

Małgorzata Czuryk*

Legal status of the local government in the time of COVID-19 pandemic

Abstract

In the context of the COVID-19 pandemic, many public entities have been forced to reorganise their activities, on the one hand to preserve the continuity of public task performance and, on the other hand, to observe all restrictions to ensure health security. The same applies to the local government as the basic form of decentralisation of public administration which, in the time of the pandemic, has to seek new solutions to preserve the continuity of task performance and compliance with the required standards, as well as measures to survive in the new realities.

The considerable changes in the functioning of the local government in the time of the pandemic caused by human SARS-CoV-2 infections involve the structure of public funds, including those of local governments, which are discussed in this paper.

Key words: local government, decentralisation, COVID-19, health security

* UWM Professor Małgorzata Czuryk, Ph.D., the Faculty of Law and Administration, the University of Warmia and Mazury in Olsztyn, e-mail: malgorzata.czuryk@uwm.edu.pl, ORCID: 0000-0003-0362-3791.

The essence of local government

The Polish constitution clearly states that the territorial system of the Republic of Poland ensures the decentralisation of public power. The basic territorial breakdown of the country, considering the social, economic or cultural ties and providing the territorial units with the capacities to carry out the public tasks is defined by an act of law¹. The local government, operating on three levels of territorial management: municipal, county and regional, is the basic form of decentralisation of public administration in Poland. The form of the government, local or regional, depends on the scope of its tasks and territory occupied by it.

The notion of decentralisation means the process of the permanent broadening of the powers of the public authority units by giving them tasks, competences and necessary measures. Decentralisation mentioned in the Polish Constitution is not a single organisational act, but rather a permanent feature of the political culture built on the proper statutory solutions, compliant with the constitutional principles of the political system of the Republic of Poland. It may not be interpreted in a mechanical way, in isolation from the interpretative context forming the consequence of the entire set of the constitutional principles and values shaping the state system. The limits of decentralisation are marked mainly by the principle of the state's unity. Making this principle a reality may be successfully reconciled with a guarantee of the public power decentralisation expressed in the territorial system of the state, as far as the relationships among the scope of tasks and powers of individual links of the power structure compliant with the Polish Constitution is preserved².

The definition of the local government is given in Art. 16 of the Polish Constitution. According to the provision and from the legal point of view, a local body is formed by residents of all units formed under the basic territorial

1 Art. 15 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No 78, item 483, as amended), hereinafter referred to as the Polish Constitution. For the notion of "decentralisation", see also: M. Karpiuk, *Koncepcja ograniczenia liczby kadencji wójta (burmistrza, prezydenta miasta) w ujęciu prawnoustrojowym*, [in:] *Wybrane aspekty ograniczenia liczby kadencji organów wykonawczych gminy*, red. I. Wieczorek, M. Mazuryk, Łódź 2017, p. 67–69; M. Karpiuk, *Istota decentralizacji administracji publicznej*, „Przegląd Prawno-Ekonomiczny” 2009, No 8, p. 25.

2 Ruling of the Polish Constitutional Tribunal of 18 February 2003 K 24/02, OTK-A 2003, No 2, item 11.

breakdown. It participates in exercising the public power. The local government carries out the significant part of tasks entrusted to it under the law on its own behalf and responsibility. The local government should be defined as a legal entity isolated from the state which is a form of decentralisation. According to the law, it is formed by residents of a specific territory, it is an entity having its own property forming the material basis for carrying out the specific tasks and characterised by administrative sovereignty. It is provided with judicially guaranteed sovereignty, a legal personality. It carries out public tasks on its own behalf and responsibility³. The local government is socially important due to the role played by it in a democratic state⁴. The local government was created to carry out the territorial public tasks. Depending on a unit of the local government carrying out the public activity, we deal with local or regional government⁵.

The local government was appointed to satisfy the needs of residents. The local government, having the proper instruments and coercive measures, is empowered to carry out the public tasks entrusted to it by the legislator. Due to the principle of sovereignty of activities, interventions concerning the activities of the local government may be taken only in the statutorily defined instances and with the observance of the legality criterion. The feature of sovereignty allows the local government to implement the approved policy by applying the rules developed by local government bodies which, however, have to be lawful⁶.

3 M. Karpiuk, *Samorząd terytorialny a państwo. Prawne instrumenty nadzoru nad samorządem gminnym*, Lublin 2008, p. 58. For the notion of the "local government", see also: M. Czuryk, M. Karpiuk, *Istota samorządu terytorialnego*, „Administracja i Zarządzanie” 2008, No 6, pp. 111–112; M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni bezpieczeństwa narodowego*, Warszawa 2014, p. 15; M. Karpiuk, J. Kostrubiec, *Rechtsstatus der territorialen Selbstverwaltung in Polen*, Olsztyn 2017, p. 191.

4 M. Karpiuk, *Miejsce samorządu terytorialnego w przestrzeni publicznej*, „Administracja i Zarządzanie” 2008, No 6, p. 123.

5 M. Czuryk, *Supporting the development of telecommunications services and networks through local and regional government bodies, and cybersecurity*, „Cybersecurity and Law” 2019, No 2, p. 40.

6 M. Karpiuk, *Activities of the local government units in the scope of telecommunication*, „Cybersecurity and Law” 2019, No 1, p. 38.

Normative solutions concerning the activities of the local government in the time of COVID-19

In the time of the COVID-19 pandemic, the legislator has implemented normative solutions which are supposed to form a specific barrier against risks to the health security⁷ of the local or regional community. However, the solutions do not violate the essence of the local government and the general rules of its functioning. Instead, they only implement some exceptions concerning its activity when the health and lives of human beings are threatened by the pandemic.

The legislator points out that, until 31 December 2020, the regional government may entrust the tasks of combating COVID-19 to a county, under the relevant agreement⁸. The regional government is already provided with this general competence, which removes the need to implement any special solutions. The voivodship is allowed to enter into agreements with other voivodships and regional government units which involve entrusting public tasks to them⁹. Fighting COVID-19 is clearly one of such public tasks.

A county may enter into agreements with local government units, as well as the voivodship within which the county is located, which involve entrusting public tasks¹⁰. Art. 15 (q) (d) of the Act on COVID-19 does not make any reservation stating that the administrative agreement is limited to the area of a given region, however, the laws concerning the local government already provide the solutions in the light of which public tasks may be entrusted to the county located in the voivodship which enters into the agreement. It seems that, in the context of the applicable provisions, the voivodship may entrust the tasks concerning the prevention of COVID-19 to the county situated within the voivodship borders.

⁷ In the health security domain, see also: M. Karpiuk, N. Szczęch, *Bezpieczeństwo narodowe i międzynarodowe*, Olsztyn 2017, pp. 157–158

⁸ Art. 15 (q) (d) of the Act of 2 March 2020 Special Solutions Related to Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and the Resulting Crisis (Journal of Laws 2020, item 374 as amended), hereinafter referred to as the Act on COVID-19.

⁹ Art. 8 (2) of the Act of 5 June 1998 on the Regional Government (i.e. Journal of Laws 2019, item 512 as amended).

¹⁰ Art. 5 (2) of the Act of 5 June 1998 on the County Government (i.e. Journal of Laws 2020, item 920).

The administrative agreement refers to public tasks – interpreted as satisfying the needs of local government communities – carried out for the common good and for the purpose of either carrying them out collectively or transferring them to another entity in combination with handing over a part of the administrative sovereignty¹¹. The entrusting entity is obliged to participate in the costs of performance of the entrusted task¹². The agreement may be concluded only in the domain of independence of a given entity which means that, in organisational terms, such entity is not subordinate to a higher-level body¹³.

The significant changes in the functioning of the local government in the time of the pandemic caused by human SARS-CoV-2 virus infections refer to the finances of the local government.

Some preferences were implemented concerning the use of assets from the fees for issuing the permits for the wholesale of alcoholic beverages to finance COVID-19 prevention measures. As Art. 15 (q) (b) of the Act on COVID-19 states, due to the need for searching for the financial assets to combat the pandemic on the regional level, the voivodship authorities are allowed to use the funds from the fees for issuing permits for the national wholesale of alcoholic beverages with alcohol content exceeding 18%, decisions implementing amendments to these permits and copies of these permits, for activities aimed at COVID-19 prevention – until 31 December 2020.

Similarly, (under Art. 15 (q) (c) of the Act on COVID-19) until 31 December 2020, the municipal executive body is allowed to use the revenues from the fees for issuing the permits for the sale of alcoholic beverages to be consumed at or outside the place of sale (including single permits), and the revenues from the fees for the use of the permits for sale of alcoholic beverages paid to bank account of the municipality before the permit is issued, for COVID-19 prevention. The rule is that the revenues from the fees for permits for sale of alcoholic beverages to be consumed at or outside the place of sale, and the fees for the use of such permits, are spent for prevention and solving the alcohol-related problems and may not be spent for other purposes¹⁴, however, under the Act on COVID-19, such revenues may also support combating the virus.

11 J. Pańnik, *Prawne formy działania administracji publicznej*, [in:] *Administracja publiczna i prawo administracyjne w zarysie*, red. M. Karpiuk, J. Kowalski, Warszawa–Poznań 2013, p. 119.

12 D. Lebowa, *Formy działania administracji publicznej*, [in:] *Nauka administracji*, red. M. Karpiuk, W. Kitler, Warszawa 2013, p. 93.

13 A. Skóra, *Prawo administracyjne materialne. Podstawowe problemy*, Elbląg 2017, p. 96.

14 See: Art. 18² of the Act of 26 October 1982 on Upbringing in Sobriety and Alcoholism Prevention (i.e. Journal of Laws of 2019, item 2277 as amended).

To guarantee that the tasks concerning the fight against COVID-19 are carried out properly, under Art. 15 (z) of the Act on COVID-19, the municipal executive body, county or voivodship administration, is allowed to: 1) make amendments to the budgetary revenues and expenditures of a unit of the local government and to transfer expenditures among the budgetary classification divisions; 2) carry out the following actions: a) transfer some powers in the scope of transferring planned expenditures to other local government organisational units, b) transfer to other local government organisational units the powers to make contractual commitments in relation to agreements which need to be concluded in the budgetary year and in the consecutive years to ensure continuity of activities of a unit, and providing payments exceeding a given budgetary year, c) make amendments in the plan of revenues and expenditures concerning: – a change in the amounts or receipt of payments transferred from the budget of the European funds if such changes do not worsen the budget outturn, – changes in the performance of a financial project subsidised from the European funds if such changes do not worsen the budget outturn, – reimbursement of payments received from the budget of European funds; 3) make amendments to the multi-annual financial perspective and in the plan of expenditures from the budget of the local government unit concerning the new projects or investment purchases by the unit if this amendment does not worsen the budget outturn; 4) change the purpose of a special-purpose reserve provided in the budget of the local government unit without obtaining the opinion of a board relevant for budgetary affairs of the body supervising such entity; 5) create a new special-purpose reserve without obtaining the opinion of a board relevant for budgetary affairs of the body supervising such entity by shifting the blocked amounts of expenditures there; 6) change the limit of commitments resulting from credits and loans and the issued securities¹⁵ in the form of increasing the temporary deficit in the budget of the local government unit.

¹⁵ Local government units are allowed to take out credits and loans and to issue securities for the purposes of: 1) covering the temporary deficit occurring in the course of a year in the budget of the local government unit; 2) financing the deficit planned in the budget of the local government unit; 3) repaying previous commitments resulting from issuing securities and taking out loans and credits; 4) preceding the financing from the funds of the European Union budget – Art. 89 of the Act of 27 August 2009 on Public Finance (i.e. Journal of Laws of 2019, item 869 as amended).

In the time of epidemic threat or the state of epidemic¹⁶ and faced with the related risk of a material violation of the time limits and conditions concerning the performance of tasks to be carried out by local government units, under Art. 15 (z) (o) of the Act on COVID-19: 1) the head of the municipality (city or town mayor) or a county or voivodship administration unit may change the plan of budget revenues and expenditures of the local government unit; 2) taking out or issuing commitments resulting from a credit or loan drawn to finance the planned deficit in the local government unit, repay the previous commitments resulting from the commitments considering the issuance of securities and taking out loans and credits as well as overtaking the funding of financial activities subsidised from the funds of the European Union which applies also to the issue of securities for these purposes – does not require obtaining an opinion from the regional audit office on the feasibility of repayment of commitments if such commitments were not planned in the forecast of the debt amount and the unit received a positive opinion of the regional audit office¹⁷ on the forecast – until the epidemic threat or the state of epidemic is revoked.

According to Art. 15 (z) (o) (b) of the Act on COVID-19, restrictions on the debts for the repayment of commitments of the local government unit do not apply to repurchases of securities, repayments of credits and loans with the due interests and discount, properly issued or drawn in 2020 up to the equivalent of a gap in revenues of the unit, resulting from the outburst of the COVID-19 epidemic. Commitments of this type may not endanger the implementation of

16 The state of epidemic threat is a legal situation implemented in a specific area due to the risk of the occurrence of an epidemic and to enable the implementation of statutory preventive measures. On the other hand, the state of epidemic is a legal situation implemented in a specific area due to the outburst of an epidemic and to take the statutory defined anti-epidemic and preventive actions to minimise the impact of the epidemic, Art. 2 (22)–(23) of the Act of 5 December 2008 on preventing and combating infections and infectious diseases among people (i.e. Journal of Laws of 2019, item 1239 as amended).

17 The regional accounting chambers are the state bodies established to exercise supervision and control over the following entities within the financial economy: 1) local government units; 2) metropolitan associations; 3) intermunicipal unions; 4) associations of municipalities and counties; 5) county unions; 6) county and municipal unions; 7) county associations; 8) organisational units of the local government, including legal persons of the local government; 9) other entities in the scope of utilisation of subsidies granted from the budgets of the local government units, Art. 1 of the Act of 7 October 1992 on the Regional Accounting Chambers (i.e. Journal of Laws of 2019, item 2137). See also: M. Czuryk, *Regionalne izby obrachunkowe jako organy nadzoru i kontroli gospodarki finansowej samorządu terytorialnego*, [in:] *Nadzór i kontrola w systemie wykonywania administracji publicznej*, red. M. Czuryk, M. Karpiuk, Warszawa 2010, p. 182.

the public tasks carried out by local government units in a budgetary year and in the subsequent years. In issuing its opinion on the feasibility of repayment of these commitments, the Regional Accounting Chamber evaluates, in particular, the impact on the planned commitments on the performance of the public tasks.

The total amount of the debt of a local government unit as at the end of 2020 may not exceed 80% of the total executed revenues of the unit in that budgetary year. In 2020, the total amount of the debt of the local government unit at the end of a quarter may not exceed 80% of the revenues of the unit planned for a given year. This follows from Art. 15 (z) (o) (c) of the Act on COVID-19.

In Art. (z) (o) (d) of the Act on COVID-19, the legislator implements the principle under which instalments of the educational, compensatory, balancing and regional parts of general subsidy may be transferred to the local government units in advance. The minister relevant for public finance transfers to the local government units: 1) the educational part of the general subsidy in twelve monthly instalments – until the 25th day of the month preceding the month of remuneration payment, but the instalment paid in March is equal to 2/13 of the total amount of the educational part of the general subsidy; 2) the compensatory part of the general subsidy in twelve monthly instalments – until the 15th day of each month; 3) the balancing and regional part of the general subsidy in twelve monthly instalments – until the 25th day of each month¹⁸. However, these periods may be shortened due to the outburst of the COVID-19 epidemic.

Under Art. 15 (zzz) (g) (a) of the Act on COVID-19, the legislator increases the percentage share of counties in proceeds from State Treasury real estate management. 50% of assets forming the revenues of the county where the real estate is situated is deducted from the proceeds from the sale, the fees from the permanent management and occupancy – of the State Treasury real estate and from the proceeds from the perpetual usufruct of the State Treasury real estate handed over for perpetual usufruct and from the interests on delayed payment of such fees and the interest received in the period from 31 December 2020.

The COVID-19 pandemic has forced the introduction of remote work, which also applies to local government units. Art. 15 (zz) (x) of the Act on

¹⁸ Art. 34 (1) of the Act of 13 November 2003 on the Revenues of the Local Government Units (i.e. Journal of Laws of 2020, item 23 as amended).

COVID-19 regulates the remote course of conducting the sessions of local government collective bodies, metropolitan associations, regional accounting chambers and local government appeal courts. According to the provision, in the time of the state of epidemic threat or the state of epidemic, the supervisory bodies of the local government units and the following collective bodies: executive bodies in the local government units, territorial government units, metropolitan associations, regional audit offices, local government appeal courts and in accessory bodies of the territorial government, are allowed to convene and hold their sessions, meetings, assemblies or other forms of activity proper for these bodies, and to make decisions, including adopting resolutions, with the use of the means of distant communication or communication by correspondence (remote course of conducting the sessions). The sessions in the remote course are convened by a person authorised to preside over a given supervisory body of the local government unit and another, collegial body. The solutions adopted under this provision are also applied to the collective internal bodies, such as boards and teams operating within the supervisory bodies of the local government and the collective bodies.

According to Art. 15 (zzz) of the Act on COVID-19, in the event of a temporary obstacle to the performance of tasks and competences of a head of the municipality, or city or town mayor under the state of epidemic threat or the state of epidemic resulting from incapacity to work caused by an illness lasting no longer than 30 days, the tasks shall be taken over by the deputy, and in municipalities where more than one deputy is employed – by the first deputy.

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Status prawny samorządu terytorialnego w dobie pandemii COVID-19

Streszczenie

W związku z pandemią COVID-19 wiele podmiotów publicznych musiało przeorganizować swoją pracę, żeby z jednej strony była ciągłość wykonywania zadań publicznych, z drugiej, zachować wszelkie rygory, aby zagwarantować ochronę bezpieczeństwa zdrowotnego. Powyższe dotyczy również samorządu terytorialnego jako podstawowej formy decentralizacji administracji publicznej, który musi w czasie pandemii poszukiwać nie tylko nowych rozwiązań pozwalających na nieprzerwane wykonywanie zadań przy zachowaniu wymaganych standardów, lecz także i środków pozwalających przetrwać w nowej rzeczywistości.

Znaczne zmiany w funkcjonowaniu samorządu terytorialnego w dobie pandemii powstałej w wyniku zakażenia ludzi wirusem SARS-CoV-2 są związane z finansami publicznymi, w tym finansami samorządowymi, o czym jest mowa w niniejszym artykule.

Słowa kluczowe: samorząd terytorialny, decentralizacja, COVID-19, bezpieczeństwo zdrowotne