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Contents

Contemporary threats to the self-governing nature of local government

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***Abstract*— The problem of joint taxation of the leasing service and the insurance service of the leased asset has been presented on the example of the analysis of the judgment of the Court of Justice of the European Union in the case C-224/11. This judgment, although issued more than ten years ago, is still under discussion. This ruling was issued in response to questions referred for a preliminary ruling by the Naczelny Sąd Administracyjny in Warsaw concerning two issues. The first, regarding the determination of the correct treatment of the leasing service and the insurance service of the leased asset, i.e. as one complex service or two separate ones, and the second, relating to the determination of the correct taxation of the leasing service and the insurance service for the leased asset (separate or joint) in the event that the lessee does not is a party to the insurance contract for the leased asset. The Court of Justice of the European Union ruled on separate treatment and taxation of these services, but indicated that their essence should be considered in each case separately.**

Keywords— government administration, local government, decentralisation, review.

I. Reactivation of local self-government institutions in Poland.

Nowadays, territorial self-government is treated as a form of decentralised administration, manifesting itself in the exercise of public administration, also in authoritative forms, thus with the possibility of applying administrative coercion (J. Panejko, Geneza i podstawy samorządu europejskiego, Paris 1926, reprint, Warsaw 1990, p. 97). Self-government is thus a decentralised state administration based on the provisions of the law, exercised by local bodies, hierarchically independent of other bodies and autonomous within the limits of the law and the general legal order. This indicates the broad nature of the concept of decentralisation, in which self-government is one type of decentralisation. In this view, the subjects of self-government are legal entities organised corporately (self-government associations) and the basis of their subjective rights is the applicable legal norms. The territorial nature of the ties connecting the inhabitants of a municipality distinguishes local self-government from other types of self-government such as professional or economic self-government.

Thus, the subject of local self-government is the local community, organised into a territorial self-governing association, and its object is the performance of public administration (Dolnicki, 1993; Kulesz 1990). As is also stressed in the literature, self-government is one of the forms of decentralised administration, but it does not exhaust the concept, as other entities, e.g. certain state establishments or professional self-government bodies, may also operate in decentralised forms. In turn, the essential features of self-government include the fact that it has a corporate character, that one becomes a member of the self-government by virtue of a law, that it performs tasks of a public nature and is a separate entity from the state, and finally that the performance of public tasks takes place on the principles of independence, including financial independence, and that the means of supervision are determined by law (Leoński 2002)

In the area of interest, particular attention should be paid to the provision contained in Article 163 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. Nr 78, poz. 483), which confirms the performance by the self-government of public tasks not reserved by the Constitution or laws for other public authorities. This means that the self-government bodies, while maintaining their autonomy, may apply all legal forms of action appropriate to state authorities. In particular, they may enact universally binding laws and issue administrative decisions, and if it is necessary to enforce the orders and

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prohibitions contained therein - apply state coercion. It should also be emphasised that the separateness of self-government as a subject of public authority is expressed in the legal context by the possession of a public-legal personality separate from the state in the scope of exercising state authority (Jendrośka 1997). In exercising its powers within the scope of this authority, the self-government applies the forms of action provided for by law and uses the administrative-legal route. The legal basis for these actions lies in the sphere of universally binding law, which defines both the object and the scope of competence of self-government bodies (Nowacka 1997).

For this reason, it is entirely justified that the restoration of the institution of local self-government in Poland in 1990 is regarded as one of the most significant actions undertaken in order to transform the system of Poland Agopszowicz 1997). Although this occurred only at the commune level, it did not close the way to further decentralisation of the state and to the creation of local government institutions at other levels of territorial division. This was evidenced by the content of Article 70(4) of the so-called Small Constitution (Ustawa Konstytucyjna o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym z dnia 17 października 1992 r., (Dz. U. Nr 84, poz. 426 ze zm.), as well as the content of Articles 15, 16 and 164(2) of the Constitution of the Republic of Poland of 2 April 1997. These provisions stipulated that the basic unit of local government was the commune, and the other types of local government units were to be defined by law, and that Poland's territorial system was to ensure the decentralisation of public authority. It should be emphasised that the attempts made in 1992-96 to establish self-government at the district and voivodeship level were unsuccessful. For this reason, the 1990 reform of the public administration system in Poland was considered unfinished, however, clearly emphasising that the adopted constitutional solutions provide a sufficient basis for undertaking further system reforms by way of legislation (Rabska, 1994). These changes were introduced in 1998, with the enactment of the following acts: on district self-government and on voivodship self-government on 5 June 1998 (Dz. U. Nr 91, poz. 578 i 576).

The introduction of the system reform in 1998-2000 resulted in a significant decentralisation of the tasks and competences of the state authorities to local government units. Compared to the changes of previous years, therefore, there were far-reaching changes in this respect, both in terms of the system and competences. Individual self-governments have become fully independent entities in relation to each other, their tasks and competences are defined in laws, and the primary burden of meeting public needs rests with the municipality, as the basic unit of this self-government. The self-government performs its tasks with the help of democratically elected bodies. The scope and criteria for supervision of the self-government are defined by law. Finally, and most significantly, local self-government is guaranteed judicial protection under Article 165(2) of the Constitution.

The existing degree of decentralisation cannot, in my opinion, be considered sufficient. The changing tasks of the state, require its organisational structure to adapt to them. It should be noted that, despite the significant systemic and competence changes that have taken place at the municipal level, there has not, in my view, been sufficient reform of the administration at the highest level, where a group of different types of government agencies, advisory bodies or government plenipotentiaries has grown alongside the supreme and central bodies. It is therefore urgently necessary to consider which tasks and competences of government bodies, including those functioning at the voivodship level, can still be transferred to local government bodies, as well as which of the tasks of current local government can be transferred to the lowest possible level, i.e. to the municipal level. Thus, decentralisation within the local government system should also be deepened, including through the transfer of certain tasks of the municipality to its auxiliary units, i.e. village councils (solectwo), city districts (dzielnica), and others, as is clear from Article 4(3) of the European Charter of Local Self-Government (European Charter of Local Self-Government drawn up in Strasbourg on 15 October 1985 (Dz. U. z 1994 r. Nr 124, poz. 607). This view is also shared by I. Lipowicz, pointing out that, against the background of other democratic countries, the existing low system diversity of municipalities in Poland hampers the development of Polish self-government (Lipowicz 2019).

II. Reasons for changes in local government legislation.

In recent years, however, a reverse phenomenon can be observed, i.e. a limitation of self-government authority, in particular of communes, both in the sphere of own tasks, i.e. tasks performed in their own name and on their own account, and in the sphere of commissioned tasks. It seemed, therefore, that viewing local self-government as a form of struggle against the central (governmental) authority had only historical significance. In this view, territorial self-government was treated as "opposing the central authorities especially when the central authorities and the territorial self-government bodies were represented by different political forces. In the case where central and local authorities are controlled by the same political forces, this element disappears" (Leoński 1994). This thesis has become fully up-to-date in recent years, as certain legislative changes make it impossible for municipalities to exercise fully the public authority previously vested in them, including in matters relating to the internal organisation of local government. As it is also evidenced by the reliable sources indicated below, municipalities in which power is exercised by supporters of the ruling party, can count on greater financial support from the government than other municipalities.

This is a disturbing phenomenon, although not a completely new one, as the self-government system laws as well as the acts

of substantive law assigning specific tasks and competences to the self-government have undergone many changes over the past 32 years, and many new laws have been passed in this respect. The over 32-year-long existence of the reborn local government in Poland, therefore, invites reflection on its system, tasks, as well as on the scope of its supervision. The question can also be posed whether the existing legal regulation in this area corresponds to contemporary requirements, and thus whether the concept of local self-government has already been fully formed. Such questions have in fact been asked in the science of administrative law before, at the same time pointing to the experience of other democratic countries, in which a debate of this kind occurs very often (Łączkowski 1997). Indeed, as it is emphasised in the literature, also in these countries, local self-government is in the process of constant transformation (Schmidt-Assmann, Kommunalrecht 1985).

It is no different in Poland. This is evidenced by the numerous amendments to the local government law, some acts of which have been amended even several times a year. The Act of 8 March 1990 on Municipal Self-Government (Dz. U. z 2022 r., poz. 559 ze zm.) in its original version ran to less than 12 pages, while after more than 70 amendments it now runs to 21 pages. The Act of 5 June 1998 on county self-government (Dz. U. z 2022 r., poz. 1256) was amended 59 times, and the Act of 5 June 1998 on province self-government (Dz. U. z 2022 r., poz. 2094) was amended 62 times. There were various reasons for these amendments: sometimes it was the poor structure of the provisions, allowing for their inconsistent interpretation not only by local government bodies, supervisory bodies, but also by administrative courts (e.g. with regard to the procedure for adopting resolutions), sometimes it was the not very precise legal regulation allowing for the abuse of the law for political purposes, which significantly hampered the efficient functioning of local government bodies e.g. Finally, some changes to the law resulted from the need to adapt it to the requirements stemming from the Constitution or specific laws, e.g. with respect to increasing openness of local government bodies and councillors or restrictions on business activity by public servants. It should be emphasised that as a result of these changes, the laws in question have significantly expanded their normative content, sometimes almost twice.

With regard to municipal self-government, the changes concerned first of all the expansion of the tasks and competences of municipal bodies. The concept of the so-called "unitary municipality" adopted in 1990, which did not take into account the fundamental differences that existed between individual municipalities in terms of their size and ability to carry out a variety of tasks, ran counter to the principle of subsidiarity expressed in the aforementioned Article 4(3) of the European Charter of Local Self-Government, according to which responsibility for public affairs should be borne primarily by those bodies that are closest to the citizens. Article 3(1) of the Charter, in turn, conferred on municipalities the right to manage and administer an essential part of public affairs, meaning that tasks and powers should be devolved to municipalities taking into account their territorial diversity. Thus, the model of division of competences between communes and government administration bodies adopted in Poland at that time was not appropriate, as it did not take into account this differentiation (Podgórski 1993). However, striving to satisfy the needs of the local government community in the best possible way entailed the necessity of acquiring these tasks and competences through agreements with government administration bodies, which in practice gave rise to a competence grid that was difficult to establish (Martysz 2000). This also had a negative impact on the procedure for issuing administrative decisions, as disputes arose over competence not only between municipal authorities and government administration bodies, but even within the local government structure.

III. Evolution of the legal basis for the organisation and functioning of self-government.

Observation of contemporary legislation, which is beginning to be dominated by parliamentary bills, does not inspire optimism. The literature points out that 'we have been taken over by the mania for creating laws' (Waltoś 2010), resulting in sloppy legislation. These views should be fully shared. Particularly worrying are those changes in the legislation that limit the wide-ranging powers of local government. The subject matter is extremely broad, although not entirely new, as it should be noted that the first legal regulations in this respect appeared as early as 2001 and referred to the composition of committees of the commune council, made under the Act of 11 April 2001 amending the acts: on communal self-government, county self-government, voivodeship self-government, government administration in the voivodeship and amending some other acts (Dz. U. Nr 45, poz. 497). It should be noted that the original version of the Act on municipal self-government allowed for the participation of persons who were not councillors in the composition of committees (with the exception of the audit committee), provided that their number did not exceed half of the statutory composition of the given committee (Article 21 of the Act on municipalities). This depended solely on the discretion of the given municipal council, which was also pointed out by the Supreme Administrative Court, emphasising that this entitlement derives from the systemic and constitutional principle of the "independence of a municipality in terms of shaping the organisational structure of its bodies so that it fulfils its tasks to the maximum possible extent" (judgment of the Supreme Administrative Court of 8 February 2005 (OSK 1122/04), OwSS 2006, z. 1, item 9). This solution was widely approved, as in many cases (especially in rural municipalities), councillors were (and still are) people without specialist knowledge useful or even necessary for the work of certain commissions. The possibility of electing specialists (e.g. economists, lawyers,

town planners) to the committees contributed to an increase in quality with regards to content of the resolutions passed by the committees and also had a direct impact on the quality of the resolutions of the municipal council itself. In this case, however, the good experience of municipalities was not used and the provision allowing non-councillors to participate in the work of council committees was removed from the Municipal Act. This was undoubtedly one of the first restrictions on the competence of the municipal council in matters of creating its own internal bodies, as the council could use this power or not, it had a right of choice in this regard, which it was deprived of for unknown reasons. This also met with a critical reception in the literature (J. Boć [in:] Powiat: z teorii, kompetencje, komentarz. Red. J. Boć Wrocław 2001, p. 362). It is regrettable that such a solution has also been adopted in the district and the voivodeship.

A significant evolution of the legal regulation could also be observed with regard to the legal position of the municipal executive, although these changes were not due to poorly constructed provisions, but to their abuse for political purposes. In its original version, the provision only stipulated that the municipal council (rada gminy) elected the executive board (zarzad), without a strict deadline, and could also dismiss the board at any time. The board initially consisted of 4 to 7 persons, from 1995 onwards it consisted of 3 to 7 persons and finally from 2001 onwards of 3 to 5 persons. Against this background, there have been cases of the unjustified postponement of the election of the executive board due to the lack of the legally required quorum, or the overly frequent removal of the board by the council without any justifying reason. These actions resulted in a statutory limitation of the period within which the council was required to elect the board (to 6 months, later reduced to 3 months), under pain of dissolving the council and calling a new election. A rigour was also introduced that the dismissal of the board could not take place at the same session in which such a proposal was made, but at the next session, and an obligation to consult the audit committee in the dismissal procedure was established. However, the measures were not effective, so in 2002, in view of the many difficulties in electing the statutory composition of the management board, mainly due to the existence of political divisions within the council, and (for the same reasons) frequent attempts to dismiss the management board or its individual members, by the Act of 20 June 2002 on the direct election of the mayor of a municipality (Dz. U. Nr 113, poz. 984), the institution of a collegial executive body in the municipality was abolished in favour of a monocratic body: the mayor of a municipality (or the president of a city), elected by general election. In this way, the legal position of this body was strengthened at the expense of the municipal council, as currently the council, as the decision-making and controlling body in the municipality, does not have the power to dismiss the mayor during his/her term of office. Such power is now vested only in the residents of the municipality, who may only dismiss the mayor through a referendum ordered on this matter, pursuant to the Act of 15 September 2000 on local referendum (Dz. U. z 2019 r., poz. 741). A certain attempt to strengthen the position of the municipal council vis-à-vis the head of the municipality was the introduction of the institution of a vote of confidence by virtue of the Act of 11 January 2018 amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies (Dz. U. z 2018 r., poz. 130). If a vote of confidence is not given to the mayor in two consecutive years, the municipal council may adopt a resolution to hold a referendum on his/her dismissal.

Interestingly, both in the district and the voivodship, the previous system of executive bodies was retained and these functions are performed by collective bodies: the district board and the voivodship board, elected and dismissed by the district council or the voivodship assembly respectively. However, as in the municipality, a vote of confidence for the executive bodies was introduced at both of these levels of local government, which appears to be a redundant solution given the strong influence of the governing bodies on shaping the composition of the executive bodies.

A similarly controversial issue, which had raised many doubts since the beginning of the Municipal Self-Government Act, was the composition of the audit committee. Pursuant to Articles 18(3) and 21(2) and (3) of the Act in its original version of 8 March 1990, the municipal council, in exercising its control function, could appoint an audit committee, but this was not an obligatory task. This committee, like the other committees, was elected by the municipal council and could be composed of both councillors and non-councillors, with the provison that non-councillors could not staff more than half of the committee's members. Such a regulation did not initially raise any doubts, however, until councillors acting as chairman of the council or his deputy, as well as persons who were members of the executive board, started to be elected to the committee. Thus, when members of the executive board also started to be elected to this committee, this situation was not unlawful, but there was no doubt that its control action would not be fully objective. Its action thus contradicted one of the basic principles of scrutiny, namely the principle of objective truth: the members of the management board were thus, in a way, judges in their own case. Although some municipal councils perceived such a danger and introduced statutory restrictions on the composition of the audit committee, these measures were not always fully effective. It should be recalled that combining these functions was not, after all, illegal.

When this phenomenon began to spread, despite its legality, the situation led to an amendment of the law in question in 1995. As a result of the amendment, it was forbidden for both members of the executive board and persons acting as chairman or deputy chairman of the council, as well as persons who were not councillors, to become members of the audit committee. In the latter case, the idea was that only members of the municipal

council would be responsible for the results of the audit, as it was the council that assessed the audit activities of the committee. As a result of the amendment, the optional appointment of the audit committee was also dropped, hence, until 2018, the audit committee was the only council committee whose election was mandatory. Since the 2018-2023 term of office, the second obligatory committee is the complaints, motions and petitions committee, introduced by the Act of 11 January 2018 amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies (Dz. U., poz. 130). In my opinion, by establishing the obligatory nature of this committee in the municipal council, the exclusive right of the council to shape its internal structure was also violated. It should be added that a similar solution was also adopted in the Act on district self-government and in the Act on province self-government.

Despite a number of amendments, in my opinion the procedure for convening sessions of governing bodies when such an initiative is put forward by a statutorily defined group of councillors or the executive body of a local government unit has not been properly regulated. Although the laws indicate in this case the obligation to convene such a session by the council chairman or his deputy (see, for example, Art. 20(3) of the Act on Municipal Self-Government), none of the laws regulates the situation where, despite a request for a council session being submitted by entities authorised to do so, the council chairman or his deputy(s) fail to perform their duties within the statutorily defined deadline. It should be noted that an interesting solution in this regard was provided for in Article 15(3) of the Act on district self-government, in force until 30 May 2001, according to which if the chairman failed to convene an extraordinary session of the district council within the statutory deadline, the right to convene this session passed to the starosta, who convened it within 14 days of the request. For incomprehensible reasons, this provision was not only not adapted to the Municipal Self-Government Act and the Voivodship Self-Government Act, but was abolished in the District Self-Government Act when it was amended in 2001. Accordingly, under the current legislation, the chairman of the council is the only entity authorised to convene a session, even if a group of councillors or the executive body of a given local government unit submits a motion to that effect. Even if the councillors wished to exercise their right to dismiss the chairman of the council, this would still have to take place at a session convened by the chairman of the council (local council) or by a deputy appointed by him. This is therefore a loophole that should be closed.

A significant evolution can also be seen in the provisions concerning the criteria for supervising the activities of local government bodies. Here, the changes have actually gone in the right direction. It should be noted that in the original version, supervision was exercised on the basis of the criterion of compliance with the law, with the provison that in commissioned matters, supervision is also exercised on the basis of the criteria of purposefulness, reliability and economy. This constituted a significant limitation of the independence of local self-government units, sometimes justified by the concern for efficient and lawful performance of public tasks. After the amendment of the Act on Municipal Self-Government in 2001, this supervision is limited only to the criterion of compliance with the law. Interestingly, in the Act on District self-government and in the Act on voivodship self-government, already from the date of entry into force of these acts (i.e. from 1 January 1999) only the criterion of compliance with the law applied to the supervision of these self-government units.

IV. CONTEMPORARY THREATS TO SELF-GOVERNMENT

More worrying, however, are those regulations which currently limit the local government's authority in favour of the government administration. It would be impossible to list all such regulations here, so I will only highlight those that, in my opinion, are examples of grossly flawed regulations or those that allow the government administration to encroach on local government activity, particularly in communes. One such regulation is the strict limitation of the exclusive right of municipal councils, guaranteed by law and existing for many years, to name public streets or squares, respecting the will of the residents of the municipalities.

Such a restriction was introduced in all severity by the Act of 1 April 2016 on the prohibition of propagation of communism or any other totalitarian system by the names of organisational units, auxiliary units of a municipality, buildings, objects and equipment of public utility and monuments (Dz. U. z 2018 r., poz. 1103, hereinafter referred to as the Act or the Act on the prohibition of propagation). From its inception, the Act was highly controversial, as the result of a hasty and thoughtless legislative process, as it gave the governors (voivode, wojewoda), as supervisory bodies, an almost unlimited right to interfere in this area of the hitherto exclusive jurisdiction of the municipal councils. In their actions, the governors, in cooperation with the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation (IPN), were very often guided by subjective, sometimes only known to themselves, criteria for determining whether something or someone fulfils the statutory prerequisites for renaming a public street or square, i.e. whether something or someone symbolises communism or another totalitarian system. In this case, too, there was no provision for any mechanism to control the content of IPN opinions, which in many cases were treated by the governors as binding, or for any form of cooperation between the provincial governor and local government bodies in the procedure for assigning a new name, even in the form of seeking the non-binding opinion of the municipality council or the decision-making body of a subsidiary unit (e.g. the city district council (rada dzielnicy) or estate council (rada osiedla)). The granting of a new name was thus a fully independent, autocratic decision of the governor

(Borówka 2018). Moreover, in accordance with Article 6b of the Act under discussion, any subsequent change of such name by a local government unit requires the prior consent of the IPN and the locally competent governor. Thus, the legislator has introduced here an additional, very drastic safeguard, protecting the decisions taken previously by the voivode. It should also be noted that the interaction of IPN and the governor with the municipal authorities in this case takes on the most drastic form of limiting the authority of these authorities: the lack of consent does not allow the municipal authorities to take any other decision than the one to which these authorities agree. Thus, should any commune council now intend to change such a name to a different one that does not even contain any political or historical overtones, it must obtain the approval of the aforementioned authorities, which in practice determines the impossibility of effectively changing the names given by the governors. The restoration of the full authority of the municipality in this respect will apparently only be possible after the amendment or repeal of this law. Moreover, in Article 6c, the law in question also introduced a (fortunately ineffective) mechanism by which it wished to limit the right of local government units or their unions to judicial protection of their independence under the Constitution. According to this provision, a complaint to an administrative court against a substitute order of a governor concerning a change of a street name would be available to a territorial self-government unit only if it could not change the name for reasons beyond its control. Similar provisions (art. 5a) were introduced by the Act with respect to the manner of removal of broadly understood monuments that might commemorate persons, organisations, events or dates symbolising communism or another totalitarian system. In practice, disregarding the interpretative doubts arising in this respect, voivodes undertook very intensive 'decommunization' activities, issuing as many as 463 substitute orders by April 2018, 106 of which were challenged in administrative courts (Żółciak 2018.). The Mazovian Voivode issued the most decrees, as many as 103, the Silesian Voivode 80, the Greater Poland Voivode 79, the Łódź Voivode 44, the Kuyavian-Pomeranian Voivode 42, and the Lower Silesian Voivode 37. The court process of reviewing these decrees confirmed beyond any doubt that also in these cases the municipalities have an effective right to protect the authority granted to them to name public streets and squares. At the same time, the court judgments unequivocally stood in the way of this seemingly unfettered path towards restricting this right. These judgements also showed a friendly, pro-constitutional interpretation of this very controversial Act for municipalities, which resulted in many cases in the restoration of old names (Martysz 2022).

An example of excessive state interference in the sphere of self-government can also be found in education legislation. Apart from the fact that the government administration decides on teachers' salaries without, however, providing enough money for this purpose, it also interferes excessively in the rules of organisation and operation of schools and kindergartens. For example, it is up to the minister to determine the maximum number of children in classes I to III and this number cannot exceed 25 pupils (cf. § 5 of the Regulation of the Minister of National Education of 28 February 2019 on the detailed organisation of public schools and public kindergartens, Dz. U. poz. 502). In exceptional cases, this can be increased by 2 pupils, but otherwise a class (school division) must be divided into 2 classes, which means incurring double costs. While in large cities this requirement can be fulfilled, because the number of school divisions in a school is relatively large, in small municipalities this leads to classes of 12 -14 children each and the creation of artificial divisions. It also leads to high costs that municipalities are unable to bear, as they do not receive additional money for this purpose.

With regard to schools, the state has also encroached on the organisational independence of the municipality. Well, according to Article 63(14) of the Act of 14 December 2016 of the Education Law (Dz. U. z 2021 r., poz. 1082), the competition committee is composed of three representatives each of the school leading authority and the authority in charge of pedagogical supervision, two representatives each of the pedagogical council and the parents' council and one representative each of the trade union organisations. In practice, this means that the executive body of the municipality in fact ceases to have any influence on the selection of the head of the school, as it is difficult to expect teachers or union representatives to oppose the candidacy proposed by the school superintendent. The state has intervened in matters of school operation to such an extent that even school organisation sheets are given an opinion by the school superintendent (Article 51(12) of the above Act).

The upcoming changes in this area do not bode well. The controversial Act of 13 January 2022 amending the Education Act was vetoed by the President of the Republic of Poland on the grounds that the provisions of the Act 'may be assessed as unduly restricting the independence of local government units running public schools. Making many activities dependent on obtaining a prior positive opinion of the competent school superintendent may interfere with the independent performance of their own task, i.e. running schools and other institutions. Restricting the independence of local government units may also violate the principle of decentralisation of public authority, as well as the principle of subsidiarity set out in the preamble to the Constitution of the Republic of Poland" (prezydent.pl). Unfortunately, the subsequent amendment of the Act in question, as well as other acts, passed by the Sejm on 4 November 2022, still contains many provisions limiting the independence of local self-government units, excessively increasing the powers of the superintendent, as a government administration body, e.g. with regard to controlling additional classes conducted in schools by representatives of social organisations (horka.sejm.gov.pl).

The state has also encroached extensively on the

organisational sovereignty of the municipality, relating to municipal cultural units, e.g. libraries or cultural centres. Here, too, the sovereignty of municipalities is severely limited. Pursuant to Article 13(8) of the Act of 27 June 1997 on libraries (Dz. U. 2019 r., poz. 1479 ze zm.), the intention to merge a small municipal library e.g. with a municipal cultural centre in order to rationalise costs (the issue of financial services, staff replacements, etc.), requires the consultation of the National Library Council acting under the minister responsible for culture and national heritage protection, the opinion of the competent provincial public library and the granting of consent by the aforementioned minister. It is possible to express the view that, in some cases, this minister may not even know where the particular municipality running such units is located, but on the basis of the application submitted he can decide whether or not this is a good solution for the local community.

Pursuant to Article 65(28) of the Act of 31 March 2020 amending the Act on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts (Dz. U., poz. 568 ze zm.), the Council of Ministers was authorised to create, in the form of a resolution, rules for the distribution and transfer of support for investment tasks to local government units. Implementing this provision, the Council of Ministers adopted Resolution No. 102 of 23 July 2020 on support for the implementation of investment tasks by local government units (M. P., poz. 662). The practice of distributing this money in practice caused a lot of controversy. Statements made by some representatives of local governments were unequivocally negative that the Government was distributing the money, but only to a select few, which was confirmed by press releases. They show that a significant part of this money was directed "to local governments associated with the ruling party. Large cities got nothing", including "cities such as Łódź, Poznań, Warsaw, Lublin, Wrocław, Kielce, Biała Podlaska or Biłgoraj. What determined this distribution? Strangely enough, all local authorities where PiS is in power received subsidies. The aforementioned cities, which did not see a single zloty, are mostly headed by independent mayors or opposition party activists'. It should be added that the assessment of the applications was made on a discretionary basis by a special commission appointed by the Prime Minister, the composition of which, however, was not disclosed (superbiz.se.pl)

State interference in the sphere concerning the operation of municipal companies is also extensive, which means that the local government may, to a limited extent, decide on the financial condition of such a company. For example, by the provisions of Articles 23 and 27a of the Act of 7 June 2001 on Collective Water Supply and Wastewater Disposal (Dz. U. z 2020 r., poz. 2028 ze zm.), the minister responsible for water management and the competent director of the regional water management board of the State Water Management Authority Wody Polskie have been granted the tool to verify water and wastewater tariffs (prices). The justification that in this way the state safeguards the interests of residents by defending them against excessive price increases is unjustified, as it constitutes an attempt to burden local governments with the consequences of their actions. This creates a public perception of a good government administration that looks after the interests of residents and a bad local government that raises water and sewage rates. Meanwhile, in practice, the verification of tariffs takes a very long time, sometimes even two years, and water and sewage companies incur significant financial losses during this time and record a negative financial result, failing to apply appropriate (cost-covering only) prices for water and sewage.

Dangerous for the self-governments' independence is also a kind of manipulation of the term of office and the date of local elections. It should be borne in mind that until 2018, local government laws provided for a 4-year term of office for these bodies. Pursuant to the aforementioned Act of 11 January 2018 amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies, the term of office of local governments was extended to 5 years. Leaving aside the unjustifiability of the extension of the term of office, it was known since 2018 that the next elections would be held in 2023. Meanwhile, by the Act of 29 September 2022 on the extension of the term of office of local self-government bodies (druk sejmowy 2612), the term of office was extended until 30 April 2024. The act has caused controversy in the local government environment, as the postponement of local government elections to spring 2024 will lead to their coincidence with European Parliament elections, and will also make it more difficult for local governments to meet the deadlines for the report on the state of the local government unit and to obtain a discharge. Let us recall that according to the provisions of the constitutional acts, the executive bodies of the local self-government must present these reports by 31 May each year, and then the constituent bodies are obliged to adopt resolutions on granting discharge to the executive bodies. It follows that the spring elections will result in a debate on the reports and the discharge of the existing bodies in the new composition. Changing the date of elections also undermines public confidence in elections as a form of direct democracy in which a significant proportion of local communities do not participate anyway, which is a permanent phenomenon (prawo.pl)

These activities can be described as a propaganda offensive aimed at undermining public confidence in local authorities and depreciating their achievements. A glaring example of this is the construction of the tunnel in Świnoujście, which will create a permanent connection between both parts of the city and the rest of the country. According to media reports, ruling party politicians present at the start of construction significantly emphasised, including in the media, their merits for the investment. Meanwhile, 85% of this investment was financed by the European Union, the rest was covered by the city budget, as the European Commission reminded in a special communication (gazeta.pl). Similarly, during the opening

ceremony of the tunnel on the road from Krakow to Zakopane, the construction of which was also financed with EU money, the EU representative was not allowed to speak (onet.pl)

A measure aimed at limiting the self-government of municipalities is also introduced by the Act of 27 October 2022 on the preferential purchase of solid fuel for households (Dz. U., poz. 2236). Reading this short but intricate law is reminiscent of the communist era, when municipal bodies were in charge of the distribution of necessities, not only food but also industrial goods. It should be recalled that, as a rule, the Act of 20 December 1996 on municipal management (Dz. U. z 2021 r., poz. 679), prohibits municipalities from carrying out economic activities with the exception of tasks of a public utility nature, the purpose of which is the current and uninterrupted satisfaction of the collective needs of the population through the provision of generally available services. Meanwhile, the law in question of 22 October 2022 imposes a whole series of organisational and legal obligations on municipalities that contradict the essence of local self-government, while depriving coal traders of their source of income. These new obligations for municipalities include, inter alia concluding agreements on the sale of coal, entering and updating information on the price of coal in the ICT system, selecting the entity that will sell coal (this may also be an organisational unit of the municipality), issuing certificates authorising the purchase of coal in a neighbouring municipality or from another entity, issuing certificates for the payment of a coal allowance, as well as verifying applications for preferential purchase, and finally, the municipality must bear the costs of transport and preparation of a suitable site for the coal storage site with the necessary infrastructure, unless it concludes an agreement with another entity. Still other obligations for municipalities are introduced by the Coal Allowance Act of 5 August 2022 (Dz. U. poz. 1692 ze zm.), where municipalities are charged with receiving and processing applications and issuing administrative decisions in these cases, although in many cases municipalities have not received government money for this purpose in time (Gliwice 2022). A reading of these laws also indicates that the primary burden of social responsibility, for the quality of the coal sold, will fall on the municipal authorities, with them having no authority whatsoever to verify the certificate confirming the quality parameters of the coal. In the instructions drawn up for the municipalities, the Minister of State Assets answered the question "Who will guarantee the quality of coal? What is the municipality supposed to do if, for example, there are combustion problems or cooker breakdowns", he answers that "the coal is of good quality". However, he makes no secret of the fact that "any complaints can be addressed by the municipality to the supplier. On the other hand, possible complaints from households can go to the municipality". It goes without saying, therefore, that the municipal authorities must prepare for such.

V. Conclusion

This brief overview of the legislation relating to local self-government, especially municipal self-government, indicates that the process of limiting its independence and imposing hitherto unknown obligations on it is progressing. It is possible to express the conviction that if the process of appropriation of self-governments by the government administration, limiting its competences, reducing tax revenues or replacing them with subsidies, as well as imposing new obligations on self-governments aimed at satisfying social needs not included in its hitherto scope of activity, continues in this way, self-governments will soon perform only auxiliary activities or will be incorporated, as they used to be, into a uniform structure of state administration bodies.

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