e. to gather and arrange the case files, to prepare a response to the appeal and to forward it together with the appeal and the files to the administrative court. From the technical point of view, there arise certain doubts as to the form in which the appeal should be remanded together with the response and the case files. Some of the decision-making bodies adopt resolutions on remanding the appeals in the mode as prescribed in Article 54 § 2 LPAC,[32] while others view this as

[32] For example, assemblies of the following voivodeships: Podlaskie, Łódzkie, Masovian, and Opolskie. See Resolution No. XIII/143/19 of the Assembly of the Podlaskie Voivodeship of 7 October 2019 on filing an appeal against Resolution No. XXIV/285/12 of the Assembly of the Podlaskie Voivodeship of 21 December 2012 on dividing the Podlaskie Voivodeship into game shooting districts, including appendices, to the Voivodeship Administrative Court in Białystok (https://bip.wrotapodlasia.pl/wojewodztwo/akty_prawne1/uchwaly _sej/uchwaly_sejmiku_od_2008/uchwala-nr-xiii-143-19-sejmiku-wojewodztwa-podlaskiego-z-dnia-2019-10-07.html, access: 24.2.2021); Resolution No. VII/106/19 of the Assembly of the Łódzkie Voivodeship of 30 April 2019 on filing an appeal of 8 April 2019 to the administrative court against Resolution No. XLIX/1444/09 of 22 December 2009 on dividing the Łódź Voivodeship into game shooting districts (https://bip.lodzkie.pl/files/853/Uchwaa_106.pdf, access: 24.2.2021); Resolution No. 245/19 of the Assembly of the Masovian Voivodeship of 17 December 2019 on filing an appeal against Resolution No. 91/19 of the Assembly of the Masovian Voivodeship of 18 June 2019 amending the resolution on enacting the Waste Management Plan 2024 for the Masovian Voivodeship to the Voivodeship Administrative Court in Warsaw and an authorisation to granting power of attorney *ad litem* (https://www.mazovia.pl/samorzad/sejmik/uchwaly-sejmiku/uchwala, 4027,24519.html, access: 24.2.2021); Resolution No. XXIV/255/2020 of the Assembly of the Opolskie Voivodeship of 24 November 2020 on filing an appeal drawn up by Komercyjne Linie Autobusowe LUZ Sp. z o.o., with its registered office in Opole, against Resolution No. XXV/322/2012 of the Assembly of the Opolskie Voivodeship of 28 December 2012 on determining the rate of pay for the use of transport stops owned or managed by the Opolskie Voivodeship by collective public transport operators or road transport undertakings, to the Voivodeship Administrative Court in Opole (https://bip.opolskie.pl/2020/11/uchwala-nr-xxiv2552020-sejmiku-wojewodztwa-opolskiego-z-dnia-24-11-2020r-w-sprawie-przekazania-skargi-komercyjne-linie-autobusowe-luz-sp-z-o-o-z-siedziba-w-opolu-na-uchwale-nr-xxv3222012-sejmi, access: 24.2.2021). See also Resolution of the Katowice City Council No. XXIX/650/20 of 17 December 2020 on filing to the Voivodeship Administrative Court in Gliwice an appeal drawn up by the District Prosecutor in Katowice (https://bip.katowice.eu/Lists/Dokumenty/Attachments/121520/Sesja%20XXIX-650-20.pdf, access: 24.2.2021); Resolution of the Katowice City Council No. XXV/560/20 of 24 September 2020 on filing to the Voivodeship Administrative Court in Gliwice an appeal against Resolution No. XVI/396/20 of the Katowice City Council of 13 February 2020 amending the resolution on determining the principles and mode of the Civic Budget in Katowice (https://bip.katowice.eu/Lists/Dokumenty/Attachments/120357/Sesja%20XXV-560-20.pdf, access: 24.2.2021); Resolution of the District Council in Lublin No. VIII/97/2019 of 31 May 2019 on considering the appeal brought by Przedsiębiorstwo Zaopatrzenia Farmaceutycznego Cefarm – Lublin SA to the Voivodeship Administrative Court in Lublin against Resolution No. VI/66/2019 of the District Council in Lublin of 28 March 2019 on determining the working time of general-access pharmacies situated

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a substantive technical matter not requiring the adoption of a separate resolution.[33] In the latter case, further doubts arise as to who should draft and sign the response to the appeal. Varied practices are exercised in this field. In some local government units, the response is signed (either in person or by hand of an authorised representative) by the municipal head, the mayor, the district governor or the marshal of the voivodeship,[34] while in others, it is signed by the president of the decision-making body,[35] and sometimes (in districts and provinces) by the marshal or the district governor together with another member of the board.[36] In addition, these entities sometimes remand the documents in question under an authorisation granted in the form of a resolution of the decision-making body,[37] while others do so without any such authorisation.

There are even more discrepancies concerning the use of self-control itself, as set out in Article 54 § 3 LPAC. With the intent to use it, the decision-making body should undoubtedly adopt a resolution, provided that all the conditions for its admissibility, as described above, are met. However, the bodies whose acts are appealed against to the administrative courts generally do not use this instrument,[38] by not admitting the charges and not yielding to the demands included in the appeal. Nonetheless, it is exactly this non-use of self-control that poses a range of problems of a technical and legal nature in clerical practice, thus giving rise to its diversity and heterogeneity. Some bodies pass resolutions to this effect on not granting the appeals,[39] while others

in the Lublin District (https://splublin.bip.lubelskie.pl/index.php?id=69&p1=szczegoly&p2=1394952, access: 24.2.2021).

[33] See public information made available to the author of the article in the form of completed questionnaires by: Marshals of the Warmian-Masurian, Pomorskie, Lubelskie, West Pomeranian, and Lubuskie Voivodeships; 2) Governors of the Łódź Wschodnia, Opole, Częstochowa, Olsztyn, and Gorzów Districts; and 3) Mayors of Toruń and Wrocław.

[34] See public information made available to the author of the article in the form of completed questionnaires by: 1) Marshals of the Warmian-Masurian, Pomorskie, Lubelskie, West Pomeranian, Lubuskie, and Opolskie Voivodeships; 2) Governors of the Olsztyn and Gorzów Districts; and 3) Mayors of Warsaw and Toruń.

[35] See public information made available to the author of the article in the form of completed questionnaires by: 1) Marshals of the Łódzkie and Masovian Voivodeships; 2) Governors of the Toruń, Bydgoszcz, Gliwice, Poznań, Białystok, and Karkonoski Districts; and 3) Mayors of Bydgoszcz and Wrocław.

[36] See public information made available to the author of the article in the form of a completed questionnaire by the Marshal of the Podlaskie Voivodeship.

[37] See public information made available to the author of the article in the form of completed questionnaires by Marshals of the Opolskie and Masovian Voivodeships; the Governor of the Lublin District; and the Mayor of Katowice.

[38] See public information made available to the author of the article in the form of completed questionnaires by marshals of 15 voivodeships, governors of 15 districts and mayors of 15 cities, among which only the Assembly of the Lubelskie Voivodeship exercised self-control only in four cases. See also D. Strzelec, *op. cit*.

[39] See public information made available to the author of the article in the form of a completed questionnaire by the Marshal of the Lubelskie Voivodeship and the Governor of the Lublin District.

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take no such resolutions, limiting themselves to resolving on remanding the appeal together with their response and collected case files.[40] Yet other bodies pass no resolutions whatsoever regarding this subject matter, and all procedural actions are taken by the marshal of the voivodeship, the district governor, the mayor, the municipal head, the president of the decision-making body or two members of the management board acting jointly, as entities recognised as being authorised to represent either the local government unit in general or, more specifically, its decision-making body.[41]

The common feature of the first two solutions described above is that they seem to consistently strive for any involvement of the decision-making body in considering the appeal filed against its own resolution. Perhaps, this is a result of the views presented in the doctrine, including those of M. Bik and T. Woś, according to which "although the phrase 'the body (…) can', which was used in Article 54 § 3 LPAC can *prima facie* suggest that the right to self-control is discretionary, it should be assumed that it is that body's duty to consider the prerequisites for exercising self-control, i.e. to analyse its own decision in terms of its compliance with the law".[42] Even in a situation where the decision-making body does not intend to use self-control and does not adopt any resolution to this effect, it then adopts another resolution on referring the appeal to the administrative court. The main point is, therefore, that the decision-making body should be able to express its opinion on the appeal at any cost, during a public and broadcast session, in the framework of a discussion held for this purpose, which is not a discussion of experts,[43] lawyers and judges considering the legal arguments contained in the complaint, but a debate of politicians, essentially incapable of any professional verification of the resolution in terms of its compliance with the law, but rather focusing on using the discussion to achieve a specific

[40] See the Assemblies of the Podlaskie, Łódzkie, Masovian, and Opolskie Voivodeships, and the Katowice City Council.

[41] See public information made available to the author of the article in the form of completed questionnaires by: 1) Marshals of the Silesian, Lower Silesian, Warmian-Masurian, Pomeranian, West Pomeranian, Kuyavian-Pomeranian, Lubuskie, Greater Poland, Podkarpackie, and Lesser Poland Voivodeships; 2) Governors of the Opole, Częstochowa, Olsztyn, Łódź Wschodnia, Toruń, Zielona Góra, Bydgoszcz, Gdańsk, Gliwice, Karkonoski, Wrocław, and Poznań Districts; and Mayors of Łódź, Częstochowa, Opole, Białystok, Warsaw, Wrocław, Toruń, Rzeszów, and Kraków.

[42] M. Bik, *op. cit.*, pp. 45–48. See also T. Woś, *op. cit.*, p. 10. Contrary views were expressed by J. Kopeć, *op. cit.*, p. 77; Z. Kmieciak, [in:] *System Prawa Administracyjnego*, vol. 10: *Sądowa kontrola administracji publicznej*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2016, p. 281.

[43] The growing role of experts in the decision-making process in the local government was highlighted by Z. Niewiadomski, who also pointed out the consequence of this phenomenon reflected in shifting the centre of real power from the local community to the representative body, and through that body to the executive body, which in turn results in the predominance of the executive power supported by experts over the local government legislature. This, in turn, creates "natural conditions for the formation of the 'fourth power' – the power of experts" (Z. Niewiadomski, *Samorząd terytorialny*, [in:] *System Prawa Administracyjnego*, vol. 6: *Podmioty administrujące*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2011, pp. 193–196).

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purpose of a strictly political nature.[44] Issuing a resolution to refer the appeal to the administrative court appears to be a vivid confirmation of this. It is worth considering a potential situation in which a draft resolution on referring the appeal to court does not obtain the required majority of votes, thus giving rise to a rhetorical question of whether the appeal would still be referred to court in this event. And if so, what would be the point of putting the draft resolution to a vote if the result of the vote has no bearing on the existence of a legal obligation to refer the appeal to court? We might also consider a more far-reaching question of why to vote at all on draft resolutions where there is only one possible legal outcome arising directly from the applicable legal regulations. This kind of practice seems to be pointless and illogical, as a result, causing completely unnecessary doubts about the further processing of the appeal, which by its very nature should be well-organized and fast.

Going a step further, one should also consider a situation in which the use of self-control by the decision-making body would be deemed inadmissible and pose a question of whether, in such a case, it would be justified to submit to the body for discussion a draft resolution on not taking into consideration or not exercising the right to apply self-control. Leaving aside the question of whether the decision-making body would be able to provide a legal basis for adopting such resolutions, the problem in question should, first of all, be considered from the pragmatic angle. It seems advisable to consider a situation when one of the aforementioned resolutions fails to obtain the required majority of votes. How then should one interpret failure to adopt a resolution? Certainly, refraining from adopting such a resolution will not be tantamount to adopting a self-control resolution, and if so, it should be considered whether there is any point in adopting this type of resolution. It seems that there is no logic in putting to a vote an issue which cannot be resolved otherwise than in a manner envisaged in the draft resolution. This is because the issue has already been determined by universally binding laws and does not require a decision of the body concerned. For this reason, it appears reasonable that a solution used by the vast majority of local government units should be a solution consisting in the preparation of a response to the appeal and referring it, together with the appeal itself and complete and orderly case files, to the administrative court without involving the decision-making body, but only with the participation of an entity authorised to represent the local government unit before external institutions. Depending on the level of the territorial division, this function will be performed by the municipal head, the mayor,[45] the district governor[46] or the marshal[47].

[44] Also for this reason, the author of this article advocates such an interpretation of Article 54 § 3 LPAC which completely excludes the possibility of applying self-control with regard to resolutions of local government bodies.

[45] See Article 31 of the Municipal Self-Government Act.

[46] See Article 34(1) of the District Self-Government Act.

[47] See Article 43(1) of the Voivodeship Self-Government Act.

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DISCUSSION AND CONCLUSIONS

The purpose of this article was to conduct a theoretical and empirical analysis of the legal admissibility of applying self-control, constituting the instrument envisaged in Article 54 § 3 LPAC, in relation to resolutions of local government bodies. More specifically, the article outlines the limits of admissibility of this instrument. First of all, self-control may only be used to grant the appeal filed with the administrative court; hence, there is no justification for the practice of adopting resolutions on failing to consider the appeal. Second, self-control may be exercised only within 30 days from the date of receipt of the appeal by the body concerned. Third, under the self-control procedure, the body may only grant the appeal in its entirety – thus, if the appeal includes a request for declaring a resolution invalid, the body concerned may not repeal or amend the resolution under the self-control procedure. Finally, self-control may be exercised by the body only within the scope of its competence under the general legal norms. Therefore, since these norms do not provide for the competency to declare one's own resolutions invalid, or to consider them passed in violation of the law, and the demand contained in the appeal may concern only these two options (Article 147 § 1 LPAC), it seems reasonable to conclude that self-control cannot be applied to resolutions passed by local government bodies. This statement is even more categorical when the appeal concerns a resolution which does not fall within the cognition of the administrative court or should be rejected by the court for other reasons (Article 58 § 1 LPAC) – with such appeals, the instrument in question cannot be applied.

Despite this fact, in clerical practice, there are various procedures for exercising self-control by the decision-making body or for refusing to use it. First of all, there arise certain doubts as to the form in which the appeal should be forwarded together with the response and the case files. Some of the decision-making bodies adopt resolutions on forwarding the appeals in the mode as prescribed in Article 54 § 2 LPAC, while others view this as a substantive technical matter not requiring the adoption of a separate resolution. In the latter case, further doubts arise regarding the entity which should draw up and sign the response to the appeal: in some local government units, the response is signed (either in person or by hand of an authorised representative) by the municipal head, the mayor, the district governor or the marshal of the voivodeship, while in others, it is signed by the president of the decision-making body, and sometimes (in districts and voivodeships) by the marshal or the district governor together with another member of the board. In addition, these entities sometimes forward the documents in question make under an authorisation granted in the form of a resolution of the decision-making body while others do so without any such authorisation. There are even more discrepancies concerning the use of self-control under Article 54 § 3 LPAC, although the bodies whose acts are appealed against to the administrative courts generally do not use it. However, refraining from using self-control is also non-uniform, as

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some bodies adopt resolutions in this respect on not considering the appeal, others do not adopt such a resolution, but only on passing a resolution on forwarding the complaint together with the reply and complete files, while the remaining bodies do not adopt any resolution to this effect, and all procedural actions are performed in the form of a letter signed by an entity recognised as authorised to represent the local government unit in general or its constituting body in particular.

The author of this paper has consistently reiterated that it is pointless to put to a vote a draft resolution on referring an appeal to the administrative court, since the outcome of the vote will have no bearing on the existence of a legal obligation in this respect. More specifically, it is pointless to put to a vote draft resolution where there is only one possible legal outcome arising directly from the applicable legal regulations. In turn, due to the fact that satisfying the demands contained in the appeal against a resolution of a decision-making body exceeds the scope of competences vested in that body, it would be justified to submit to the body for discussion a draft resolution on not taking into consideration or not exercising the right to apply self-control. If one of the above resolutions does not obtain the required majority of votes, refraining from adopting such a resolution will not be tantamount to adopting a self-control resolution, assuming especially that the adoption of such a resolution is legally inadmissible due to the lack of competence of the decision-making body in this scope. There is no logic in putting to a vote an issue which cannot be resolved otherwise than in a manner envisaged in the draft resolution. For this reason, it appears reasonable that a solution used by the vast majority of local government units should be a solution consisting in the preparation of a response to the appeal and referring it, together with the appeal itself and complete and orderly case files, to the administrative court without involving the decision-making body, but only with the participation of an entity authorised to represent the local government unit before external institutions.

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Resolution of the District Council in Lublin No. VIII/97/2019 of 31 May 2019 on considering the appeal brought by Przedsiębiorstwo Zaopatrzenia Farmaceutycznego Cefarm – Lublin SA to the Voivodeship Administrative Court in Lublin against Resolution No. VI/66/2019 of the District Council in Lublin of 28 March 2019 on determining the working time of general-access pharmacies situated in the Lublin District.

Resolution No. XIII/143/19 of the Assembly of the Podlaskie Voivodeship of 7 October 2019 on filing an appeal against Resolution No. XXIV/285/12 of the Assembly of the Podlaskie Voivodeship of 21 December 2012 on dividing the Podlaskie Voivodeship into game shooting districts, including appendices, to the Voivodeship Administrative Court in Białystok.

Resolution No. 245/19 of the Assembly of the Masovian Voivodeship of 17 December 2019 on filing an appeal against Resolution No. 91/19 of the Assembly of the Masovian Voivodeship of 18 June 2019 amending the resolution on enacting the Waste Management Plan 2024 for the Masovian Voivodeship to the Voivodeship Administrative Court in Warsaw and an authorisation to granting power of attorney *ad litem*.

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ABSTRAKT

W artykule omówiono problematykę korzystania z instytucji autokontroli w sytuacji, gdy skarga do sądu administracyjnego dotyczy uchwał organów stanowiących jednostek samorządu terytorialnego. Autor w ramach analizy prawnej przedmiotowej instytucji szczególną uwagę zwrócił na jej obwarowanie istotnymi ograniczeniami stanowiącymi granice dopuszczalności jej stosowania. Ponadto wskazano na aspekty praktyczne oraz problemy węzłowe, wynikające ze stosowanych różnorodnych mechanizmów, które z uwagi na ich niejednolitość, poddane zostały dogłębnej analizie empirycznej i konstruktywnej krytyce. W artykule zaprezentowano wyniki badań przeprowadzonych na podstawie oceny licznych odpowiedzi na wnioski o udostępnienie informacji publicznej, sformułowanych przez marszałków województw, starostów powiatowych oraz prezydentów miast. Zakres badań należy określić jako dotyczący aktualnego stanu prawnego w Polsce. Opracowanie ma zatem charakter naukowo-badawczy oraz praktyczny. Rezultaty osiągnięte wskutek interpretacji wyników badań mają charakter oryginalny i nowatorski, badania takie nie były bowiem dotychczas prowadzone. Powoduje to, że niniejsze studium stanowi cenne źródło wiedzy dla przedstawicieli nauki i praktyki.

Słowa kluczowe: autokontrola; zakres właściwości; uprawnienia samokontrolne; nadzór nad uchwałami; skarga do sądu administracyjnego