

Maia Pyvovar

Lviv Polytechnic National University,
Dr. assistant of the Department of Legal Theory
and Constitutionalism

Maia.S.Pyvovar@lpnu.ua

ORCID ID: <https://orcid.org/0000-0001-5495-5361>

PRACTICAL ASPECTS OF LAW-MAKING REGARDING ACTS OF LOCAL GOVERNMENT ON THE EXAMPLE OF POLAND AND UKRAINE

<http://doi.org/10.23939/law2023.40.406>

© *Пивовар М.*, 2023

Today, international experience shows that one of the main subjects of rule-making activity in developed democratic countries is the Ministry of Justice, which, due to its professional orientation, deals daily with regulatory and legal acts of all levels and, through legal examination, reveals the shortcomings of draft acts, warns adoption of illegal norms, and also carries out a significant amount of legislative works. The Ministry of Justice of Ukraine plays an important role in the processes of rule-making in Ukraine. Decree of the President of Ukraine dated November 26, 2003 No. 1348 «On improving the organization of legislative activity» since January 2006, the Ministry of Justice has been entrusted with the functions of the main drafter of all bills submitted by the President of Ukraine and the Cabinet of Ministers for consideration by the Verkhovna Rada.

However, in addition to the functions assigned to the Ministry of Justice, until 2023, the state authorities and local self-government bodies followed the methodological guidelines adopted by the Ministry of Justice of Ukraine entitled «Methodical recommendations for the development of draft laws and compliance with the requirements of regulatory and project engineering». Under the requirements set before Ukraine, as a state that has fixed the course of European integration and adaptation of national legislation in accordance with EU law (EU *acquis*), forced to adopt the law of Ukraine «On rule-making activity» [1]. According to that, the technique of normative design is a set of technical and legal means, ways, techniques and methods, with the help of which a draft of a normative legal act is created. «For the first time in 32 years, Ukraine received a ‘law about laws’», – said the Speaker of the Verkhovna Rada of Ukraine Ruslan Stefanchuk. Unlike Ukraine, in Poland in 2002 the Prime Minister of Poland adopted a sub-legal act, which until now regulates the requirements to regulations in this country.

Keywords: rule-making activity; normative-legal act; technical requirements; normative structure.

Formulation of the problem. The realization of the principle of the rule of law in reality, its harmonious consolidation and expression in legal norms of the most important spheres of social relations is the highest goal of rulemaking. It is clear that in connection with the constant development of social

relations, which must meet the requirements of the times, the legislation requires constant updating and improvement. That is why the standard design process must be high-quality and clear. Before the entry into force of the Law of Ukraine «On Law-Making Activity» in September 2023, a trend was observed in Ukrainian legislation regarding the lack of a systematic approach to technical requirements for one or another normative legal act. Given the fact that before that, only methodological guidelines for the development of draft laws were in force in our country, that is why in practice there were many disagreements regarding the interpretation and quality of normative legal acts.

Analysis of recent research and publications. Research on legislative processes and requirements for regulatory acts in this area investigate foreign and domestic scientists, including: Michał Błachut, Jacek Kaczor, Katarzyna Liszka-Michałka, Marcin Maksymiuk, Grzegorz Kubalski and others.

The purpose of the research. It discusses the need to investigate the legal frameworks of technical and legal means and their structural elements, specifically as they relate to normative and legal acts on the local level in Poland and Ukraine. It also highlights the issue that little attention is paid to technical requirements and the drafting of local acts.

The main material. In the abstract of the article, it was mentioned that until September 2023, there was no regulatory act in Ukraine that would regulate rule-making activity. In Poland, on the contrary, Regulation of the Prime Minister of December 20, 2002 on the «Principles of legislative technique» [2] which regulates the execution of law provisions and the manner of their application, and which is included in the drafting of national law. Local self-government bodies also adopt resolutions pursuant to the Regulation of the Prime Minister. This act is valid and has a significant impact on the effectiveness of the legal system.

The principles of legislative technique include, in particular, elements of the methodology of preparation and the method of editing draft resolutions, regulations, justifications and other normative legal acts. It is important that the conditions that the justifications for draft local acts should meet are in accordance with the principles of legislation and legality. The currently applicable Rules of Legislative Technology were established pursuant to the regulation of the Prime Minister of June 20, 2002 on the «Principles of Legislative Technology» (consolidated text: Journal of Laws of 2016, item 283). Determining them in the form of an act of generally applicable law entails significant significance.

The earlier Principles were undoubtedly of the nature of internal law, and therefore applied only to the Council of Ministers and the bodies directly subordinated to it. But according to the Regulation §134 «The basis for issuing a resolution and order is a legal provision that: 1) authorizes a given entity to regulate a specific scope of matters; 2) designates the tasks or competences of a given entity [3].

The analysis of the provisions of the regulation on the Principles of legislative technique allows us to put forward the thesis that a draft act of local law should contain the following elements: 1) a heading part – a title containing the type of act, the entity issuing the act, number, date and general description of the regulated matter; 2) the basis legal regulations; 3) general and specific substantive provisions; 4) episodic, transitional and adapting provisions; 5) final provisions; 6) indication of the body responsible for implementing the resolution; 7) signature of the issuing body; 8) justification; 9) annex [4, p. 41]. It is important to avoid mistakes: repetitions, complex sentences, incorrect references to other regulations. Let's take to analyze the local act adopted by Krakow city council. The title of the local law act includes, in separate lines:

1) designation of the type of act – resolution, order – written in capital letters. It should be emphasized that the law-making nature results not so much from the designation of the act, but from the authorizing provisions and special acts. The name of the legal act is not legislative, does not constitute law, and is not the basis for adjudicating in the case – it is only the legal provisions specified in individual

articles (Decision of the Administrative Court in Warsaw of April 20, 2006, I SA/Wa 1079/05, CBSA). For example – Resolution No. CVII/2916/23 [7];

2) name of the issuing body – commune council, poviast council, commune head (mayor, city president), poviast board – written in capital letters, example Resolution No. CVII/2916/23 of the Krakow city council;

3) date – indication of the day written in arabic numerals, the name of the month specified in words and the year written in arabic numerals with the r sign as an abbreviation of the word year, preceded by the phrase «of». The date is the day on which the act was issued. In practice, this means that in the case of resolutions of collegial bodies, this will be the day of adoption of the resolution, and in the case of orders of the mayor (city president) – the day of signing. For example, Resolution No. CVII/2916/23 of the Krakow City Council of March 22, 2023;

4) definition of the subject of the act – a short, possibly concise indication of the scope of regulation covered by a given act. Resolution No. CVII/2916/23 of the Krakow City Council of March 22, 2023 in a case of the establishment of Primary School.

As specified in the statutory authorization and the guidelines regarding its content, is not reiterated here. It's important to note that defining the subject of an act can take two forms:

a) descriptive: This form begins with the phrase «regarding»;

b) substantive: This form comprehensively regulates a broad range of matters. In practice, this form is suitable for statutes (e. g., Resolution – Statute of County X), budgets (e. g., Resolution – County X Budget for the year...), and various types of regulations.

Furthermore, it's advisable to start the numbering of resolutions anew at the beginning of each new term of office, typically indicated in Arabic numerals. The year of the resolution's adoption can be specified either in full form or by using the last two Arabic digits.»

However, in the case of orders, it is enough to indicate the subsequent number of the order and the year of its issue to indicate their number. However, it should be noted here that posting the act number is not an obligation arising from legal provisions. As such, the number is intended to help in assigning subsequent legal acts created in a given entity, which in the event of current legal inflation allows for organizing the collections. The numbering most often results from the statute of a given unit or from the legislative practice adopted and consistently continued over subsequent terms [5, p. 71].

Undoubtedly, the text of a local law act should begin with a quotation of the provision of the act containing the statutory authorization as the legal basis for its issuance. For example, Resolution No. CVII/2916/23 of the Krakow City Council of March 22, 2023 on the establishment of Primary School No. 20 in Krakow. Pursuant to Art. 7 section 1 point 8 and art. 18 section 2 point 9 letter h of the Act of March 8, 1990 on municipal self-government (Journal of Laws of 2023, item 40), art. 12 section 1 point 2 and section 2 of the Act of 27 August 2009 on public finances (Journal of Laws of 2022, items 1634, 1692, 1725, 1747, 1768, 1964, 2414), art. 8 section 15, art. 88 section 1–2 of the Act of December 14, 2016 Education Law (Journal of Laws of 2021, item 1082 and of 2022, items 655, 1079, 1116, 1383, 1700, 1730, 2089) is hereby adopted as follows:

The doctrine emphasizes that the legal basis has two basic functions:

a) legitimizing;

b) informative [6, p. 100]. The legitimizing function, as the name suggests, expresses the legality of the act taken, so that there are no doubts as to whether a given act was really issued on the basis of an authorizing provision specifying the competences of a given entity in this respect. However, the information function gives a chance to review whether the content of a normative act falls within the scope of matters submitted by the legislator for regulation at the local level – and whether the entity that issued a given act really had the legitimacy to do so.

An important attribute is the indication of the calendar year or calendar years, the meaning of the beginning and end of the regulation's validity, expressed in calendar days, and the indication of the number

of days, weeks, months or years that have passed since the date of entry into force of the resolution or its individual provisions. Taking the example of this Resolution, «The Resolution comes into force after 14 days from the date of publication in the Official Journal of the Małopolska Voivodeship».

The last step is signature of chairman or vice-chairman of the city council. Also an act of local law may contain annexes to which references are included in the substantive provisions of a given act. The appendices include in particular (the use of this phrase means that it is not a closed catalog but only an exemplary enumeration): lists, charts, formulas, tables, and specialized descriptions.

Having analyzed the Law of Ukraine «On Normative Activity», according art.36 the following features can be distinguished. A project based on normative and legal acts contains the next details :

- 1) image of the small State Coat of Arms of Ukraine;
- 2) full name of the subject of law-making activity (except laws), type of regulatory act, date of its adoption (issue);
- 3) name of the regulatory act;
- 4) the text of the regulatory act (description);
- 5) position (post), name (surname, proper name and patronymic (or initials of the first name and (or) patronymic), unless otherwise follows from the law or custom of the national minority to which it belongs) authorized to it is the Constitution of Ukraine and (or) the law of the official who signed the normative legal act;
- 6) date, number of the normative legal act and state registration number of the subordinate normative legal act, if it is subject to such registration.

The research can also prove the differences in the context of registering regulatory acts between Poland and Ukraine. In Poland, there is an obligation to register local decisions, and this registration typically involves publication in official publications at the voivodeship (province) level. Legislation focuses considerable attention on gaining legal force of a local act within a certain period (calendar days).

In Ukraine, the newly adopted law focuses on the registration of specific categories of sub-legal normative legal acts. There is no specific emphasis on the obligation to have local acts enter into legal force from the moment of their publication, which is mandatory in Poland. In Ukraine, local self-government bodies are required to publish these acts on their official web portals (territorial community).

Conclusions. Comparing the technical requirements for the adoption of a local act by local self-government bodies in Poland and Ukraine, we observe similar technical requirements and principles regarding the adoption of a local act. For example 1) the authorized entity for the adoption of the act, 2) the indication of the responsible person who reports on its implementation, 3) the controlling entity, etc. The adoption of the Law «On Normative Activity» is an advantage for Ukraine. Examining individual decisions of local self-government bodies, it should not be overlooked that during the period of martial law in Ukraine, local self-government bodies can make decisions of a confidential nature related to the sphere of defense work (at the level of national security).

It highlights the difference in who signs these local acts, which is a significant factor.

In Poland, the responsibility for signing local acts depends on the role within the local government. The chairman or his/her deputy (vice-chairman) is responsible for signing local acts. This is in contrast to the executive body, represented by the president or mayor, who does not participate in the voting process. Instead, they are tasked with implementing the relevant resolutions and decisions. This explanation clarifies the separation of roles and responsibilities between the legislative and executive branches within the local government in Poland.

In Ukraine, according to the legislation, the chairman of the village and city councils can simultaneously hold the position of the chairman of the corresponding council, participate in voting and head the executive committee, which is an executive body. We must adopt and implement a different vision and focus on completing the reform of decentralization of power in Ukraine according to European standards.

To sum up, it should be stated that the requirements of the principle of legislative technique constitute the validity of the existence of each normative act. The legality, quality and force of a legal act depend on compliance with legislative and technical requirements.

REFERENCES

1. *Problemy normotvorchoi diialnosti subiektiv normotvorennia*. [Problems of rule-making activity of rule-making subjects]. Ofitsiyni veb-sait Ministerstva yustytisii Ukrainy. URL: https://minjust.gov.ua/m/str_12895. (accessed: 10.10.2023). [In Ukrainian].
2. *Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. W sprawie Zasad techniki prawodawczej*. URL: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20160000283/O/D20160283.pdf>. (accessed: 26.05.2023). [In Polish].
3. *Zakon Ukrainy «Pro normotvorchu diialnist». Vidomosti Verkhovnoi Rady Ukrainy* [The Law of Ukraine «On Normative Activity»] (accessed: 01.10.2023). [In Ukrainian].
4. Grzegorz P., Liszka-Michałka K., Maksymiuk M. *Akty prawa miejscowego w praktyce działania samorządu terytorialnego*. Warszawa. 72 p. [In Polish].
5. Błachut M., Kaczor J. *Błędy w tytułach i podstawach prawnych aktów prawa miejscowego jednostek samorządu terytorialnego*. 82 p. [In Polish].
6. Wierczyński G. Komentarz do rozporządzenia w sprawie «Zasad techniki prawodawczej», [w:] redagowanie i ogłaszanie aktów normatywnych, Komentarz, wyd. II, WK 2016, LEX. [In Polish].
7. *Postanowienie WSA w Krakowie z 22.12.2009 r.*, II SA/Kr 473/09, LEX nr 543493. (accessed: 16.09.2023) [In Polish].
8. *Postanowienie Sądu Administracyjnego w Warszawie z dnia 20 kwietnia 2006 r.*, I SA/Wa 1079/05, CBSA) [In Polish].

Дата надходження: 07.11.2023 р.

Майя Пивовар

Національний університет «Львівська політехніка»,
асистент
кафедри теорії права та конституціоналізму
Навчально-наукового інституту
права, психології та інноваційної освіти, к. ю. н.
Maiia.S.Pyvovar@lpnu.ua
ORCID ID: <https://orcid.org/0000-0001-5495-5361>

ПРАКТИЧНІ АСПЕКТИ НОРМОТВОРЧОСТІ ЩОДО АКТИВ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ НА ПРИКЛАДІ ПОЛЬЩІ ТА УКРАЇНИ

Сьогодні міжнародний досвід свідчить, що одним із основних суб'єктів нормотворчої діяльності в розвинутих демократичних країнах є Міністерство юстиції, яке з огляду на свою фахову спрямованість щоденно має справу з нормативно-правовими актами всіх рівнів та шляхом проведення правової експертизи виявляє недоліки проєктів актів, попереджає прийняття незаконних норм, а також виконує значний обсяг законопроектних робіт. У процесах нормотворчої діяльності в Україні важливу роль відіграє Міністерство юстиції України. Указом Президента України від 26 листопада 2003 року № 1348 «Про поліпшення організації законопроектної діяльності» з січня 2006 року на Міністерство юстиції покладено функції головного розробника всіх законопроектів, що вносяться Президентом України та Кабінетом Міністрів на розгляд Верховної Ради.

Однак, окрім функцій покладених на Мін'юст, до 2023 року органи державної влади та органи місцевого самоврядування слідували методичним вказівкам, прийнятим Міністерством юстиції України під назвою «Методичні рекомендації щодо розроблення проектів законів та дотримання вимог нормопроектної техніки». За вимогами, що поставлені перед Україною як держави, яка закріпила курс європейської інтеграції та адаптації національного законодавства згідно з правом ЄС (*acquis* ЄС), було прийнято Закон України «Про нормотворчу діяльність». Відповідно до нього, техніка нормопроектування – це сукупність техніко-правових засобів, способів, прийомів та методів, за допомогою яких створюється проєкт нормативно-правового акта. «Україна вперше за 32 роки отримала «закон про закони», – зазначив спікер Верховної Ради України Руслан Стефанчук. На відміну від України, в Польщі 2002 року було прийнято підзаконно-нормативний правовий акт, який досі регулює вимоги до нормативних актів у цій державі.

Ключові слова: нормотворча діяльність; нормативно-правовий акт; технічні вимоги; нормопроектування.