

ISSN: 2450-6869

eISSN: 2719-6763

No. 19, 2024

DEFENCE SCIENCE REVIEW

<http://www.journalssystem.com/pno/>

[DOI: 10.37055/pno/197026](https://doi.org/10.37055/pno/197026)

Military order as a legal form of operation of organizational units military administration in the sphere of internal organization

Original article

Received: 2024-09-24

Revised: 2024-12-07

Accepted: 2024-12-07

Final review: 2024-11-24

Peer review:

Double blind

Keywords:

order, military administration, legal forms of administration

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Krystian Wasilewski ¹, A-F

[ORCID !\[\]\(1f56542a42e2413e44a2b2023033aa2e_img.jpg\) 0009-0004-2385-9579](https://orcid.org/0009-0004-2385-9579)

A – Research concept and design, B – Collection and/or assembly of data, C – Data analysis and interpretation, D – Writing the article, E – Critical revision of the article, F – Final approval of article

¹ Katolicki Uniwersytet Lubelski, Poland, Poland

Abstract

Objectives: To examine the legal basis on which managerial acts, such as orders, may be issued and the extent to which they may regulate the conduct of employees. In practice, the Act on Homeland Defense in Poland raises doubts regarding the scope of introducing orders towards employees who are not soldiers. The fundamental problem is to determine whether the issuance of such acts falls within the scope of the powers of the managing entity, and how such acts may affect the rights and obligations of employees.

Methods: The dogmatic-legal method

Results: It should be considered whether, in terms of the internal organization of organizational units of the minister and military units, provisions should be introduced in the Homeland Defense Act in Poland that would enable such a unit to be granted a statute or organizational regulations. Regulations issued under the Act should cover not only external issues, such as headquarters or territorial scope of operation, but also the detailed internal organization of these units.

Conclusions: Alternatively, the Act should provide for the Minister of National Defense to grant the unit a statute and the head of the unit to establish organizational regulations by way of an ordinance. The introduction of such a solution would provide subordinated entities with a clear basis, eliminating the need to rely on regulations introduced by way of orders, which could be questioned as to compliance with this form of action - an order.

Introduction

The issue of issuing internal acts by management entities in public administration is an important element of the administrative law relationship between the management entity and the management entity, i.e. the employee. In the doctrine of administrative law, it is recognized that internal legal acts, such as instructions or official orders, are a manifestation of organizational and managerial authority. In the literature on the subject, these issues have been thoroughly analyzed by numerous authors, including I. Lipowicz (Lipowicz, 1991) and Góralczyk (Góralczyk, 2016). According to these authors, internal acts, such as official orders, serve the function of management within public organizations. Góralczyk also emphasizes that management through internal acts requires clear legal foundations and adherence to limits defined by competence norms. These works provide essential theoretical frameworks for analyzing the relationships between managing entities and subordinate entities within the sphere of public administration. Their purpose is to ensure the efficient functioning of organizational units and the proper performance of public tasks. This relationship is based on the principle of hierarchy, where the management entity issues binding orders, and the management entity is obliged to execute them. In this context, however, the question arises about the limits of the application of these acts.

Administrative law relations in Poland between the management entity and the management entity are regulated not only by the provisions of administrative law, but also by other branches of law, such as the Labor Code, which regulates the principles of issuing work regulations and employment conditions. In this context, internal acts such as organizational regulations, official orders or internal regulations, which constitute a form of management in public administration, take on particular significance. These acts must have a legal basis in the regulations governing the functioning of a given unit, and their content should be in accordance with applicable legal standards.

The main objective of the analysis is to examine the scope on the basis of which management acts, such as orders, can be issued, to what extent they can regulate the conduct of employees in the internal sphere. In the practice of the Act on the Defense of the Homeland (military administration), doubts are noted regarding the scope of introducing in the form of orders acts of internal management applicable to employees who are not soldiers. The main problem is to determine whether issuing such acts falls within the scope of the powers of the managing entity, and how such acts can affect the rights and obligations of employees.

1. Legal form of public administration action in the internal sphere in Poland

Public administration bodies operate through their offices. The office is an organizational unit often with a very complex structure. On one side there is the body, on the other there are people employed in the office (Góralczyk, 2016, p. 42). In the internal sphere of administration, within the functioning of a given office, an administrative-legal relationship is created. I. Lipowicz, undertaking research on the essence of the internal sphere of administration, proposed dividing the internal sphere into "two planes". The first one was called the „micro-administrative plane”, which „expresses the system of dependencies between the superior and the subordinate. On this plane, the main form of action is the official order". The second plane

was defined as the „macro-administrative internal sphere" and included "relations between the bodies of general and special government administration, central and local, and between bodies and separate organizational units that do not have the status of a body. (...) I also include in the internal sphere the relations between the bodies of government administration and the bodies of local government administration carrying out assigned tasks" (Lipowicz, 1991, p. 87). This is a legal relationship that is formed between the managing entity and the subordinate entity (e.g. an office employee). Internal actions may be based on a competence norm, external actions on a legal basis (Zimmerman, 2022, p. 353). In the context of the organization of the office and the indicated internal relations taking place, the action of the administration (in the legal form of action) can be distinguished and given a certain name, referred to as management. According to W. Góralczyk, management is a legal institution within which legal forms of action are applied, such as normative acts and administrative acts (Góralczyk, 2016, p. 57).

An example of the former are internal orders, while the latter – official orders. The instruments by means of which the managing body influences the behavior of the managed entity are referred to in two ways: as management acts and management measures. It should be noted, however, that these are not synonyms. The set of legal acts used in the management process is called management acts. Management measures also include other actions that the managing entity takes towards the managed entity as part of management. The application of management means can be differentiated into systems; in the macro-administrative system, it always involves using the competence of the administrative body understood in a strict sense. This always has a statutory source, which gives it priority over actions resulting from other sources. Similarly, one can derive the priority of management means belonging to the indirect system over the means used in the micro-administrative system (superior-subordinate). The former draw their power from the constitutive (statutory) acts of the office (organizational unit), the latter - from the service or employment relationship, which is part of the previously created organizational structure. In the micro-administrative system of management, the addressee of management actions is always a natural person.

2. Military administration

The legislator excluded the office serving the Minister of National Defense from the scope of military administration, leaving the status of this office in the sphere of government administration. However, the minister's bodies and organizational units were left in the realities of military administration, which was already expressed in the act on the defense of the homeland itself. In this act, the legal status of military employees was left to the discretion of the act on employees of state offices (art. 1 sec. 2 point 3 and art. 43 sec. 1 of the act on the defense of the homeland), while employees of the minister's office remained in the realities of the act on the civil service. In addition, the act clearly separated the minister's organizational units as entities separate from the ministry itself, not only by the regime of employee status but also by legal forms of action (see art. 2 point 10 of the act on the defense of the homeland). The bodies competent in matters of state defense and their tasks are specified in the act of March 11, 2022 on the defense of the homeland.

Military administration, which is part of public administration in Poland, can be presented in the subjective and objective approach. In the objective approach, military administration is

understood as a field of military science, part of the state economy, an element of public administration, comprehensive satisfaction of the needs of the armed forces, supplying the needs of the armed forces, all matters of the armed forces that do not fall within the scope of command and training (Szykowski, 2009, p. 36). In the subjective (organizational) approach: these are military bodies, various entities, bodies and institutions. This approach allows us to understand how the military administration is organized internally (Kitler, Stepnowska, Nowak, 2017, p. 380). In the Republic of Poland, the authorities are exercised by the Parliament and the Senate, the executive power by the President of the Republic of Poland and the Council of Ministers, and the judicial power by courts and tribunals. The Council of Ministers carries out public tasks in the field of state security, and performs these tasks using the armed forces. These forces, in turn, are made up of soldiers but also civilian administrative staff. Tasks in the field of state security are, like any other public tasks, performed with the help of an auxiliary apparatus. In the case of the army, the auxiliary apparatus will be the organizational units of the Minister of National Defense, which as a whole constitute the Ministry of National Defense. Of course, in the scope of application of the provisions regarding the Ministry of Defense serving the Minister, the provisions of the Civil Service Act shall apply, as for other local bodies, it will be the Act on Employees of State Offices.

The army has a hierarchical system of positions and ranks - its organization is based on the hierarchical subordination of soldiers. The internal activities of the Polish Armed Forces are regulated in detail by subsequent regulations issued by the Minister of National Defense on the basis of appropriate statutory delegations. Currently, the General Regulations of the Polish Army Soldier are in force. The basis for the operation of the military administration should be sought in the Act on Government Administration Departments. According to art. 19 of the Act, national defense, because that is how the so-called military matters are reserved in the Act, this section includes, in times of peace, matters of defense of the State and the Polish Armed Forces, cyberspace security in the military dimension, the participation of the Republic of Poland in military undertakings of international organizations and in the scope of fulfilling military obligations resulting from international agreements, offensive agreements.

2.1. Organizational unit

The definition of an organizational unit was introduced in the Homeland Act, in accordance with point 10 of Article 2 of the Homeland Defense Act, an organizational unit is a unit subordinate to the Minister of National Defense or supervised by the minister, excluding the ministry. The organizational unit of the Minister of National Defense will include, among others, the Central Military Recruitment Center in Warsaw. In accordance with Article 36 of the Act, the tasks and competences of the minister in charge of a specific department in relation to bodies, including local government administration bodies and organizational units subordinate to him or supervised by him are specified in separate regulations.

2.2. Military units

The definition of military units was specified in Article 2 point 12 of the Homeland Defense Act. A military unit is an organizational unit of the Armed Forces and an organizational unit, operating on the basis of a position granted by the Minister of National Defense, using the official seal with the emblem of the Republic of Poland and the name of the military unit.

Military units and their associations are deployed in garrisons. A garrison includes soldiers, military personnel, and infrastructure in one or more locations. Garrison issues are regulated by the regulation of the Minister of Defense of August 10, 2022 on the establishment, transformation, and abolition of garrisons and the determination of their tasks, headquarters, and the territorial scope of the competences of their commanders (Królikowski, 2023, p. 116.).

An organizational unit is, in accordance with art. 2 point 10, a unit subordinate to the Minister of National Defense or supervised by him, financed from the budget of the Ministry of National Defense, excluding the office serving the Minister of National Defense. A military unit is an organizational unit of the Armed Forces (art. 2 point 12). In accordance with art. 18 of the U.O.O., service positions are created in a military unit for soldiers and employees of the Ministry of National Defense. Employees of organizational units and military units including the ministry create employees of the Ministry of National Defense (art. 2 point 24 of the U.O.O.).

3. Order as a legal form of action of the military administration

The legal basis for the action of the military administration in the form of an order should be sought in art. 422 of the Act of 11 March 2022 on the defense of the Homeland, according to which the Minister of National Defense issues military regulations by way of an order. By order No. 7/MON of 28 April 2023 on the introduction of the "General Regulations of a soldier of the Polish Army", the Minister introduced regulations in which he defined what is to be understood by the term order. An order is a command to perform a specific action or omission issued to a soldier by a superior or authorized soldier of a higher rank. The order is issued orally, in writing, by means of signals or through technical means of communication. The order must be concise, understandable and issued decisively.

The definition of an order in higher-ranking acts was introduced in the Penal Code and is of key importance for determining the designations of the concept of an order. In accordance with art. 115 § 18 of the Penal Code, an order is an order issued to a soldier on official business terms by a superior or an authorized soldier of a higher rank, ordering a specific action or omission. It has the nature of a specific order issued in official service conditions. When qualifying an order as an order issued on official business terms, its content, not its form, is of decisive importance (Dobosz, Puczko, 2023, p.261).

The concept of an "order" in Polish law, particularly in the military context, has been the subject of numerous theoretical and legal analyses. Scholars have examined this term in detail, highlighting its various interpretations within the Polish legal system. J. Ziewiński addressed the issue of orders in his work *Military Orders in Criminal Law* (Ziewiński, 1973). This topic was also explored by Igor Zgoliński, J. Lachowski, and A. Ziółkowska in the *Commentary on the Criminal Code* (Zgoliński et al., 2016), while W. Cieślak discussed issues related to criminal law, including institutions and fundamental principles, in his monograph *Criminal Law – Institutions and Fundamental Principles* (Cieślak, 2010). In the context of military regulations, orders were also thoroughly analyzed in the *Commentary on the Homeland Defense Act* authored by J. Bulira, A. Jagnięża, and E. Krempeć (Bulira et al., 2023).

In her article „Military Orders in Polish Criminal Law," A. Pietras examines the evolution of the definition of orders in Polish law, noting that the first attempts to define this term occurred during the interwar period and were based on military and criminal law provisions (Pietras, 2016).

It is also worth noting that the Polish legal system recognizes the concept of orders in a narrow sense (*sensu stricto*), referring to military orders as defined by the Criminal Code, and in a broad sense (*sensu largo*), encompassing various official directives that do not meet all the definitional criteria of orders in the strict sense.

The inconsistent use of the term "order" by legislators, jurisprudence, and legal doctrine leads to numerous theoretical and practical problems.

While the failure to comply with a military order by a soldier leads to specific consequences under criminal law, such as penalties outlined in the Penal Code, the failure to follow an official instruction or directive by a civilian employee of the military administration does not and cannot result in criminal liability. It is essential to distinguish between a military order issued to a soldier, which carries a specific legal and disciplinary weight, and an instruction or directive labeled as an "order" but addressed to a civilian employee. In the case of civilian employees, non-compliance with such directives is subject solely to the provisions of labor law, particularly the Labor Code. This differentiation underscores the need for clear legal definitions and boundaries regarding the responsibilities and liabilities of military and civilian personnel within the military administration.

In the public administration system, military administrations are formed by organizational units of the minister or supervised by him, as well as military units. Civilian employees of the military administration are subject to official pragmatics.

The question arises about the competence that constitutes the basis for issuing acts of internal management in relation to military units and organizational units (As far as the specificity of the legal basis is concerned, it is assumed that standards defining general tasks can only be the basis for internal or non-authoritative actions). The problem also arises when issuing in the form of an order the organization and functioning of organizational units and military units by the heads of these units in matters not arising from the Labor Code or other statutory authorizations, therefore there is no general provision on competence in military law, in particular in the Act on the Defense of the Homeland. In accordance with art. 2 point 1 of the Act of 14 December 1995 on the Office of the Minister of National Defence, the scope of the Minister of National Defence's activities includes directing the entire activity of the Armed Forces in times of peace. The question therefore arises whether such regulations should be issued by the minister on the basis of art. 2 point 1 of the Act on the Office of the Minister of National Defence, or whether the legal basis should be sought in other legal acts. Currently, in the military administration, the internal regulations are derived from the minister's decision issued on the indicated legal basis. Because only such a basis for action can be possibly admissible, another norm, which could be called qualified - dedicated to such specific action in the internal sphere.

Góralczyk points out that in the case of management acts, there is no need to rely on a qualified basis, a general basis is sufficient, the author also explains that the managing entity must operate within the limits of the law and towards strictly defined entities (Góralczyk, 2016, p. 69).

In the context of creating internal regulations regulating relations within the public administration, it should be noted that every activity of public entities should be based on the provisions of the law and fall within its limits. The Republic of Poland is a state of law, in which public authorities operate in democratic conditions, which means that all actions of public entities must be predictable and transparent. In this context, it is crucial that the competences in the field of internal regulations are clearly defined.

The general competence, which can be assigned, for example, to the Council of Ministers to conduct the general economic policy of the state, is based on the principle of general responsibility for managing the government administration. Such a general competence is therefore, for example, the so-called general competence to act granted to the Council of Ministers, which means that the Council of Ministers has a broad mandate to make decisions within the framework of conducting state policy. However, in the case of detailed regulations concerning the functioning of military units or organizational units of government bodies, such general competences are insufficient and should be clarified by the legislator by amending the defense act.

An example of an overly general provision is the norm according to which the Minister of Defense is authorized to manage the armed forces. Although this provision defines the general competence of the minister in relation to the management of the armed forces, it does not specify sufficiently the scope to which the minister may regulate detailed issues concerning the internal organization of military units or other organizational units subordinate to his competences. Too broad a definition of powers may lead to ambiguity and a lack of appropriate control over individual actions of the minister, which may be inconsistent with the requirements of a democratic state of law.

This therefore requires adopting the position that the competences of executive authorities, including in particular the minister, should be formulated in a precise manner so as not to violate the principle of legalism. This principle requires that the actions of the administration be based on clear legal foundations that clearly define the scope of possible actions, which ensures transparency and control in a democratic state of law.

The Homeland Defense Act should introduce regulations that, following the example of Article 31 of the Council of Ministers Act, would specify detailed principles for the organization of military units and local bodies of the Minister of National Defense. In the aforementioned Article 31 of the Council of Ministers Act, the Prime Minister, by way of an ordinance, grants the Chancellery of the President a statute that specifies the detailed scope of tasks and the organization of the Chancellery and the organizational units supervised by the Head of the Chancellery. Similar solutions should be included in the Homeland Defense Act to ensure greater precision in the organization of military structures. Currently, the Act only indicates that military units are deployed in garrisons, and the Minister of National Defense, by way of an ordinance, creates, transforms and abolishes garrisons, specifies the tasks of their

commanders and their headquarters and territorial jurisdiction. Similarly, with respect to the Minister's local bodies, the Minister creates, transforms and abolishes military recruitment centers and specifies their headquarters and territorial scope of activity. These regulations, although important, do not regulate the detailed internal organisation of these units, which gives rise to the need to clarify the legal basis on which these units operate.

Conclusions

It should be considered whether, in the scope of the internal organization of organizational units of the Minister and military units, provisions should not be introduced in the act on the defense of the Republic of Poland, the homeland, which would allow granting such a unit a statute or organizational regulations. Regulations issued on the basis of the act should cover not only external issues, such as headquarters or territorial scope of activity, but also the detailed internal organization of these units.

Alternatively, it should be provided in the act that the Minister of National Defense grants the unit a statute, and the head of the unit establishes organizational regulations by way of an order. The introduction of such a solution would provide subordinate entities with clear foundations, eliminating the need to rely on regulations introduced by way of orders, which could be questioned in terms of compliance with this form of action - an order. Such regulation would contribute to increased stability and predictability of the legal order, removing doubts regarding interpretation.

Finally, taking into account the principles of administrative law and management theory in the process of creating regulations regarding the internal organization of military units is crucial to ensuring the efficient functioning of the national defense system. Only by clearly defining roles, competences and responsibilities can tasks related to state defence be effectively carried out, which in the long term will contribute to national stability and security.

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