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EXECUTIVE AUTHORITIES IN LOCAL GOVERNMENT IN POLAND

This article refers to exercising the executive authority at the level of local government in Poland. It presents rights and obligations of the executive authorities and describes the procedure of assigning and dismissing them. Representatives of local executive authorities are presented as individuals who have considerable influence on creating local environment.

Keywords: local government, community, mayor, president of the city.

Петрецька Б. ОРГАНИ ВИКОНАВЧОЇ ВЛАДИ В ОРГАНАХ МІСЦЕВОГО САМОВРЯДУВАННЯ В ПОЛЬЩІ

У статті розглядається здійснення виконавчої влади в органах місцевого самоврядування в Польщі на місцевому рівні. В ній представлені права та обов'язки органів виконавчої влади та порядок їх призначення та звільнення. Представники виконавчої влади на місцевому рівні, показані як люди, які мають значний вплив на місцеве навколишнє середовище.

Ключові слова: місцеве самоврядування, громада, мер, президент міста

The executive authority in local government, in the case of communes is the commune head, in the case of municipalities – the mayor or the president of the city (the name depends on the size of a city – “president of the city” is used when referring to cities with more than 100,000 citizens and cities with district rights, as well as cities with more than 50,000 citizens, in which such a post had existed before the 27th of May 1990 and province capitals populated by a lower number of inhabitants), whereas with respect to districts, there is a collective body referred to as the district board. The Commune Self-Government Act does not differentiate among the positions of those three leaders in the system, therefore whenever the term “commune head” is mentioned, this may also refer to the mayor or president of the city. “Only in the case of the president of the city with district rights, the area of competence is broader and encompasses also the rights of the district governor and district board” [Piasecki 2009s.284].

The executive authorities in communes and districts are elected in universal, equal and direct elections by secret ballot [Ustawa o wyborze wójta 2002 art. 2]. Commune head elections are held in the same time as elections to the commune council, and the commune head's term of office is closely related to the council's term of office, i.e. they both commence and end on the same date. Upon the expiry of the commune head's term, he or she fulfils the function until a new commune head has been elected to the office.

The concept of the commune head as an independent executive authority has been known in Polish communes only since 2002. Throughout the first three terms of office of self-governments, as from 1990, the executive authority in communes was vested in the board, which was elected by the commune council and led by the commune head – who was also elected by the council. The board was comprised of 4 to 7 persons: a chairperson, who was the commune head, a deputy or deputies and board members. The commune head and his or her deputies did not have to hold a seat on the commune council. The commune council elected the board from among members of the council by a simple majority vote

in the secret ballot. If the board was not elected within a statutory time limit, the council was dissolved and it was necessary to call new elections. The commune head was elected by the commune council in a separate secret ballot by an absolute majority of votes in the presence of at least two-thirds of the statutory number of council members [Ustawa o samorządzie gminnym 1990 art. 28]. The commune board or its individual members could be dismissed by an absolute majority of votes of the statutory number of commune council members in a secret ballot. The functioning of the council was regulated by such rules until 1996.

The Amendment to the Local Government Act of 29 September 1995 introduced a concept of so-called management based on individual initiative (in Polish: zarząd autorski) [Piasecki 2009 s.285]. Consequently, the commune head was granted an exclusive right to nominate candidates for board members, as well as to propose a motion to dismiss them. On a reasonable motion of the commune head, the commune council could dismiss individual board members by a simple majority vote in the presence of at least half of the statutory number of council members in a secret ballot. A dismissal of the commune head led to a dismissal of the whole board [Ustawa o samorządzie gminy 1990 art. 28 d]. The above amendment also lowered the minimum threshold of the number of board members from 4 to 3, with the maximum number thereof being unchanged – 7 members. The term of office of the board was longer than the term of the council, because upon the expiry of the term of the council the board performed its duties until a new board was elected.

Fundamental changes in the commune executive authority were effected by the Act on the Direct Elections of the Commune Head, Mayor and President of the city, of 20 June 2002. The principal provisions introduced by the Act are as follows:

- a candidate can be nominated by political parties, societies and social organisations, as well as groups of voters (depending on the size of a commune – from 150 to 3,000 signatures),

- a candidate can be fielded only by those electoral commissions which register complete lists of councillors at the council in at least half of electoral constituencies in a particular commune,

- only a Polish citizen who has attained the age of 25 is entitled to stand as a candidate,

- to stand for a post in a commune, a candidate does not have to be a citizen thereof,

- a candidate for the commune head is not permitted to stand for this post in two or more communes simultaneously (however, such a candidate is allowed to run for election as a councillor in his or her commune),

- no person who has been sentenced for an intentional indictable offence or against whom a final and binding judgement on the conditional discontinuance of the criminal proceedings regarding the same offence has been passed may be a candidate for the commune head,

- if none of the candidates has received more than half of votes, a second round of elections takes place,

- if only one candidate has stood for the post and he or she has not received more than half of valid votes or if there has been no candidate for the post, the commune head is elected by the commune council in a secret ballot by an absolute majority of votes of the statutory number of council members [Ustawa o samorządzie gminy 1990 art. 3-11]. A candidate may be nominated a group of councillors consisting of at least one-third of all council members. Should the council fail to elect anybody for the post in question within 2 months, the Prime Minister – on a motion of the competent Minister of Public Administration – assigns a commissioner (an acting commune head) [Piasecki 2009 s. 285].

Both the commune head and councillors are prohibited from holding different posts jointly and pursuant to Article 27 of the Commune Self-Government Act, the post of commune head cannot be combined with:

- the function of the commune head or deputy commune head in a different commune,

- membership in the bodies of local government units, including also a commune where such a person holds the office of commune head or deputy commune head,

- employment in the government administration,

- the mandate of a Deputy or Senator.

The mandate of commune head is the strongest mandate from among all representatives of local authorities, since compared to councillors, he or she receives the greatest support from voters. As it is the case with councillors, the commune head performs his or her duties after having sworn a relevant oath before the commune council [Piasecki 2006]. The commune head may appoint his or her deputies (depending on the number of citizens in a commune – 1 to 4 deputies), yet it is him or her who is held accountable for fulfilling tasks.

The mandate of a commune head may expire due to:

- a refusal to take an oath,

- a waiver of the mandate,

- loss of eligibility to stand for election or lack thereof on the day of elections,

- a breach of the statutory prohibition of combining the function of commune head with other functions or running a business activity,

- a statement of permanent incapacity to work given pursuant to regulations on retirement and other pensions from the Social Insurance Fund,

- a dismissal by means of a referendum,

- recurrent breaches of the Constitution or statutes, [Ustawa o samorządzie gminy 1990 art. 96],

- changes in the territorial division (if a unit has been incorporated into a different unit or two or more units have been combined so that they form a new unit, councils of those units shall be dissolved in accordance with law) [Ustawa ordynacja wyborcza 1998 art. 197],

- death.

A dismissal of the commune head by means of a referendum, on the initiative of the commune council, may take place if the commune head has not been granted a vote of approval or due to other material reasons, on the condition that a written motion for the dismissal of the commune head by a referendum has been tabled by at least one-fourths of the statutory number of the council members. “A resolution by the commune council on the subject of not granting a vote of approval to the commune head, adopted 9 months following the election of the commune head, but not later than 9 months before the completion of the term of office, constitutes an initiative for a referendum on the dismissal of the commune head” [Ustawa o samorządzie gminnym art. 28]. Prior to adopting the resolution on granting the commune head a vote of approval, the commune council should become familiar with a motion and opinion of the audit committee. A motion for a vote of approval is also subject to an opinion of the regional audit chamber. The resolution on granting a vote of approval is passed by the commune council by an absolute majority of votes of the statutory number of council members.

The motion for a referendum on dismissing the commune head due to reasons other than failure to receive a vote of approval requires also an opinion of the audit committee. The commune council may adopt a resolution on conducting a referendum on dismissing the commune head at a session called not earlier than 14 days after presenting such a motion. The resolution on a referendum on dismissing the commune head due to reasons other than failure to receive a vote of approval is passed by the commune council by a majority of at least three-fifths of the votes of the statutory number of council members, by roll-call vote. If the motion for the resolution on a referendum on dismissing the commune head put forward in the manner described above does not receive the required majority of votes, another motion may be presented under the same procedure, however, not earlier than 12 months after the previous vote [Ustawa o samorządzie gminnym 1990 art. 28b, 28c]. The commune council accepts the expiry of the mandate by means of a resolution, not later, however, than 1 month after the day on which grounds for such expiry occurred.

The competence of the executive authorities in communes includes, but is not limited to:

- Preparing draft resolutions of the council – one of the most relevant duties of the executive authority. Considering the self-government practice, the significance of this duty is even greater, which results from the fact that resolutions are the most often introduced by the

executive authorities, which means that they have strong chances of influencing the form of local government;

- Implementing the council's resolutions – the main duty of the executive authorities, which – with the assistance of officials, who are subordinate to them – supervise the implementation of decisions of individual councils;

- Managing communal assets – councils are appointed merely to reach decisions on more serious matters, in particular, they establish the principles of managing the assets, whereas the overall responsibility for the management rests with the executive authorities. Thus in this case, in order to enable the executive authorities to manage the assets efficiently, presumptive competence and obligation applies. In respect of managing communal assets, the executive authorities perform duties on a daily basis by taking specific decisions [Stecko 2011];

- Drawing up and implementing a budget – the executive authority has an exclusive right [Ustawa o finansach publicznych 2005] to present a draft budget, and once it has been approved by the council, the executive authority supervises the implementation of budget-related decisions of the council. A budget of self-government units constitutes the basis for managing finances and when planning it, the executive authorities possess extensive capabilities to exert a real impact on the functioning of communes or districts. The council may confer its rights to change a budget on the commune head. This is provided for by Article 257 of the Public Finances Act [Ustawa o finansach publicznych 2009], which concerns particularly shifting expenses between chapters and sections of the budget classification [Piasecki 2009 s. 288]. The commune head has rights to effect changes in a budget in respect of: a) changing an income and expenditure plan due to award of specific grants from the State Budget and budgets of other local government units during a fiscal year; b) shifting expenses from budget reserves; c) changing a commune's income plan due to changed amounts of subventions as a result of the division of subvention reserves; d) changing (upon prior consent of the council) the reallocation of earmarked reserves; e) the capability to grant the authority to other commune's organisational units to reallocate planned expenses [Ustawa o finansach publicznych 2009 art. 257-258].

- Deciding upon individual matters connected with the public administration – acts on local government do not define the competence of executive authorities to decide on individual matters, however, the legal basis for such decisions has been laid down in specific acts [Stecko 4/2014].

- Organising local government structures – the commune head/mayor or district board plays an important role in organising structures which are responsible for fulfilling the tasks of local government. The foregoing involves creating new units, developing the structure of existing units, delegating tasks and supervising the accomplishment of them [Kisiel 2003 s.195].

- Taking personnel-related decisions – employing and dismissing heads of local government organisational units. The commune head, being responsible both to the council and citizens of the commune for the overall performance of the organism which he or she is in charge

of, has the right to decide on the staffing of the organisational units subordinate to him or her. Heads of unincorporated commune organisational units (budgetary units, establishments) act under a power of attorney granted by the commune head [Stecko 2013].

- Representing local government units in public and law relations – according to the Act, the commune head and the president of the district board, i.e. the district governor, have such a right. Therefore, it is actually one of the persons mentioned above, who should sign e.g. a written response to an appeal filed with the Supreme Administrative Court. Local government units are supervised by the district governor and the Regional Audit Chamber, and as far as such interaction is concerned, executive authorities are also responsible for submitting resolutions of legislative bodies ex officio to the supervisory authority.

- Managing day-to-day affairs of local government units – it is rather difficult to define the term “day-to-day affairs”, as it has not been specified either in the Commune Self-Government Act or in other local government statutes. Referring to B. Dolnicki, it is possible to lay down only general criteria for assessing such affairs, including, but not limited to the following: a routine nature (repetitiveness), increased frequency; lesser importance (they do not have any significant impact on the commune's economy); the necessity of settling affairs immediately and promptly; a lack of specification whether affairs fall within the competence of other bodies or not [Dolnicki 2009 s. 82].

Some rights provided for the commune head relate to the entitlement intended specifically for an administration body comprised of one person. In such a role, the commune head gives individual, specific decisions connected with the public administration. The commune head may authorise his or her deputies or other commune office employees to announce administrative decisions on behalf of him/her [Ustawa o samorządzie gminnym 1990 art. 39]. The commune head gives individual decisions in respect of all duties for which the commune is responsible for, i.e. which encompass both the commune's own duties and those assigned. A decision issued by the commune head may be appealed to the local appeal body. An example of the commune head's administrative decisions, which are of special importance to society, includes deferring, or remitting the payment of tax liabilities connected with taxes and charges which are a source of the commune's revenues, as well as deciding to pay such liabilities by instalments.

The commune head carries out his or her duties with the help of a commune office which he/she is in charge of. The organisation of commune offices and the principles of their functioning are laid down in operating rules issued, by way of an order, by the commune head [Ustawa o samorządzie gminnym 1990 art. 33]. A commune office is an apparatus that provides assistance to the commune head, thus reaching decisions on behalf of the commune and representing it falls outside the competence of the office.

In respect of districts, a collective executive body is represented by the district board. It is comprised of 3 to 5 persons elected by the district council, and is formed by the district governor, district vice-governor and board

members (the number of board members is specified in a district statute). The district council elects the board not later than 3 months after the day when election results have been announced by a competent election body. Members of the district board may either have a mandate of councillor or not. They cannot, however, combine their post with membership in any other body of a local government unit, a parliamentary seat or employment in the government administration. Apart from the district governor and vice-governor, the other members of the district board do not have to serve on the board regularly [Piasecki 2009 s.290].

The district board implements resolutions of the district council and performs the district's duties specified by provisions of law. The duties of the district board are almost the same as the tasks of an executive authority in a commune (which have been already discussed above) and they include: preparing drafts of the council's resolutions and implementing them, managing district's assets, implementing a district's budget, as well as employing and dismissing heads of district organisational units. The district board is subordinate to the district council in performing its tasks. The organisation of the board and operating procedure are laid down in a statute of a district. A special role in the board is served by the district governor, who – as the president of the district collective body organises its functioning. The district governor presides over the district board, and if the board's vote results in a tie, he or she has a casting vote. Regarding the matters of extreme urgency, as well as in case of emergency, the district governor may have the competence of the board, yet this cannot refer to regulations, and what is even more – every act introduced by the district governor instead of the board must be passed at the next board session [Ustawa o samorządzie powiatowym 1998 art. 32-34]. Pursuant to the Article 34 of the District Self-Government Act, the district governor organises the functioning of the district board and the district governor's office, manages day-to-day affairs of the district and represents it before third parties. The district governor devises an operational plan that ensures protection against flood and issues and calls off a flood alert and flood warning. In respect of matters of huge urgency, which pose threat to the public interest and create direct risk to health and life, and with regard to matters which can cause substantial loss of property, the district governor takes necessary actions that come within the competence of the district board. Those actions require approval at the next district board session.

“The district governor has powers (greater than the commune head) to authorise persons to issue administrative decisions. As for the mayor, only his or her deputies or other office employees may be authorised. The district governor can authorise deputies, board members (also community board members), employees of the district governor's office, district inspection services or a fire service, as well as heads of district organisational units” [Piasecki 2009 s.291].

The district board can be dismissed if it fails to receive a vote of approval. A resolution on granting a vote of approval is passed by the district council by an absolute majority vote of the statutory number of council members. The district council may dismiss the district

governor due to reasons other than failure to receive a vote of approval only upon a reasonable written motion of at least one-fourths of the statutory number of council members. The said motion requires an opinion of the audit committee. The district governor is dismissed by a majority of votes of at least three-fifths of the statutory number of council members in a secret ballot. After becoming familiar with the audit committee's opinion, the district council takes a vote on the dismissal at the next session, i.e. following the session during which the motion calling for dismissal was put forward, not earlier, however, than 1 month after the day of proposing such a motion. Should the motion calling for the dismissal of the district governor fail to achieve the requisite majority of votes, another motion for dismissal may be tabled not earlier than 6 months after the date of the previous vote. If the district governor has been dismissed or when he or she has tendered his/her resignation from the office, this constitutes the dismissal of the whole district board. Upon a reasonable motion of the district governor, the district council may dismiss individual board members by a simple majority vote in the presence of at least half of the statutory number of council members, in a secret ballot. Should the district governor submit his/her resignation, it requires a simple majority vote, otherwise it is rejected.

Both the executive authority and the council have the same obligations, i.e. they have to submit declarations on their financial situation, must not reveal state and official secrets. The executive authority at a commune and district level is also a public official, which means that it is entitled to special legal remedies.

The executive authority at a local level has a series of rights which enable it to shape – to quite a large extent – local government policy. Local communities perceive the executive authorities as groups of individuals which exercise real self-government power. It can be observed particularly at a commune level, where the commune head/mayor is considered to be a person who both has the supreme authority and exerts the greatest influence. And this is exactly how the commune head, who enjoys the social confidence and is entitled to assign local officials, particularly heads of organisational units, is seen by many people.

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АДМІНІСТРАТИВНО-ТЕРИТОРІАЛЬНИЙ УСТРІЙ ПОЛЬЩІ: ВЕРТИКАЛЬНО-РІВНЕВА СИСТЕМА УПРАВЛІННЯ

Проведено аналіз процесу реалізації адміністративно-територіальної реформи в Польщі. Виокремлено особливості проведення реформування системи територіального устрою та адміністративного управління в Польщі. Визначені напрямки можливого запозичення та імплементації найкращих надбань польського досвіду у вітчизняну практику адміністративно-територіальної реформи.

Ключові слова: адміністративно-територіальна реформа, гміна, органи місцевого самоврядування, громадянське суспільство, громада.

Siryk Z. ADMINISTRATIVE-TERRITORIAL DIVISION OF POLAND: VERTICAL LEVEL MANAGEMENT SYSTEM

The analysis of the administrative-territorial reform implementation in Poland was done. The peculiarities of reforming the system of territorial organization and administrative management in Poland were determined. The directions and possible implementing of the best achievements of Polish experience in Ukrainian practice of administrative-territorial reform were defined.

Keywords: administrative-territorial reform, gmina, local authorities, civil society, community.

Україна все активніше намагається інтегруватися в Європейські структури. Цивілізаційний, геополітичний та гео економічний вибір для нашої країни є очевидним, а тому для його реалізації необхідні важкі, послідовні та інколи нетрадиційні й непопулярні політичні рішення. Необхідне реальне втілення принципів деконцентрації, децентралізації та субсидіарності в практику державного управління, зокрема через запровадження нових моделей взаємовідносин між політичним центром та регіонами. Регіональні диспропорції розвитку території України, неспроможність реалізації реформи на місцях в конкретних адміністративно-територіальних одиницях, поширення корупційних схем – все це наслідки неефективної моделі місцевого самоврядування та державного управління регіональним розвитком. Держава не розвивала, а керувала регіонами в той спосіб, який був необхідний тій чи іншій політичній еліті. На сьогодні для України існує нагальна потреба змінити механізм функціонування системи адміністративно-територіального устрою. Безумовно історичні, ментальні, культурні та соціально-економічні умови розвитку нашої держави є унікальними, а тому і подібні реформи повинні проходити з їх урахуванням.

Але оскільки Україна намагається долучитися до єдиного Європейського суспільно-економічного простору, то необхідно враховувати ті тенденції регіоналізації, які притаманні сучасному ЄС. В цьому контексті найбільш показовим є досвід Польщі – країни, що тривалий час, як і Україна, перебувала під гнітом тоталітарної комуністичної системи адміністративної економіки та прямими політичним тиском СРСР. Натомість на сьогодні Польща пройшла досить важкий шлях реформ, і з огляду на сучасні їх результати доцільно вивчати та імплемувати цей досвід в українські суспільно-політичні реалії.

Польській досвід у проведенні адміністративно-територіальної реформи став предметом дослідження багатьох вітчизняних вчених, зокрема таких як Т. М. Апончик, О.В. Білянський, С.Г. Бочаров, І. І. Каспрук, Л. Л. Прокопенко, С.В. Федонюк, Н. Л. Шпортюк, І. Д. Шумляєва та ін. У зв'язку з реальним початком реформування місцевого самоврядування в Україні цей досвід слід актуалізувати у контексті актуальних завдань вітчизняної практики.

Мета статті полягає у виокремленні та оцінці найбільш вагомих аспектів й особливостей реформування адміністративно-територіального устрою в Польщі, екстраполюючи їх на сучасні