

## A VOTE OF CONFIDENCE FOR A COMMUNE HEAD (MAYOR, CITY PRESIDENT) IN THE JURISPRUDENCE OF ADMINISTRATIVE COURTS

### ABSTRACT

This paper presents the institution of a vote of confidence for the commune head (mayor, city president). The paper is divided into four parts: introduction; the mode of adoption of a resolution on a vote of confidence for a commune head (mayor, city president); selected judgments of administrative courts in the context of the institution of a vote of confidence for a commune head (mayor, city president); and conclusion.

In the introduction, I made an attempt to define the concept of a vote of confidence for a commune head, pointing out that this concept has not (so far) been the object of in-depth analysis by scholars. I then traced the process of adoption of this resolution, which is very important (for the executive body of the commune). I have characterized the legal consequences that arise from the failure to pass the act in question.

The most relevant part of the paper is the third part entitled “selected judgments of administrative courts in the context of the institution of a vote of confidence for a commune head (mayor, city president)”. It is in that section (based on the rulings of administrative courts) that I presented the most important interpretation problems faced not only by councilors, lawyers providing legal services to the commune, and supervisory authorities (mainly the province governor), but also by administrative courts. These controversial issues (which have been interpreted in different ways by administrative courts) are:

- a. the requirement to draft the grounds for the resolution on granting a vote of confidence to the executive body;

- b. the possibility or impossibility of drafting and voting on a resolution not to pass a vote of confidence;
- c. the obligatory nature of the debate on the report on the state of the commune with a requirement for the legality of the resolution on granting a vote of confidence to the commune head;
- d. the legal interest or absence of legal interest of the commune head to challenge the resolution on not granting him a vote of confidence.

The section ends with a brief summary and presentation of bibliographic items as well as selected judgments of administrative courts.

**KEYWORDS:** *vote of confidence, administrative courts, resolution, control, oversight*

## INTRODUCTION

The attempt to define the concept of a vote of confidence (which is passed or not passed annually) for the executive body of a commune has so far not been the object of detailed analysis or particular interest on the part of Polish researchers. Of course, a detailed characterization of this concept will not be carried out in this paper because the object of my interest will be only selected decisions of administrative courts closely related to this institution.

However, before I move on to a brief analysis of selected judgments, I would like to at least address this new concept (in the practice of local government) in a few sentences.

Thus, a vote of confidence is nothing more or less than a resolution of the council, passed by a special vote, which expresses confidence in the activities of the commune head (mayor, city president) and completes the process of evaluation of his annual performance. It should be noted that there is no correlation between the passing of a vote of confidence and the granting of a vote of approval (Bułajewski, 2005, pp. 86-97). It should be borne in mind that these positions result from the evaluation of separate issues within the scope of operation of a commune's executive body.

Pursuant to Article 18 (2) (4a) of the Act of 8 March 1990 on commune-level local government (consolidated text: Journal of Laws of 2022, item 559, as amended – hereinafter referred to as ACLLG), the adoption of a resolution on granting or not granting a vote of confidence is closely related to the

report on the state of the commune and the debate on it. This is confirmed by the first sentence of Article 28aa (9) of the ACLLG, which indicates that after the debate on the report on the state of a commune is completed, the commune council shall hold a vote of confidence for the commune head. On the other hand, pursuant to Article 18 (2) (4) of the ACLLG, the adoption of a resolution on granting or not granting a vote of approval is closely related to the report on the execution of the budget. This is also confirmed by Article 18a (3) and the second sentence of Article 28a (1) of the ACLLG. Therefore, the expression of a vote of confidence and the granting of a vote of approval concern separate issues and are not related to each other.

The only correlation between the procedures for granting a vote of confidence and granting a vote of approval to a commune head arises from the first and second sentences of Article 28aa (4) of the ACLLG, because the commune council is required to consider the report on the state of the commune during the session at which the council adopts a resolution to grant or not grant a vote of approval to the commune head, which takes place before the vote of confidence. However, this only involves the commune council's obligation to look at the report from the execution of the budget in the broader context of the state of the commune. However, we cannot point to any other relationship between a vote of confidence and a vote of approval (Wolf, Lex 2022 electronic edition).

It is also important to keep in mind the consequences of a failure to adopt a resolution on a vote of confidence. With regards to a resolution on a vote of confidence for a commune head (mayor, city president), the legislator used a different solution than with regards to a resolution on a vote of approval in terms of the legal consequences of a situation in which a resolution on granting a vote of confidence to a commune head is rejected by the councilors. In the case of a resolution granting a vote of approval to a commune head, the rejection of such a resolution does not automatically mean the adoption of a resolution with an opposite effect, i.e. a resolution not to grant a vote of approval. In contrast, in the case of a resolution on a vote of confidence, such automatism does exist. Indeed, according to the wording of Article 28aa (9) of the ACLLG in fine, “[f]ailure to pass a resolution to grant a commune head a vote of confidence is tantamount to passing a resolution not to grant

the commune head a vote of confidence” (Cyrankiewicz-Gortyński, 2022, <https://www.prawo.pl/samorzad/uzasadnie-uchwaly-w-sprawie-wotum-za-ufania-dla-wojta,515812.html>).

## **PROCEDURE FOR ADOPTION OF A RESOLUTION ON A VOTE OF CONFIDENCE FOR A COMMUNE HEAD (MAYOR, CITY PRESIDENT)**

In this section, I will briefly outline the procedure for adoption of a resolution on granting a vote of confidence to a commune head.

As I mentioned in my introductory remarks, according to Article 18(2) (4a) of the ACLLG, the exclusive competence of a commune council is not only to pass a resolution to grant or not to grant a vote of confidence to the commune head, but also (which procedurally is the first action of the council) to consider the report on the state of the commune.

Of course, before a report on the state of the commune can be considered at a session of the commune council, it must be prepared and presented by the commune head (mayor, president of the city) by May 31 of the year following the year to which it relates, as explicitly stated in Article 28aa (1) of the ACLLG.

Pursuant to Article 28aa (1) of the ACLLG, the commune head submits a report on the state of the commune to the commune council every year by May 31. The report includes a summary of the activities of the commune head in the previous year, in particular the implementation of policies, programs and strategies, resolutions of the commune council, and the civic budget (Article 28aa (2) of the ACLLG). The commune council may specify in its resolution the detailed requirements for the report (Article 28aa (3) of the ACLLG). The commune council considers the report referred to in par. 1 during a session at which the resolution of the commune council on granting or not granting a vote of approval to the commune head is adopted. The report is considered first. A debate is held on the submitted report on the state of the commune (Article 28aa (4) of the ACLLG). In the debate on the report on the state of the commune, the councilors speak without time

limitation (Article 28aa (5) of the ACLLG). Also, the residents of the commune may speak in the debate (Article 28aa (6) of the ACLLG). Of course, a resident of the commune (as expressly stipulated in Article 28aa (7 and 8) of the ACLLG) who wishes to speak in accordance with the procedure set forth in par. 6, must submit a written request to the chairman of the council, supported by the signatures:

- in a commune with up to 20,000 residents – of at least 20 persons;
  - in a commune with more than 20,000 residents – of at least 50 persons.
- Importantly, the resident must submit the request no later than the day before the day on which the session at which the report on the state of the commune is to be presented is to take place. Residents are allowed to speak according to the order in which the chairman of the council received their requests. The number of residents who may speak in the debate is up to 15, unless the council decides to increase this number.

However, according to Article 28aa (9 and 10) of the ACLLG, after the conclusion of the debate on the report on the state of the commune, the commune council must hold a vote on granting a vote of confidence to the commune head. The resolution on granting a vote of confidence to the commune head is adopted by the commune council by an absolute majority of the statutory composition of the commune council. A failure to pass a resolution on granting the commune head a vote of confidence (as I indicated in the introduction to this paper) is tantamount to passing a resolution not to grant a vote of confidence to the head of that commune. If the commune head does not obtain a vote of confidence in two consecutive years, the commune council may pass a resolution to hold a referendum on the removal of the head of that commune. The provisions of Article 28a (3 and 5) of the ACLLG apply *mutatis mutandis*.

It follows from the cited provisions that (unlike in the case of the link between the resolution on a vote of approval and the resolution on a vote of confidence for a commune head), first of all, there is a close link between the report on the state of a commune and the adoption of a resolution on a vote of confidence. The cited provisions complement each other and result in a specific role and participation of various entities, i.e. the commune council – a decision-making body, the commune

head – the executive body, and the residents of the commune, in the process of considering the report on the state of the commune and the application of the institution of a vote of confidence (judgment of the Provincial Administrative Court in Poznań of 3 March 2021, file ref. no. IV SA/Po 1222/20).

The resolution on granting or not granting a vote of confidence to the commune head is passed by the commune council by an absolute majority of the statutory composition of the commune council. Importantly, the draft resolution should contain appropriate grounds (later in this paper I will indicate the judgments that address the issue of the grounds in the resolution in different ways), from which the motives of the commune council for granting or not granting a vote of confidence to the commune head will be apparent. Absence of the grounds – especially in a situation where the commune council does not grant a vote of confidence to the commune head – may result, in extreme cases, even in the supervisory body declaring the adopted resolution invalid as contradictory to Article 7 of the Constitution of the Republic of Poland, which states that “[b]odies of public authority shall act on the basis and within the limits of the law” and formulates the so-called rule of law principle (“Uchwała w sprawie wotum zaufania dla wójta, burmistrza, prezydenta miasta musi posiadać uzasadnienie – Sądy o samorządach” [A resolution on a vote of confidence for a commune head, a mayor, or a city president must have the grounds drafted – Courts on local and regional government] – *Biuletyn samorządowca* 5/2021, accessed on 15 July 2022, <https://www.doradcasamorządu.pl/wydanie-archiwalne/rok-2021/137-sas5-2021/5479-uchwa%C5%82a-w-sprawie-wotum-zaufania-dla-w%C3%B3jta,-burmistrza,-prezydenta-miasta-musi-posiada%C4%87-uzasadnienie.html>).

## **SELECTED JUDGMENTS OF ADMINISTRATIVE COURTS IN THE CONTEXT OF THE INSTITUTION OF A VOTE OF CONFIDENCE FOR A COMMUNE HEAD (MAYOR, CITY PRESIDENT)**

in this section, I will briefly characterize selected judgments of administrative courts in the context of various contentious issues relating directly or indirectly to the institution of a vote of confidence. Examples of these contentious issues are:

- a. **the requirement to the grounds for the resolution on granting a vote of confidence to the executive body;**
- b. **the possibility or impossibility of drafting and voting on a resolution not to pass a vote of confidence;**
- c. **the obligatory nature of the debate on the report on the state of the commune with a requirement for the legality of the resolution on granting a vote of confidence to the commune head;**
- d. **the legal interest or absence of legal interest of the commune head to challenge the resolution on not granting him a vote of confidence.**

**Re. a)** Not only the rules and procedure for issuing acts of local law, but also the rules and procedure for issuing resolutions with internal effect have (so far) not been comprehensively regulated anywhere. For this reason, not only the councilors and the council's legal counsels, but also the administrative courts are uncertain as to whether the grounds are or are not an obligatory element of the resolution, and thus whether its absence influences the legality of the resolution (Bułajewski, 2010, pp. 51-72).

As usual, we are helped by the jurisprudence of the administrative courts, which unfortunately (as I mentioned above) does not present uniform views on this issue, either. For example, the Provincial Administrative Court in Opole, in the grounds for the judgment of 25 October 2021, clearly indicated that “[a]lthough the Court generally does not question the need for or necessity to present the grounds for drafts of acts of local laws and resolutions that are not acts of local law, the resolution on granting a vote of confidence to a commune head (mayor, city president) has a specific character and therefore cannot have

separate grounds. This is because it is adopted after the presentation of a report on the state of a commune and the debate on the report and the resulting information. The totality of information obtained from the report provides a basis for the councilors to formulate an assessment of the commune head (mayor, city president), the expression of which is the resolution on a vote of confidence. It should be emphasized that it is the content of the report, and sometimes the content and course of the debate on the report, that justifies the adoption of a resolution to grant a vote of confidence to the commune head (mayor, city president), or justify a negative vote on the report, which – by the will of the legislator – has the character of a tacit negative resolution. The resolution, or rather the result of the council's vote on it, is the result of each councilman's own opinion. In this case, neither the supervisory authority nor the administrative court can investigate the motives of the councilors to vote in a specific way, as this involves their exercise of the mandate received from the voters. Moreover, it is impossible to separately present grounds for a resolution that has not even been subject to a separate debate, since its tacit adoption is a consequence of a failure to adopt another resolution" (file ref. no. II SA/Op 492/21, LEX no. 3274080). Also, the Provincial Administrative Court in Poznań, in its judgment of 2 December 2021 (file ref. no. II SA/Po 738/21, LEX no. 3288716), added that, in the court's view, the absence of an obligation to prepare written grounds for a resolution on a vote of confidence is not contrary to the purpose of the provisions introduced by Article 1 (11) of the Act of 11 January 2018 on amending certain laws to increase the participation of citizens in the process of electing, functioning, and controlling certain public bodies. According to the authors of these amendments, their purpose was to increase citizens' participation in the process of controlling and functioning of certain bodies of local and regional government. Residents of the commune, as is clear from Article 28aa (6, 7, and 8) of the ACLLG, may read the report on the state of the commune without hindrance, as well as participate in the debate on the report. Their opinions may be taken into account when the commune council grants (or does not grant) a vote of confidence to the executive body. Citizens of the commune, through access to information on the state of the commune and the possibility to participate in the discussion, thus exercise real influence on the functioning of the local government



unit. They only cannot take part in voting on resolutions, as this has been reserved to the exclusive competence of the commune council (Article 14 of the ACLLG). The commune council is the controlling body with respect to the commune head/mayor/city president (Article 18 (2)(4a) of the ACLLG), which allows for a substantive evaluation of his or her work and, in the event of a negative evaluation, to pass a resolution not to grant a vote of confidence.”

The above rulings contradict a huge number of rulings by other administrative courts. At this point, I would like to make a reference, as an example, to the judgment of the Provincial Administrative Court in Poznań of 19 May 2021 (file ref. no. IV SA/Po 213/21, LEX no. 3187698), which states that in a “democratic law abiding state, an arbitrary decision of public authorities, not subordinated to the objectives of this order and the values that public authority is supposed to serve, cannot be accepted. This rule is a part of the very essence of the principle of the rule of law. It is incumbent on public authorities to present the grounds for their decisions in such a way that it is possible to assess whether these decisions were made as a result of a comprehensive and careful analysis of the factual and legal situation of the case” (I fully agree with this opinion). In the aforementioned judgment (specifically, in its grounds), the court also stated that the lack of the grounds for a commune council’s resolution adopted pursuant to Article 28aa (9) of the act on commune-level local government constitutes a flagrant violation of the law, as it makes it impossible to determine the real motives for its adoption.

An acceptance of the permissibility of not presenting the grounds for resolutions on a vote of confidence would entail the permissibility of using this instrument for political purposes, both in those arrangements where a group opposing the executive body would prevail in the council, and when the council would be supportive of the executive body (Provincial Administrative Court in Szczecin – judgment of 25 February 2021, file ref. no. II SA/Sz 669/20, LEX no. 3158539). Moreover, according to the court, “[t]he requirement to draft the grounds for a resolution on granting a vote of confidence to the executive body as a result of consideration of the report does not refer to the court’s ability to verify the validity of the assessment adopted by the councilors regarding the report, but to whether such an assessment was made at all. Indeed, there is no basis to conclude that it could be a so-called “tacit resolution.” An acceptance

of the permissibility of not presenting the grounds for resolutions adopted pursuant to Article 18 (2) (4a) of the ACLLG would entail the permissibility of using this instrument for political purposes, both in those arrangements where a group opposing the executive body would prevail in the council, and when the council would be supportive of the executive body.”

Thus, one should fully agree with the statements in the above-mentioned grounds for the judgment of the Provincial Administrative Court in Szczecin of 25 February 2021 that “[b]oth the jurisprudence and the doctrine indicate that such grounds should be drawn up, as it serves certain purposes. It should be emphasized that “although in the current legal system a normative obligation to present grounds for resolutions of local government bodies has not been explicitly expressed, the lack of grounds for a resolution, as well as the complete absence in the case file of any information on the substantive reasons for the adoption of the act by the body of the district, cause such a resolution to elude the control of the court, as it is impossible to assess its legality” (see the judgment of the Supreme Administrative Court of 23 May 2013, file ref. no. I OSK 240/13; judgment of the Supreme Administrative Court of 1 March 2019, file ref. no. I OSK 1348/17). In addition, “in the doctrine, the obligation to present the grounds for a resolution (where this obligation is not explicitly defined by law) is derived from the general constitutional principle of binding administrative bodies with law, the obligation to refer to law, and the competence of administrative courts and supervisory bodies, which – when exercising control – must know the motives that guided the council of a commune, a district, or a regional assembly, as well as from the principle of a democratic law-abiding state and specific principles, including the principle of trust in the state and the laws it enacts or the principle of ‘good legislation’” (Stahl, 2006, p. 45). It should be noted that an analogous position on the issue of the obligation to draft the grounds for resolutions adopted on the basis of Article 18 (2) (4a) of the ACLLG was taken by the Provincial Administrative Court in Olsztyn in its judgment of 14 November 2019, file ref. no. II SA/Ol 785/19, and the Provincial Administrative Court in Wrocław in its judgment of 5 November 2020, file ref. no. III SA/Wr 283/20.”

**Re. b)** Another contentious issue in the jurisprudence of administrative courts is the question of the formal preparation of a draft resolution not to pass a vote of confidence. Therefore, the following question should be asked: If the required absolute majority of votes of the statutory composition of the council is not achieved when voting on a resolution to grant a vote of confidence – should a draft resolution not to grant a vote of confidence to the commune head be prepared and then voted on?

Unfortunately, this issue too has not been interpreted in a uniform manner. As proof, I would like to cite two rulings of administrative courts. A ruling that allows for the possibility of voting on a draft resolution not to grant a vote of confidence to a commune head was issued by the Supreme Administrative Court on 9 February 2022 (file ref. no. III OSK 4795/21). In this ruling, the Court pointed out, among other things, that “[s]ince the legislator has stated that the failure to grant a vote of confidence to a commune head by resolution is tantamount to the adoption of a resolution not to grant a vote of confidence, this means that in both cases there is a resolution. Consequently, it did not constitute a violation of the law for the Municipal Council of W. to draw up a resolution on (...) June 2019 not to grant a vote of confidence to the President of the City of W. The position presented by the complainant in the cassation is not acceptable not only in connection with the linguistic interpretation of Article 28aa (9) of the ACLLG, but also with the systemic interpretation. A failure to draft a resolution not to grant a vote of confidence would result in such a resolution not being subject to the province governor’s supervision. Pursuant to Article 90 (1) of the ACLLG, the commune head shall forward resolutions of the commune council to the province governor within 7 days of their adoption. The assumption that a resolution not to grant a vote of confidence is not drafted would result in the inability of the commune head to submit such a resolution to the province governor.”

Slightly different conclusions were reached based on the same problem by the Provincial Administrative Court in Białystok, which, in the grounds for its judgment of 5 April 2022 (file ref. no. II/SA Bk 89/22, LEX no. 3337424), clearly indicated that “(...) Article 28aa (9) of the ACLLG contains a construction in which the failure to adopt one resolution is equivalent to the adoption of the other. Proceeding on the former is tantamount to proceeding on the latter.

If the relevant council has not passed a resolution to grant to the commune head (mayor) a vote of confidence, this is tantamount to passing a resolution not to grant a vote of confidence to the commune head (mayor). In light of these provisions, there is no need in this case to proceed on the resolution not to grant a vote of confidence, including a separate vote on that resolution. This is because the legislator indicated that the resolution on granting a vote of confidence to the commune head, including the report on the state of the commune, is to be fully proceeded on. However, if a resolution to grant a vote of confidence to the commune head is not passed, the legislator has introduced a solution in the form of equating the above situation with the passing of a resolution not to grant a vote of confidence to the commune head (par. 9).

At this point, it should be emphasized that both a resolution in which a vote of confidence is granted to the commune head by an absolute majority of the statutory composition of the commune council and a resolution not to grant a vote of confidence to the commune head (which demonstrates the will of the legislator following the failure to pass a resolution to grant a vote of confidence) are resolutions related to the consideration of a report on the state of the commune. The above is clear from the provisions of Article 18(2)(4a) of the ACLLG cited above. Hence, there is no basis for treating a resolution not to grant a vote of confidence as “tacit” in the sense of the absence of specific motives for its “adoption” (this is also what the Provincial Administrative Court in Wrocław stated in its judgment of 5 November 2020, file ref. no. III SA/Wr 283/20, CBOŚA).”

**Re. c)** Administrative courts have also analyzed the issue of the obligatory nature of the debate on the report on the state of a commune. This is also an important issue, as the debate is an essential element preceding the adoption of a resolution on granting a vote of confidence to a commune head. This raises the following question: Does the absence of this debate result in a legally adopted resolution, or does it only involve a so-called insubstantial violation of the law?

This issue has not been resolved in the relevant provisions of the law regulating the structure of local and regional government; therefore, also in this case, we should look for the answer in the jurisprudence of administrative courts. At this point, I would like to cite the judgment of the Provincial Administrative

Court in Wrocław, i.e. the judgment of 10 October 2019 (file ref. no. III SA/Wr 302/19, LEX no. 3014158). The grounds for the aforementioned judgment indicates among other things, that “[i]n view of the procedural model adopted in Article 28aa of the ACLLG, including the introduction of the solution that consists in ‘tacit adoption of a resolution’ not to grant a vote of confidence to a mayor, the only element that allows confirming this necessary link between the assessment of the report on the state of the municipality (and the evaluation of the activities of the executive body made in connection with it) and the decision of the council on granting a vote of confidence to the executive body, is a debate. This is because this procedural element should include a presentation of the councilors’ positions on the report, particularly in the event of its rejection. While it is possible to accept the idea that the lack of a discussion before a vote of confidence is granted to the executive body implies the absence of objections to the report presented by that body and its full acceptance, in a situation where a vote of confidence is not granted to the executive body, the failure of the councilors to take any position in a debate leads to a situation where: 1) it cannot be said that the vote of confidence was related to the assessment of the report and, consequently, that any form of substantive oversight over the executive body was performed at all, and the aforementioned objective of the provision to increase public scrutiny was fulfilled; 2) there is a complete distortion of the objective of increasing the transparency of the activities of commune bodies, because it is possible to assume a situation where the report on the state of the commune confirms the proper performance of the mayor’s duties, while the councilors, for undisclosed reasons, do not grant to him or her a vote of confidence, thus opening the way for a possible undermining of his electoral mandate and reducing the guarantees arising from this mandate; 3) the right of the residents of the municipality to be informed about the actions of its bodies is disregarded, since they have been deprived of the possibility to learn the motives for not granting a vote of confidence to the commune head/mayor/city president elected by these residents. (...) Taking into account the fact that in the case in question the Council (tacitly) passed a resolution not to grant the Mayor of the City of L. a vote of confidence without any actual debate on the report on the state of the municipality presented at the session, the Court, for the

reasons set forth above, found that the contested resolution violates the law and, therefore, pursuant to Article 146 of the Law on Proceedings before Administrative Courts, declared it invalid.”

**Re. d)** the legal interest or absence of legal interest of the commune head to challenge the resolution on not granting him a vote of confidence is the last issue I would like to discuss. In other words, the question is whether or not the commune head (mayor, city president) may or may not challenge the resolution to an administrative court on account of not granting him or her a vote of confidence?

Of course, I have no doubt that he or she may do so, but what do the administrative courts say about it? As we can easily guess, the jurisprudence of administrative courts is not uniform on this issue either. For example, the Provincial Administrative Court in Rzeszów, in its judgment of 8 August 2022 (file ref. no. II SA/Rz 859/22, LEX no. 3389614), indicated that “[i]n the most recent jurisprudence administrative courts, a view is presented, which the Court shares, that the resolution not to grant a vote of confidence to a commune head, based on Article 28aa (9) of the ACLLG, is of an intentional nature and is only a declaration of the decision-making body of that local government unit on the assessment of the activities of the commune executive body in the previous year, within the scope specified in the report on the state of the commune, i.e. the implementation of policies, programs and strategies, resolutions of the commune council, and the civic budget. Consequently, it is impossible to conclude that the adoption of a resolution not to grant a vote of confidence to the commune executive body violates the legal interest or right of the complainant holding such a function, pursuant to the wording of Article 101 (1) of the ACLLG. This is because it cannot be assumed that such a resolution takes away or restricts any right of the individual holding the position of the commune head under the law, or imposes a new obligation or changes an existing obligation. The consequence of adoption of such a resolution is not, for example, removal of the commune head from office; its adoption is not even tantamount to an initiative to hold a referendum on the removal of the commune head. Moreover, the adoption of a resolution to hold a referendum on the removal of the commune head is optional, in accordance with Article 28aa (10) of the ACLLG (see judgments of the Supreme

Administrative Court of 1 June 2022, file ref. no. III OSK 5083/21; of 14 January 2022, file ref. no. III OSK 4896/21; judgment of the Provincial Administrative Court in Warsaw of 8 April 2022, file ref. no. II SA/Wa 3236/21; judgment of the Provincial Administrative Court in Gliwice of 11 July 2022, file ref. no. III SA/Gl 1418/21). In conclusion, the challenged resolution does not violate the legal interest or right of the complainant in his capacity as a Commune Head, so the complaint is rejected on the basis of Article 58 (1) (5a) of the ACLLG.”

Of course, one may not agree with this ruling, which is why I agree with the position of the Provincial Administrative Court in Białystok, which in the grounds for the judgment of 5 April 2022 (file ref. no. II SA/Bk 89/22) clearly indicated that “[t]he complaint in the present case was filed on the basis of the provision of Article 101(1) of the Act of 8 March 1990 on commune-level local government (consolidated text: Journal of Laws of 2020, item 713, hereinafter “ACLLG”), according to which anyone whose legal interest or right has been violated by a resolution or order, adopted by a commune body in a matter within the scope of competence of public administration, may challenge the resolution or order in an administrative court. It follows from the cited provision that the legitimacy of the complaint is based on the criterion of “legal interest” and requires the establishment of a link between the sphere of individual rights and obligations of the complainant and the challenged act or action of the administrative body. The existence of a legal interest can be said to exist when there is a provision of law from which certain rights or obligations can be derived for a given entity. The complainant must show that in a particular case there is a connection between his or her own legally protected situation and the challenged resolution.

The resolution challenged in the case starts a procedure that may, pursuant to Article 28 aa (10) of the ACLLG, lead to a local referendum on the removal of the commune head from office and, in consequence, his or her dismissal. This is because, according to the cited provision, If the head of a commune (mayor) does not obtain a vote of confidence in two consecutive years, the commune (municipal) council may pass a resolution to hold a referendum on the removal of the head of that commune (municipality). Therefore, there is no doubt that the resolution in question violates the legal interest of the complainant holding this function (this was also stated by the Provincial

Administrative Court in Szczecin in its judgment of 25 February 2021, file ref. no. II SA/Sz 669/20, and by the Provincial Administrative Court in Poznań in its judgment of 3 March 2021, file ref. no. IV SA/Po 1222/20, both available in the Central Database of Administrative Court Judgments). Thus, J. B., as the Mayor of City of B. is an entity legally entitled to challenge the resolution of (...) June 2021, as it violates his legal interest. In these circumstances, it was appropriate to adjudicate the complaint based on its merits.”

## CONCLUSION

In this paper, I have presented selected judgments of administrative courts. My goal was not to provide a comprehensive presentation of the content, form, and mode of adoption of a resolution on a vote of confidence for a commune executive body in juxtaposition with the jurisprudence of administrative courts, but only to draw attention to the problem, which is important from the point of view of not only local legislators, but also supervisory bodies. This is because the problem involves an important issue: recognizing when a resolution of the commune council on a vote of confidence for the commune head (after meeting what conditions as to content, form, and procedure) is a legal act and when this act is illegal (in the opinion of the supervisory authority or an administrative court).

This problem should not be ignored any longer. As we can easily see from the examples of judgments of administrative courts cited above, resolutions of the same content are qualified as either legal or illegal acts.

What makes the situation particularly dangerous is that the rulings of administrative courts are not always taken into account by local governments, but instead are exploited only in an opportunistic manner. Local lawmakers, when submitting their legislative initiatives, often make references to court verdicts that confirm their way of thinking, while omitting those that would contradict it.

To some extent, the solution to this may be a law on the rules and procedure for issuing local laws, which not only should, but must be enacted so as to ensure that, at least in this area, the supervisory decisions of province governors (Bulajewski, 2020, pp. 61-79), as well as the rulings of administrative courts



throughout Poland, are uniform. After all, it cannot be tolerated (although it currently is) that in one province a resolution of a council on a vote of confidence for the commune head must obligatorily contain the grounds, while in another province the supervisory authority (most often the provincial governor) considers the grounds to be unnecessary (Bułajewski, 2018, pp. 118-127).

## REFERENCES

- Bułajewski, S. (2005). *Komisja rewizyjna jako pomocniczy organ rady powiatu z uwzględnieniem instytucji absolutorium*, [The audit committee as an auxiliary body of the district council taking into account the institution of vote of approval], *Radca Prawny* no. 5.
- Bułajewski, S. (2010). *Konstytucyjny obowiązek ustawowego określenia zasad i trybu stanowienia aktów prawa miejscowego – czy spełniony?* [The constitutional obligation of statutory specification of the principles of and procedure for passing acts of local law – has it been fulfilled?], in: S. Bożyk, A. Jamróz, eds., *Konstytucja, ustroj polityczny, system organów państwowych. Prace ofiarowane Profesorowi Marianowi Grzybowskiemu* [Constitution, the political system, the system of state bodies. Works dedicated to Professor Marian Grzybowski], Wydawnictwo Temida II, Białystok.
- Bułajewski, S. (2018). *Problematyka aktów prawa miejscowego w rozstrzygnięciach nadzorczych wojewody i orzeczeniach sądów administracyjnych*, [The problem of acts of local law in supervisory rulings of the province governor and judgments of administrative courts], in: B. Dolnicki, ed., *Źródła prawa w samorządzie terytorialnym* [Sources of law in local and regional government], Wolters Kluwer, Warsaw.
- Bułajewski, S. (2020). *Wojewoda jako organ nadzoru nad działalnością jednostek samorządu terytorialnego*, [The province governor as the supervisory body for the activities of units of local and regional government], *Toruńskie Studia Polsko-Włoskie XVI – Studi Polacco-Italiani di Toruń XVI*, Toruń 2020.
- Cyrankiewicz-Gortyński, M. (2022). *Uchwałę w sprawie wotum zaufania dla wójta należy uzasadnić*, [A resolution on a vote of confidence for a commune head must require the presentation of grounds], accessed on 30 July 2022, <https://www.prawo.pl/samorzad/uzasadnie-uchwaly-w-sprawie-wotum-zaufania-dla-wojta,515812.html>.
- Stahl, M. (2006). *Samorząd terytorialny w orzecznictwie sądowym. Rozbieżności i wątpliwości*, [Local and regional government in court jurisprudence. Differences and doubts], *Zeszyty Naukowe Sądownictwa Administracyjnego*, year II, no. 6 (9).
- Uchwała w sprawie wotum zaufania dla wójta, burmistrza, prezydenta miasta musi posiadać uzasadnienie – Sądy o samorządach*, [A resolution on a vote of confidence for a commune head, a mayor, or a city president must contain its grounds – Courts on local and regional government] – *Biuletyn samorządowca* 5/2021, accessed on 15 July 2022, <https://www.doradcasamorzadu.pl/wydania-archiwalne/rok-2021/137-sas5-2021/5479-uchwa%C5%82a-w-sprawie-wotum-zaufania-dla-w%C3%B3jta,-burmistrza,-prezydenta-miasta-musi-posiada%C4%87-uzasadnienie.html>).
- Wilk, J. (2022). *Czy istnieje zależność między udzieleniem wotum zaufania i udzieleniem absolutorium?*, [Is there a relationship between granting a vote of confidence and granting a vote of approval?], Lex 2022, electronic edition, published: QA 1249413).

**LEGAL ACTS AND JURISPRUDENCE**

- Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483, as amended).
- Act of 8 March 1990 on commune-level local government (consolidated text: Journal of Laws of 2022, item 559).
- Judgment of the Supreme Administrative Court of 23 May 2013 (file ref. no. I OSK 240/13, LEX no. 1603052).
- Judgment of the Supreme Administrative Court of 1 March 2019 (file ref. no. I OSK 1348/17, LEX no. 2637320).
- Decision of the Supreme Administrative Court of 14 January 2022, file ref. no. III OSK 4896/21, published: ONSAiWSA 2022/3/48.
- Judgment of the Supreme Administrative Court of 9 February 2022 (file ref. no. III OSK 4795/21, LEX no. 3330415).
- Decision of the Supreme Administrative Court of 1 June 2022 (file ref. no. III OSK 5083/21, LEX no. 3355573).
- Judgment of the Provincial Administrative Court in Wrocław of 10 October 2019 (file ref. no. III SA/Wr 302/19, LEX no. 3014158).
- Judgment of the Provincial Administrative Court in Olsztyn of 14 November 2019 (file ref. no. II SA/Ol 785/19, LEX no. 2741804).
- Judgment of the Provincial Administrative Court in Wrocław of 5 November 2020 (file ref. no. III SA/Wr 283/20, LEX no. 3096312).
- Judgement of the Provincial Administrative Court in Szczecin of 25 February 2021 (file ref. no. II SA/Sz 669/20, LEX no. 3158539).
- Judgment of the Provincial Administrative Court in Poznań of 3 March 2021 (file ref. no. IV SA/Po 1222/20).
- Judgment of the Provincial Administrative Court in Poznań of 19 May 2021 (file ref. no. IV SA/Po 213/21, LEX no. 3187698).
- Judgement of the Provincial Administrative Court in Opole of 25 October 2021 (file ref. no. II SA/Op 492/21, LEX no. 3274080).
- Judgment of the Provincial Administrative Court in Poznań of 2 December 2021 (file ref. no. II SA/Op 492/21, LEX no. 3274080).
- Judgment of the Provincial Administrative Court in Białystok of 5 April 2022 (file ref. no. II/SA Bk 89/22, LEX no. 3337424).
- Decision of the Provincial Administrative Court in Warsaw of 8 April 2022 (file ref. no. II SA/Wa 3236/21).
- Decision of the Provincial Administrative Court in Gliwice of 11 July 2022 (file ref. no. III SA/Gl 1418/21, LEX no. 3371442).
- Decision of the Provincial Administrative Court in Rzeszów of 8 August 2022 (file ref. no. II SA/Rz 859/22, LEX no. 3389614).