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ENTITIES PERFORMING SELF-GOVERNMENT PUBLIC TASKS - SPECIFICITY OF ACTING AND FUNDING

The goal of this article was to identify and characterize entities that participate in the process of performing public tasks. It contains their types and method of financial and/or organizational relationship with the budget of the municipal self-government. The article uses the methods of analysis and literature review as well as inductive and deductive reasoning. Institutional documents of a normative nature regarding the principles of self-government functions and literature on public (local) finances were used for the conducted research. The results show that functionally, the relationships between municipal companies and a commune budget can lead to disruptions in the assessment of the state of indebtedness of a local government entity. Following the experience of Great Britain, it can be concluded that one of the rational possibilities for carrying out projects is through a Public-Private Partnership. However, this solution can also bring financial dangers. Incorrectly dividing risks may lead to postponements of project performance or an excessive financial burden on the local government. It should also be noted that the private capital involvement formula (PPP contracts) can be used when there are economic benefits in the implementation of a specific public project, the scale of which may be of interest to the owners of capital. A significant number of public projects that are carried out by municipalities, especially in smaller (rural) entities, are in short supply and, in principle, do not give such an opportunity.

Keywords: local government, public tasks, municipal companies, finance.

JEL Codes: H41, H44, H72.

Introduction

The form of communal self-government, reactivated in 1989 in Poland and later extended by another two levels – poviats and voivodships in 1998 – was guided by the goal of introducing and expanding democratic values in Polish society. The state and local governments should enable civil society to function. Thus, self-governments were equipped with legislative and executive bodies. They are guided by the principle of subsidiarity. The essence of such an approach is to adopt solutions for actualizing public projects in such a manner that the authorities on each level implement only those tasks that cannot be performed by those at a lower level, or by an individual alone. It is the individual person who has the greatest value, and public support should take place only when such interference is necessary. If such interference is required, however, public tasks should be realised within the local government unit closest to the citizen, i.e. in the commune (gmina).

Therefore, the Act of 8 March 1990 on communal self-government¹ defines a catalogue of a commune's own tasks and responsibilities. They are mainly provided to residents in the form of public services and can be included in three main areas: administrative, social and technical. The performance of these tasks may be entrusted to various entities.

The communal self-government functioning today, as well as other levels of self-government, was established in order to perform public tasks. Therefore, all competences that are left to the commune are an effect of delegating such competences by the state. This delegation defines the scope of activities of individual local government levels, normalizes their legal system and provides financial means. At the same time, however, the above-mentioned essential features indicate that, within the scope of delegated competences, local government has a legal personality, independence, and is also provided with judicial protection. This, in turn, allows for the distribution of competences between the state and between communal authorities. The commune (gmina), performing the tasks of state administration, may use legal measures pertaining to state authorities, including the exercise of authority.

Realisation of municipal economy within a commune (gmina)

The Act of 20 December 1996 on communal economy², defining the economic system within the communes, forms the grounds for the economic activity of local government units. It is referred to as communal economy. Communal economy, in accordance with the statutory definition contained in Article 1 of the cited Act, consists of local self-government units performing their own tasks to meet the collective needs of the local government community. Therefore, communal economy includes particular public service tasks aimed at meeting the collective needs of the population through the provision of widely available services³. The method of performing these tasks may take a form of three possible measures: it is permissible to actualize projects in the quasi-market, market and non-market framework.

In the first case, it is possible for local government authorities to interfere in the provision of public services. It will be visible, for example, by the commune's defining the organization or provision of these services, and by determining prices. Public services will be performed by units created by public administration, where there is an indirect bond and the ability to influence decisions. However, entities providing services are not directly dependent on public administration.

The market method rules out the possibility of non-market influence on the process of providing public services. The role of public administration comes down to delegating and evaluating the performance of a public service that has been contracted. The market framework is therefore based on the use of enterprises and entities operating on the principle of full economic settlement and applying the rules of the open market.

¹ Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym (Local Government Act) (tekst jednolity – Dz. U Nr 142 poz. 1591 z 2001 r. z późn. zm.)

² Ustawa z dnia 20 grudnia o gospodarce komunalnej (Municipal Services Management) (t.j. Dz. U. z 2011 r. Nr 45, poz. 236)

³ <https://www.senat.gov.pl/gfx/senat/pl/senatopracowania/42/plik/plik046.pdf>, [01.09.2019]

The non-market framework, on the other hand, is based on the use of a public administration's own procedures, organizational units and full involvement in the process of providing services. The non-market framework is grounded on the use of subordinate organizational units, such as: budget units, budgetary establishments and special purpose funds.

Pursuant to Article 2 of the Act of 20 December 1996, municipal economy may be conducted by self-government units in strictly defined organizational and legal forms. These involve: local government budgetary establishment and commercial law companies and partnerships. A local government unit may also, under certain conditions, delegate the tasks falling within this area to natural or legal persons or entities without legal personality. A budgetary establishment is a subject of a budgetary economy, created in such areas of the public sector in which there is a possibility of full or partial payment for services. This means that, unlike a budgetary unit, a budgetary establishment can cover its expenses (costs) from its income.

It should be borne in mind that a local government budgetary establishment is an entity of the public finance sector, which means that it is subject to legal and financial requirements set out in the Public Finance Act⁴. With respect to the second group of entities performing public tasks – i.e. companies – pursuant to the provisions of Article 14, the public finance sector does not involve enterprises, research institutes, banks and commercial law companies. This allows greater flexibility in the economic organization in such an entity. Local governments can create limited liability (or joint stock) companies and join such companies.

In principle, a communal company is understood as a company where 100% of the shares are owned by the commune. However, it should be noted that such a construct does not appear within the Polish legal order⁵. The communal company has a legal personality, which means that it bears full responsibility for its obligations. Thus, the commune's liability is limited to the amount of the contribution made. Outside of the public sphere, a commune (gmina) may join and create commercial law companies, provided that strict conditions are met. One such condition is the existence, within the commune (gmina), of unmet needs in the community regarding the local market. Another condition concerns unemployment within the commune (gmina), which has a significant negative impact on the standard of living in the community. Additionally, communes need to analyze whether the measures undertaken have/have not led to economic activation that would manifest itself in the revival of the local market or in the permanent reduction of unemployment.

In addition to public utilities, a commune may establish commercial law companies and also join them if the disposal of a municipal property component (which may constitute a non-cash contribution of the commune to the company) or disposing of it in another way will not cause a serious loss of property for the commune (gmina). Restrictions regarding the creation of commercial law companies and of the commune

⁴ Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych (Dz. U. 2009 Nr 157 poz. 1240 z późn. zm.) (Act of 27 August 2009 on public finance, Journal of Laws 2009, No. 157, item 1240 as amended).

⁵ Z. Dolewka, Funkcjonowanie spółek komunalnych w Polsce (Functioning of municipal companies in Poland) Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu, Research Papers of Wrocław University of Economics, 2017, Nr 477, s. 59-72, DOI: 10.15611/pn.2017.477.05, p. 60

joining such companies, referred to in Sections 1 and 2, shall not apply to the commune's holding of shares or stocks of companies that deal in banking, insurance and advisory, promotional, educational and publishing activities for the benefit of local government, as well as of other companies important for the development of the commune.

Taking into account the current socio-economic situation, the commune's activity in the area of constructing residential housing for rent, including the activity involving tenant rights to acquire ownership of the property in the future, as well as the formation of sports clubs operating in the form of a capital company, gains importance. Creation and accession of commercial law companies by the commune must be carried out on the principles guaranteeing fair and free competition and observance of the principles of equal treatment, transparency and proportionality.

Linking entities performing public tasks to the local government budget

A self-government budgetary establishment carries out the tasks under consideration and covers the costs of its activities from its own revenues. The basis of its financial management is an annual financial plan covering, apart from its own revenues, also subsidies from the unit's budget, costs and other charges or fees. A newly created budgetary establishment may provide financial support in the form of a subsidy related to the first provision of this entity with current assets. The settlement between a local government budgetary establishment and the budget of the organisational unit is made by paying the surplus of working capital, established at the end of the financial year.

The entry into force of the provisions of the Public Finance Act on January 1, 2010 resulted in significant changes in the financial and organizational sphere of local government. These changes concerned, among others, limiting the scope of activities of budgetary establishments to selected areas – Article 14 of the Act on Public Finances. This currently encompasses:

- housing management and business premises management,
- roads, streets, bridges, town squares and traffic organization,
- water supply installations, sewage disposal, removal and purification, municipal sewage, maintaining cleanliness and order and sanitation, landfills and disposal of municipal waste, electricity and heat supply, and gas,
- local public transport,
- markets and market halls,
- municipal greenery and tree plantings,
- physical culture and sport, including maintenance of recreational areas and sports facilities,
- social assistance, vocational and social reintegration as well as vocational and social rehabilitation of the disabled,
- keeping various species of exotic and domestic animals, including in particular breeding of endangered animals in order to protect them outside their natural habitats, and
- cemeteries.

Significant changes were also noted in terms of non-expiring expenses. The catalogue has been clarified and closed. Therefore, it applies only to such expenses that are related to:

- 1) investments and investment purchases,
- 2) the purchase and taking up of shares and stocks, and
- 3) making contributions to commercial law companies.

Another issue concerns the balance of the local government budget in terms of current operations, which means the inability to finance current operations with a deficit. The next change was the introduction of an individual debt repayment rate, calculated for each unit. This means that currently a deficit can be shown on investment activities. To fully convey the essence of the case, it should also be added that property income includes:

- 1) subsidies and funds allocated for investments,
- 2) income from the sale of property and
- 3) income from the transformation of the perpetual usufruct right into ownership.

All other income is therefore qualified as current self-government income. It must be constructed and planned so that its collection provides the local government with a sufficient pool of funds to cover its day-to-day operations.

The introduction of an individual debt ratio caused excessive transfers of funds from the local government budget to companies (leading to overinvestment), which were formally (in terms of expenditure) qualified as property and thus did not cause an increase in debt. The companies, on the other hand, paid dividends to the local government budget, where from the legal and financial point of view they were treated as current revenues (Figure 1). Pursuant to Article 191, Section 1 of the Code of Commercial Companies, an owner has the right to participate in profit, i.e. dividend, the amount of which is determined by resolution of the Annual General Meeting of Shareholders. The dividend transfer does not result in the obligation to collect a flat-rate corporate income tax. The legal structure and assumption relating to the financial separateness of municipal companies is therefore important for the financing of their activities. Against the background of previous considerations, one should come to the conclusion that *indebtedness of local government and municipal companies should not be combined*. This also means that the debt of municipal companies is not recorded in local government budgets, because – as has already been shown – such companies are not units of the public finance sector.

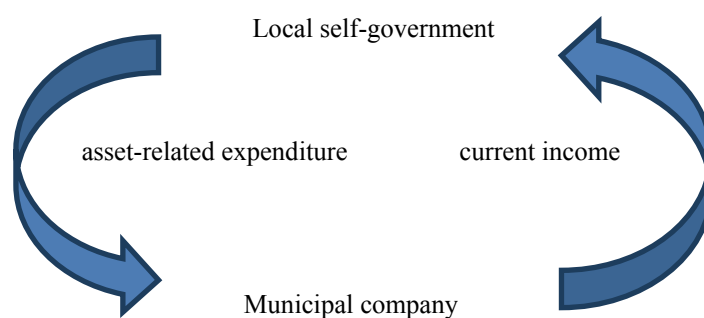


Figure 1. Scheme of financial settlements between the commune's budget and a municipal company
Source: author's own study.

The Kosciuszko Institute was one of the first to address the hypothesis that local governments of the largest Polish cities hide a large part of their debts, pushing them to their own companies. In its report published in 2011 in "Monitoring of the debt of cities – voivodship centres" the Institute alerted that the publicly disclosed financial data of these cities did not fully reflect their financial condition. They pointed out that the actual debt was much higher than the official debt, which did not include the debts of local government companies⁶. There are already over 3,000 municipal companies in Poland⁷. According to Babczuk, more than three quarters of the debt incurred by the communal companies (until 2010) was owed by Warsaw and powiat-municipalities. In addition, this debt increased rapidly and should be subject to monitoring and further in-depth analyses⁸.

The amendment to the Public Finance Act reinforced the mechanisms protecting local governments against excessive indebtedness, but further changes are necessary, including the inclusion of municipal companies' debt in the reports. The data for 2018 shows that out of 2808 local government units only 25 do not meet the requirements arising from Article 243 of the Act on Public Finances regarding excessive indebtedness⁹, and only four were asked by the Regional Accounting Chambers (RIOs) to prepare a resolution program.

Public-private partnership - an opportunity or a threat to local government finances?

In the meaning of the Public-Private Partnership (PPP) Act, it is "based on a public-private partnership contract, cooperation between a public entity and a private partner to implement a public task." It is therefore seen as a form of long-term cooperation between the private and public sectors in projects aimed at implementing public tasks, including those implemented on a local level. The goal of this cooperation is to achieve mutual benefits in both the social and commercial (economic) dimensions of the undertaking. The subject of the contract is the implementation, for a proper defined remuneration, of undertakings by a private partner for a public entity. The private sector incurs expenses on realising the project in whole or in part, and can also ensure that costs will be borne by other entities¹⁰.

Pursuant to the PPP Act, all public finance sector entities within the meaning of the Public Finance Act (including public authorities, local government units) may become a

⁶ J. Krzeziński, Długi spółek miejskich nie były ucieczką samorządów, <https://www.obserwatorfinansowy.pl/forma/rotator/dlugi-spolek-miejskich-nie-byly-ucieczka-samorzadow/> [12.11.2019]

⁷ <http://aesco.com.pl/raport-finansowanie-inwestycji-w-spolkach-komunalnych-wspolnota-nr-4-z-2019-r/> [12.11.2019]

⁸ A. Babczuk, Zadłużenie spółek komunalnych może mieć wpływ na sytuację finansową (Indebtedness of municipal companies may affect the financial situation) - <https://www.prawo.pl/samorzadz/zadluzenie-spolek-komunalnych-moze-miec-wplyw-na-sytuacje-finansowa-samorzadow,85629.html> [10.11.2019]

⁹ B. Bugalski, Zadłużenie samorządów. Konieczne dalsze wzmocnienie RIO, <https://www.portalsamorzadowy.pl/prawo-i-finanse/zadluzenie-samorzadow-konieczne-dalsze-wzmocnienie-rio,128346.html> [12.11.2019]

¹⁰ Ustawa z dnia 19 grudnia 2008 r. o partnerstwie publiczno-prywatnym (Act of public-private partnership), Dz.U. 2009 nr 19 poz. 100

public partner. They may also be legal persons created to meet common needs not having a commercial character and not operating under normal market conditions.

The formula of public-private partnership involves both benefits and risks. Bearing in mind the functional discrepancy resulting from the specifics of local government and conducting business activity, the more important the correct risk assessment becomes. The Act does not precisely and completely define risk. This concept should be understood as the likelihood of adverse events. Risk sharing in PPPs is based on the belief that partners assume part of the risk in accordance with the possibilities of neutralizing it. A public partner usually takes political risk, hence long-term and uniform local development strategy is extremely important. The risk that a private partner assumes usually relates to the maintenance of the current infrastructure of the project being implemented¹¹. Each party takes on that part of the risk that it can reduce. The greater the risk the entity takes over, the greater should be its share in the investment returns. This division shortens the duration of the investment process and, in principle, reduces investment costs. Within the last 10 years, from the beginning of 2009 to the end of 2018, a total of 547 proceedings were initiated, of which 419 (76.60%) were unique (announced once or repeated unchanged)¹².

The interest in public-private partnership is gradually increasing, which is confirmed by the data contained in the publication entitled "PPP Market Report for 2009- 2019 Q1". According to the data, 10 public-private partnership contracts were concluded in 2016, one more in 2017, and 15 public-private partnership contracts last year¹³. Most often, proceedings are initiated in sectors such as sport and tourism, transport infrastructure, and energy efficiency. The least often are in the field of housing, culture, public buildings and revitalization¹⁴. Even a clear global leader in PPP development like Great Britain did not manage to avoid problems in this respect. The British relatively rarely use the concept of PPP (Public - Private Partnership), as they managed to develop their own special variation of this model, namely Private Finance Initiative (PFI)¹⁵. More widely and under special legal regulations¹⁶ for the purpose of providing public services, the PPP formula has been used since the 1990s and applies to transport, hospitality, education, sport and recreation, urban regeneration and defense. On average, projects financed by the private sector provide savings of around 17% compared to alternative solutions borne by the public sector – which may correspond to

¹¹ Poradnik, Wskazówki dla podmiotów publicznych zainteresowanych podejmowaniem partnerstwa publiczno-prywatnego (A guidelines for public entities interested in undertaking public-private partnership, Departament Instrumentów Wsparcia Ministerstwa Gospodarki, Warszawa 2007

¹² A. Kaczmarek, Rynek partnerstwa publiczno-prywatnego dojrzeva. Liczba umów powinna wzrosnąć [RAPORT] <https://www.portalsamorzadowy.pl/prawo-i-finanse/rynek-partnerstwa-publiczno-prywatnego-dojrzewa-liczba-umow-powinna-wzrosnac-raport,124885.html> [14.03.20]

¹³ Raport rynku PPP 2009 – I kw. 2019 <https://www.ppp.gov.pl/media/system/slowniki/Raport-z-rynku-PPP-III-kw-2019-final.pdf> [14.03.20]

¹⁴ T. Korczyński, Dobry czas na partnerstwo publiczno-prywatne w samorządach, <https://www.rp.pl/Finanse/308139984-Dobry-czas-na-partnerstwo-publiczno-prywatne-w-samorzadach.html> [16.03.20]

¹⁵ M. Kulesza, D. Sześciło, Polityka administracyjna i zarządzanie publiczne (Administrative policy and public management), Lex a Wolters Kluwer business, Warszawa 2013, s. 103

¹⁶ Private Finance Initiative Law, 1992 r. HC Deb. 12 November, vol. 213, col 998 https://api.parliament.uk/historic-hansard/commons/1992/nov/12/autumn-statement#column_993 [14.03.20], <https://publications.parliament.uk/pa/cm201012/cmselect/cmtreeasy/1146/1146.pdf> [16.03.20]

the construction of 25 new hospitals and 130 new schools¹⁷. PFI has the potential to increase the efficiency of the sphere of providing public services but also, not in all conditions can it be taken for granted that private financing will ensure appropriate quality in all types of projects¹⁸.

As a rule, the obligations arising from public-private partnership agreements do not affect the level of public debt and the public finance sector deficit. This happens when the private partner bears most of the construction risk and most of the availability or demand risk. This means that the provisions in the PPP agreement regarding the model of key risk sharing between the partners adopted in the agreement are decisive. It is only in the risk sharing adopted in the contract that it can be concluded that the obligations under the PPP contract do not affect public debt. In the absence of a regulation implementing this provision, the public entity must itself interpret the concepts contained in this provision. This is undoubtedly a very big difficulty discouraging Local Government Units from this model.

Conclusions

A public task is an activity of local government administration which it implements on the basis of laws. The addressees of such tasks may be persons, their communities, and entities without legal personality. Depending on the manner and scope of operation of local government units, they can implement them with the help of their own entities, i.e. budgetary establishments. Municipal companies can be another group of entities, while private entities performing these services based on the formula of public-private partnership can be the next. Each of these groups is characterized by different financing. Therefore, the basic reasons for choosing the contractor for the task should relate to meeting the needs of residents and maintaining the financial security of the municipality. The analysis allows to conclude that due to the pattern of settlements of the commune budget with a municipal company, the result of local government debt may be falsified. On the other hand, not all tasks can be performed using a budgetary establishment. This is due to statutory restrictions. In relation to the PPP formula, it becomes problematic to assess risks and increase prices for residents. However, taking into account past experience, tasks carried out by entities not belonging to the public finance sector are assessed by the inhabitants who benefit from them. This applies to, among other things, time of service, maintaining its quality, and availability.

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¹⁷ J. Hall, Private Opportunity, Public Benefit?, Fiscal Studies (1998) vol. 19, no. 2, p. 138 http://www.ifs.org.uk/fs/articles/hall_may98.pdf dostęp [12.07.2019]

¹⁸ Public Private Partnerships, The Government's Approach, London: The Stationery Office 2000, <http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/mediastore/otherfiles/ppp2000.pdf> dostęp [12.07.2019]

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Podmioty wykonujące samorządowe zadania publiczne – specyfika działania i finansowania

Streszczenie

Celem artykułu było wskazanie i scharakteryzowanie podmiotów, które uczestniczą w procesie wykonywania zadań publicznych. Zamieszczono w nim ich typy i sposób finansowego lub/i organizacyjnego powiązania z budżetem samorządu gminnego. W artykule wykorzystano metodę analizy i krytyki piśmiennictwa oraz wnioskowania indukcyjnego i dedukcyjnego. Do prowadzonych badań wykorzystano dokumenty instytucjonalne o charakterze normatywnym dotyczące zasad funkcjonowania samorządu oraz literaturę przedmiotu z zakresu finansów publicznych (lokalnych). Po dokonaniu badań dowiedziono, że funkcjonalnie spółek komunalnych i ich rozliczenia z budżetem gminy może prowadzić do zakłóceń w dokonaniu oceny stanu zadłużenia podmiotu samorządowego. Podążając za doświadczeniem Wielkiej Brytanii uznać można, że jedną z racjonalnych możliwości realizacji zadań jest zawieranie umów w ramach Partnerstwa Publiczno-Prywatnego. Jednakże i to rozwiązanie może nieść ze sobą niebezpieczeństwa finansowe. Nieprawidłowy podział ryzyk, może doprowadzić do przesunięcia wykonania zadania w czasie lub zbyt dużego obciążenia finansowego samorządu. Ponadto formuła angażowania kapitału prywatnego w ramach PPP może być zastosowana w sytuacji, gdy przy realizacji określonego zadania publicznego pojawiają się korzyści ekonomiczne, których skala może zainteresować właścicieli kapitału. Znaczna część zadań publicznych realizowana przez gminy, szczególnie w mniejszych ośrodkach (wiejskich) jest deficytowa i co do zasady, nie daje takiej szansy.

Słowa kluczowe: samorząd, zadania publiczne, spółki komunalne, finanse.

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