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Problems associated with the notion of "public duties" and "public utility services" with regard to the principle of the autonomy of local self-governments in Poland – an analysis of selected issues

The local self-government was restored in Poland in 1990 and was based on the experiences of interwar Polish local self-governments as well as a comparison with the experiences of local self-governments in Western European countries. However, local self-government cannot be treated as a static structure; on the contrary, it is still developing. One of the proofs of this is the structural reform of 1998, involving the introduction of local self-government at the county (*powiat*) and voivodeship (province) levels.

It has to be said, though, that the notion of local government has been defined on numerous occasions. This state of affairs seems to have been influenced by the specific policy conditions in which the various definitions were developed. As Jacek Starościak rightly pointed out: "the institution of self-government, as one of the ways of decentralizing state administration, has such a voluminous literature that at this point it would seem to be rather impossible to add any new elements to the definition of what self-government actually is."[1]

Currently, there are two distinct and divergent notions of local self-government in circulation; namely, the legal and political conceptions of self-government. However, the political understanding of self-government goes beyond the scope of the present considerations concerning the duties of local self-governments. In contrast, self-government as viewed from the legal

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[1] J. Starościak, *Decentralizacja administracji,* Warszawa 1960, p. 52.

perspective can be understood as the performance of public administration duties in a decentralized manner by legal subjects that are separate from the state, with these entities assuming their own responsibility for the discharge of duties. The principle of the decentralization of public authority, along with guarantees of the role and the entitlements of local self-government, are provided for in Article 16 of the Constitution of the Republic of Poland (henceforth 'the Constitution').

The concept of decentralization is most frequently understood as "a way of organizing the administrative apparatus, in which lower-tier authorities are not hierarchically subordinated to higher-tier authorities, and any interference in their scope of activity can only take place on the basis of a given statute and in forms provided for by law."[2] On the other hand, Article 15 (2) of the Constitution states that decentralization refers to territorial division which takes social, economic and cultural ties into consideration, and such ties are to ensure the territorial units the capacity to perform their public duties. According to Article 16 (1) of the Constitution, self-governing communities are formed, in accordance with law, from "the inhabitants of the units of basic territorial division." Moreover, such communities are granted the opportunity to discharge a substantial part of public duties.

The classic theory of local self-government divides the administration's duties into its own duties and delegated duties. The core of this responsibility is the performance of public duties. Some of these are to be carried out autonomously, that is to say, without the possibility of an unrestricted (substantive) interference by state authorities (the administration's own duties). However, other duties (delegated) may be subject to such substantive interference. In the case of the self-government's own duties, such interference is acceptable only in the form of supervision which is defined by law. It should be noted that the European Charter of Local Self-Government also states that "The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute" (Article 4 (1) (1)).[3] The term 'basic powers' is understood to cover the self-government's own duties, as the second sentence of this provision from the European Charter refers to local authorities being attributed powers and responsibilities for special purposes, i.e. delegated duties.[4] Thus, in line with the principle of subsidiarity, we can see a division of duties between the state and local self-governments. It should also be noted that the division of a municipality's public duties into its own and delegated does not result in an opposi-

[2] A. Skoczylas, W. Piątek, *Komentarz do art. 15 Konstytucji RP,* (in:) *Konstytucja RP, T. I, Komentarz do art. 1-86,* ed. L. Bosek, M. Safijan, Warszawa 2016, Legalis.

[3] JL RP 1994 no. 124, item 607.

[4] B. Dolnicki, *Polski samorząd terytorialny na tle europejskim*, Gazeta Uniwersytecka UŚ www.gazeta.us.edu.pl.

tion between the municipality and the state, because from the legal point of view the municipality also exercises administrative power of its own. In addition, in both areas, the municipality discharges duties determined by the statute.[5]

Local self-government, which is a local community, aims to discharge specific duties of the public administration autonomously, with the resources it has been provided with.[6] It should be noted that while the autonomy of various local self-government units is closely linked with the decentralization of public authority, the scope of this autonomy depends mainly on the way in which the system of these units is regulated, which involves regulating their competencies, duties and financial affairs, as well as the state's supervision with regard to their functioning.[7] If the local self-government is to be autonomous, it needs to have sound material foundations which will ensure the right of ownership as well as other rights of property granted under the Constitution.[8] In its ruling of 20 November 1996,[9] the Constitutional Tribunal of the Republic of Poland stated that "local self-government is an essential component of a democratic state," and that "the ring-fencing of communal property derives from the existence of the municipality (*gmina*) as a subject of public law."

The scholarly literature on the subject provides examples of the various forms of autonomy that the local self-government can assume. Bogdan Dolnicki states that such autonomy is protected by law, and it comprises: the autonomy to shape the internal system of self-government units, financial independence, tax independence, economic independence and public-legal autonomy, meaning the ability to perform public duties autonomously.[10] The autonomy of local self-government units is one of the basic constitutional principles of the Republic of Poland. This principle is derived from Articles 16 (2) and 165 of the Constitution,[11] as well as from the regulations of various acts of institutional law.[12]

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[5] See K. Podgórski, *Zadania samorządu terytorialnego (część ogólna),* Katowice 1990, p. 8.

[6] W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej, Komentarz,* wyd. 7, Warszawa 2013, p. 217.

[7] J. Jagoda, *Prawne przesłanki samodzielności samorządu terytorialnego,* (in:) *Administracja publiczna pod rządami prawa,* Księga pamiątkowa z okazji 70-lecia urodzin prof. Dra hab. Adama Błasia, Wrocław 2016, p. 139.

[8] B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej, Komentarz* vol. IV, ed. L. Garlicki, Warszawa 2005, p. 13

[9] K 27/95, OTK ZU 1996, no. 6, item 50.

[10] B. Dolnicki, *Prawne płaszczyzny przejawiania się granic samodzielności jednostek samorządu terytorialnego* (in:) S. Dolata, *Prawne i finansowe aspekty funkcjonowania samorządu terytorialnego,* vol. I: *Prawo samorządowe i administracyjne,* Opole 2000, p. 191.

[11] The Act of 2 April 1997, JL R,P no. 78, item. 483 as amended.

[12] Article 2 of the Act of 8 March 1990 On the Municipal Self-government, (consolidated text – JL RP 2001, no. 142, item 1591 as amended; Article 2 of the Act of 5 June 1998, On County Self-government, consolidated text – JL RP 2001, no. 142, item 1592 as amended; and Article 6 of the

Local self-government units have also been defined, in both administrative and civil law, as separate legal subjects which undertake activities on their own behalf and assume their own responsibility. This has opened up the opportunity to strengthen the autonomy of these units and become a basic element of profound changes in the structure of local administration. For the institutions of the current local self-governments to function properly, the system of relationships between local self-governments and the state authority is extremely important. Due to this dependency, there is a need to protect the autonomy of self-government, taking into account an extremely important aspect, namely the essence of local self-government.[13] Błaś believes that the essence of the notion of autonomy manifests itself in the fact that "public duties are discharged by subjects able to exercise their right to autonomy and in possession of their own subjective rights (…). No authority of the state administration has its own subjective rights, or benefits from a certain autonomy, granted *a priori* (especially granted by court), and neither does it have legal personality."[14]

The autonomy of local authorities may be analyzed from a number of standpoints. Firstly, the legal standpoint, derived from the legal system, according to which a local self-government unit is a legal entity, which entails independence and self-governance. Secondly, the economic standpoint, which involves discharging duties and engaging in business activities. Thirdly, the organizational dimension, which involves granting the right to create new authorities and organizational units, and the right to appoint staff. Fourthly, the financial dimension, which entails the right to decide upon the structure and amount of income, as well as the levels and kinds of expenditure. Finally, the political dimension, which is defined as the right to embark on a given course of action in line with the policies of a given party or organization.[15] However, it has to be stressed that such autonomy does not have an absolute character and may be limited by means of legislation. The primary concern is to ensure that that the interference of the legislator in the autonomy of local self-government units is not excessive and can be justified in the light of the Constitution and other statutes.[16]

Act of 5 1998, On Voivodeship Self-government, consolidated text – JL RP 2001, no. 142, item. 1590 as amended.

[13] See B. Dolnicki, *Nadzór nad samorządem terytorialnym,* Katowice 1993, p. 125 ff.

[14] A. Błaś, *Problem samodzielności działania organów administracji publicznej i samodzielności jednostek samorządu terytorialnego* (in:) S. Dolata (ed.) *Problemy prawne w działalności samorządu terytorialnego,* Opole 2002, p. 101.

[15] B. Filipiak-Dylewska, *Procedury budowy strategii finansowania zadań własnych gminy,* Szczecin 2002, s. 120; podobnie H. Stępień, *Finanse lokalne w warunkach decentralizacji finansów publicznych,* Wyższa Szkoła Humanistyczno-Ekonomiczna, Włocławek 2006, p. 30.

[16] M. Łyszkiewicz, *Znaczenie samodzielności dochodowej,* Gazeta Samorządu i Administracji 2013, no. 7, p. 19.

Also, in its resolution of 27 September 1994, the Constitutional Tribunal stated that "local self-government units [...], while performing public duties, participate in the exercise of power the scope of which has been determined by the legislator, yet they do so on special terms, the most important of which is the principle of autonomy, granted and protected by statute."[17] This resolution was adopted in order to establish a commonly applicable interpretation of Articles 85 and 86 of the Act on Local Self-government of 8 March 1990. According to the resolution of the Tribunal, the municipal activities of local government include both its own public duties as well as duties delegated in the area of government administration. This is crucial for further considerations regarding public duties discharged by local government units.

An attempt to clarify the meaning of these two terms and the relations between them is crucial, as there are problems associated with their interpretation with regard to the functioning of local self-government. They raise serious questions in relation to both the doctrine and case-law. Hence, the question arises of whether public duties carried out by local self-governments are synonymous with the notion of "public service" duties.

The concept of public utility services has not been defined in the legislation, which is why a number of recommendations have been formulated in the scholarly literature and the case-law, according to which it is necessary to assess whether a given activity is covered by this concept. In the existing case-law, public services include, in particular: water supply and sewage disposal services for local communities; collection, disposal, storage and utilization of municipal waste; cemetery and funeral services; and provision of public transport stops, etc.[18] A precise explanation of the concept of 'public utility services' is also lacking in the case-law of the Supreme Court. The above examples suggest that the functional approach to the interpretation of this concept prevails. According to the case-law, the scope of this concept should be determined by taking into account both the purpose of the activity being carried out and the meaning assigned to this concept in other legal regulations – thus the determination should be as broad as possible.[19] The broadest approach views public services as those which serve the public interest.[20]

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[17] The resolution of the Constitutional Tribunal of 27 September 1994, K 10/93, OTK 1994, part II, item. 46.

[18] See, *inter alia*, the judgment of SOKiK (Office of Competition and Consumer Protection) of 20 March 2008, XVII Ama 78/07 unpublished, the judgment of SOKiK (Office of Competition and Consumer Protection) of 1 December 2004, XVII Ama 70/03, Wokanda 2005, no. 11, p. 53.

[19] The judgment of SOKiK (Office of Competition and Consumer Protection) of 13 June 2006, XVII Ama 48/05 unpublished.

[20] The judgment of SOKiK (Office of Competition and Consumer Protection) of 20 March 2008, Ama 78/07: this judgment was issued in the case against the decision of the President of the Office,

We can now turn to the views expressed in the scholarly literature, which are based on the cited case-law and constitute a basis for defining the term 'public utility services'. According to Marek Szydło, public services are those which satisfy the basic needs of members of society, without which normal, everyday life is impossible. Public services are provided on an ongoing and continuous basis, and are usually available to anyone wanting to use them.[21] According to Stawicki,[22] public services should be understood in a broad sense and identified with government and local government services that fulfil the collective needs of society. The author also refers to the resolution of the Constitutional Tribunal of 12 March 1997.[23] Cezary Kosikowski recognizes that public services are those which are to meet the ongoing and continuing needs of the population, paid for by public assets, without either the need to maintain an equivalent level of benefits or a profit-oriented approach. Kosikowski also recognizes the subordination of individual businesses to the needs of the community to be a feature of public services.[24]

These definitions provided by the literature suggest that for a specific entity and its activity to be classified as a public service, it is crucial that the activity under consideration serves the needs of the population. While it is obvious that public services are provided in the public interest in order to satisfy the needs of local communities, not every service provided by the state and local self-governments – or by their subsidiary organizations – is a public service. The foregoing also allows another conclusion to be drawn, namely that the provision of 'public services' is not performed for the purpose of making a profit. However, these views reduce the meaning of the concept to the absolute minimum.

The fact that some of the positions presented in the doctrine are unjustified – namely those that adopt a narrow conception of 'public services', defining them as not being performed in order to make a profit – entails

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which deemed that the municipality was abusing its dominant position on the local water supply market by making the connection of a property to the municipal water supply network subject to payment of a flat fee of PLN 4000 to the municipality.

[21] See M. Szydło, *Nadużywanie pozycji dominującej w prawie konkurencji,* Warszawa 2010, p. 28.

[22] A. Stawicki, E. Stawicki, *Ustawa o ochronie konkurencji i konsumentów, Komentarz,* Warszawa 2011, p. 90.

[23] In 8/96, OTK 1997 no. 1, item 15 […] "This leads to the conclusion that state and municipal organizational units carrying out public services should be understood as all units whose purpose is to meet collective public needs of a general nature, belonging to public duties, and whose activity is not aimed at maximizing profit."

[24] C. Kosikowski, *Publiczne prawo gospodarcze Polski i Unii Europejskiej,* Warszawa 2006, p. 251, see also A. Wasilewski, *Przedsiębiorstwo użyteczności pub licznej w świetle prawa polskiego,* Przegląd Ustawodawstwa Gospodarczego 1982 no. 1-2, p. 12; W podobny sposób pojęcie użyteczności publicznej rozumie L. Zacharko, *Nadzór nad przedsiębiorstwem użyteczności publicznej we Francji,* Samorząd Terytorialny 1992, no. 1-2, p. 76.

that an alternative position needs to be adopted. The interpretation of the term 'public service' should be broad (and not restrictive). On the basis of a broad understanding of public service, the Constitutional Tribunal established an interpretation of the concept in its resolution of 17 March 1997.[25] Although this ruling was concerned with the provision of the Public Procurement Law (in force at that time), the Tribunal explicitly referred to the definition contained in the Act on Municipal Management.

In the light of this ruling, public services should be understood to include services aimed at the ongoing and continual fulfilment of the collective needs of the population through the provision of universal services.[26] The findings of the Constitutional Tribunal have universal significance and should have a decisive impact on how the provisions are interpreted.[27] As a consequence, it should be noted that the interpretation of the Constitutional Tribunal of 12 March 1997 was made approximately three months after the adoption of the Act on Municipal Management, which included Article 1 (2), referred to above, in the wording still in force to this day. Therefore, there is no doubt that the application of this interpretation is also perfectly valid for this provision, the content of which the Tribunal took into account when adopting it.[28] These observations clearly demonstrate the questionable reasoning behind the arguments for adopting a restrictive understanding of the concept of 'public service' in relation to local governments.

Neither is there a normative definition of 'public duties', therefore it is necessary to refer to the views expressed in the doctrine and case-law. In its resolution of 27 September 1994, the Constitutional Tribunal stated that all the duties of local self-governments have a public character, in the sense that they aim to meet the collective needs of society, whether they be local (the self-government's own duties) or nationwide ones organized by the government (delegated duties).[29] In a different ruling, the Constitutional Tribunal drew attention to the fact that the provisions of the Constitution lack in a substantive criterion which the legislator would be obliged to follow when defining certain public duties entrusted to the local self-government as the own duties of that self-government. According to the Tribunal, the legislator should entrust local government with such duties which are

[25] The resolution of the Constitutional Tribunal of 17 March 1997, W/96, "Rzeczpospolita" of 14 April 1997, p. 16.

[26] K. Byjoch, S. Redeł, op. cit., p. 65.

[27] For a broader discussion of this issue, see M. Stec, M. Mączyński, *Zakres i charakter zadań samorządu województwa sfera użyteczności publicznej,* Kontrola Państwowa, Państwo i społeczeństwo, 2016 r. no. 1, p. 135.

[28] Ibidem, p. 136.

[29] The resolution of the Constitutional Tribunal of 27 September1994, K 10/93, OTK 1994, II, item 46.

public in nature, involve satisfying the needs of residents and can be implemented under the jurisdiction of a local self-government.[30]

Undoubtedly, each of the definitions presented in the literature can lead to a deeper analysis of the subject matter, however this path will not lead to a comprehensive understanding. Public duties are defined as public goals which the public administration is obliged to implement, while public goals are identified with the public interest.[31] The public nature of these duties means that they have a normative authority, and that the local government discharges its duties in the public interest. Public duties are also defined as those for which the state assumes responsibility, in order to meet the collective and individual human needs that result from people living together in communities.[32] Dolnicki notes that local issues and duties are rooted in the local community and have distinct connections with it. Such duties can be fulfilled by the members of that community independently, and they can assume responsibility for them. Local duties will therefore be connected with a given area and the members of one local organization, whose territory is not subject to further division.[33]

When discussing this issue in relation to privatization, Stanisław Biernat rightly points out that the main criterion for identifying a public duty should be that the public administration is responsible for its implementation, regardless of whether it is at the governmental or local level, even if the contractor remains outside administrative structures. Biernat stresses that transferring the performance of public duties to non-public entities (Article 3 of the Act on Municipal Management) does not mean they cease to be included in the category of public duties.[34] Similarly, the Supreme Court stated that all municipal activities carried out in public-law forms are aimed at performing public duties, and hence fall under the scope of public administration. [35]

The main task of a municipality is undertaking activities in all public matters of a local character which have not been stipulated by law as the

[30] The judgment of the Constitutional Tribunal of 23 October 1995, K 4/95, OTK 1995, II, item 11, and MP 1998, no. 12.

[31] M. Stahl, *Cele publiczne i zadania publiczne*, (in:), *Koncepcja systemu prawa administracyjnego,* J. Zimmermann (red.), Warszawa 2007, p. 95, M. Karlikowski, *Zadania jednostek samorządu terytorialnego w Polsce,* Zeszyty Naukowe Ostrołęckiego Towarzystwa Naukowego 2013, no.27, pp. 330-340.

[32] S. Fundowicz, *Dynamiczne rozumienie zadania publicznego,* (in:) *Administracja i prawo administracyjne u progu nowego tysiąclecia,* Łódź 2000, p. 158.

[33] B. Dolnicki, *Samorząd terytorialny,* Warszawa 2012, p. 274 ff.

[34] S. Biernat, *Prywatyzacja zadań publicznych. Problematyka prawna.* Warszawa– Kraków 1994, p. 25 ff.

[35] The resolution of the Supreme Court of 26 September 1996, III ARN 45/96, OSNAPiUS 1997 no. 8, item 125.

responsibility of other entities. Such activity concerns, above all, duties which are in the scope of public service (Article 7 (1) of the Act on Municipal Self-Government). The enumeration of duties included in this provision is non-exhaustive (this is indicated by the specific wording).

As it is evident from the above, the scope of a municipality's duties can be flexible, depending on the collective needs of a particular community. Therefore, it is difficult to provide a precise and definitive list of a self-government's own duties and, consequently, projects which remain in the sphere of public service. Taking into account the municipality's public duties, it should be noted that both its own and delegated duties are public duties within the meaning of the applicable law.[36] On the other hand, delegated duties belong to the duties of the government administration and therefore do not have to aim at the ongoing and continuous fulfilment of the collective needs of the local community through the provision of publicly available services. It should also be noted that delegated duties are financed from the state budget, and thus their implementation must take into account the likelihood of them being financed.[37]

The term 'public service' also has significance for the county and the voivodeship. At this point it is necessary to refer to Article 6 (2) of the Law on the System of Common Courts. ("the *powiat* cannot undertake business activities which exceed duties of a public service nature"), and Article 13 of the Act on Voivodeship Self-government, which authorizes the voivodeship to create and join private limited companies and joint-stock companies for purposes that lie within the scope of the public interest, with no limitations other than those related to the implementation of their own duties; however, outside this scope they may only form partnerships in the situations listed in Paragraph 2 of this Article.[38] In conclusion, it should be stated that not all duties carried out by local self-governments are duties of 'public service', but certainly all the above duties are public duties, since local self-government was created for this purpose.

Satisfying the needs of local communities has ceased to be the domain of the state (at the central level), and in accordance with the principle of decentralization this has been assigned to self-government communities. It should also be added that the criteria which enable 'own' and 'delegated' duties to be distinguished are imprecise, and their classification depends, in

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[36] Tak. A. Doliwa, *Samodzielność jednostek samorządu terytorialnego,* (in:) *Prawo samorządu terytorialnego*, pod red. P. Sitniewskiego, Wyższa Szkoła Administracji Publicznej im. S. Staszica, Białystok 2009, p. 120.

[37] K. Bandarzewski, *Ustawa o samorządzie gminnym, Komentarz* ed. P. Chmielnickiego, Warszawa 2013, p. 279.

[38] H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności, wydanie V*, Warszawa 2008, p. 114.

principle, only on the will of the legislator. In addition, it is also necessary to highlight that the public duties assigned to local self-government units are subject to constant evolution, which involves their systematic development in response to the demands of residents. This trend mostly concerns municipal self-government, and in this case the catalogue of public duties has been extended several times since 1990. Thus, it is directly related to the increase in the significance of local government administration bodies and the scope of the competences they are granted.

The problem of the statutory division of self-government public duties being imprecise is tied up with another problem, namely the lack of appropriate competences for their autonomous creation. This issue primarily concerns the municipality, where we are dealing with an 'open' catalogue of duties combined with the constitutional presumption of the municipality having jurisdiction in most public matters. Nevertheless, in Polish legislative practice and case-law the approach prevails in which it is assumed that the possibility of performing any public duty should result directly from the applicable legal regulations. As it is emphasized in the doctrine, there are no universal criteria for the separation of the scope of government and self-government administration because the criteria adopted are created in specific conditions and in relation to specific goals.[39]

It is also impossible to produce a definitive list of the areas of social life or issues which fall within the sphere of public services that would apply for all time and in all circumstances. The variability of these boundaries is mainly due to the variable needs of local communities.

From the above arguments one can draw the conclusion, on the basis of new law (*de lege ferenda*), that it will be legitimate to regulate the above matters in a separate statutory regulation, which will apply to all categories of local self-government.[40]

Bibliography

Błaś A., *Problem samodzielności działania organów administracji publicznej i samodzielności jednostek samorządu terytorialnego* (in:) S. Dolata (ed.) *Problemy prawne w działalności samorządu terytorialnego,* Opole 2002.

Banaszak B, *Konstytucja Rzeczypospolitej Polskiej, Komentarz* t. IV, ed. L. Garlicki, Warszawa 2005.

Bandarzewski K., *Ustawa o samorządzie gminnym, Komentarz*, eds. P. Chmielnicki, Warszawa 2013.

[39] Z. Niewiadomski, *Zadania samorządu terytorialnego* (in:) *System prawa administracyjnego. Podmioty administracyjne,* red. R. Hausner, Z. Niewiadomski, A. Wróbel, vol. 6, Warszawa 2011 b, p. 132.

[40] For more detailed discussion of this issue, see M. Stec, *O potrzebie reinterpretacji (i nie tylko) niektórych pojęć w zakresie samorządowych zadań i kompetencji,* Ruch Prawniczy, Ekonomiczny i Socjologiczny, 2017 vol. 3.

Biernat S., *Prywatyzacja zadań publicznych. Problematyka prawna*. Warszawa-Kraków 1994;

Dolnicki B., *Polski samorząd terytorialny na tle europejskim*, Gazeta Uniwersytecka UŚ http://gazeta.us.edu.pl/node/214831.

Dolnicki B., *Nadzór nad samorządem terytorialnym,* Katowice 1993.

Dolnicki B., *Prawne płaszczyzny przejawiania się granic samodzielności jednostek samorządu terytorialnego* (in:) S.Dolata, *Prawne i finansowe aspekty funkcjonowania samorządu terytorialnego*, vol. I: *Prawo samorządowe i administracyjne*, Opole 2000.

Dolnicki B., *Samorząd terytorialny,* Warszawa 2012.

Doliwa A., *Samodzielność jednostek samorządu terytorialnego,* (in:) *Prawo samorządu terytorialnego*, eds. P. Sitniewskiego, Wyższa Szkoła Administracji Publicznej and. S. Staszica, Białystok 2009.

Filipiak-Dylewska B., *Procedury budowy strategii finansowania zadań własnych gminy*, Szczecin 2002.

Fundowicz S., *Dynamiczne rozumienie zadania publicznego*, (in:) *Administracja i prawo administracyjne u progu nowego tysiąclecia,* Łódź 2000.

Jagoda J., *Prawne przesłanki samodzielności samorządu terytorialnego*, (in:) *Administracja publiczna pod rządami prawa*, Księga pamiątkowa z okazji 70-lecia urodzin Prof. dra hab. Adama Błasia, Wrocław 2016.

Izdebski H., *Samorząd terytorialny. Podstawy ustroju i działalności, wydanie V* Warszawa 2008.

Karlikowski M., *Zadania jednostek samorządu terytorialnego w Polsce,* Zeszyty Naukowe Ostrołęckiego Towarzystwa Naukowego 2013, no. 27.

Kosikowski C., *Publiczne prawo gospodarcze Polski i Unii Europejskiej,* Warszawa 2006.

Łyszkiewicz M., *Znaczenie samodzielności dochodowej,* Gazeta Samorządu i Administracji 2013, no 7.

Niewiadomski Z., *Zadania samorządu terytorialnego* (in:) *System prawa administracyjnego. Podmioty administracyjne*, red. R. Hausner, Z. Niewiadomski, A. Wróbel, vol. 6, Warszawa 2011 b.

Podgórski K., *Zadania samorządu terytorialnego (część ogólna),* Katowice 1990.

Skoczylas A., Piątek W., *Komentarz do art. 15 Konstytucji RP,* (in:) *Konstytucja RP, T. I, Komentarz do art. 1-86,* red. L. Bosek, M. Safijan, Warszawa 2016, Legalis.

Skrzydło W., *Konstytucja Rzeczypospolitej Polskiej, Komentarz*, wyd. 7, Warszawa 2013.

Starościak J., *Decentralizacja administracji,* Warszawa 1960.

Stawicki A., Stawicki E., *Ustawa o ochronie konkurencji i konsumentów, Komentarz*, Warszawa 2011;

Stec M., Mączyński M., *Zakres i charakter zadań samorządu województwa sfera użyteczności publicznej*, Kontrola Państwowa, Państwo i społeczeństwo, 2016, no. 1.

Stępień H., *Finanse lokalne w warunkach decentralizacji finansów publicznych,* Wyższa Szkoła Humanistyczno-Ekonomiczna, Włocławek 2006.

Szydło M., *Nadużywanie pozycji dominującej w prawie konkurencji,* Warszawa 201.

Wasilewski A., *Przedsiębiorstwo użyteczności publicznej w świetle prawa polskiego,* Przegląd Ustawodawstwa Gospodarczego 1982 no. 1-2.

Zacharko L., *Nadzór nad przedsiębiorstwem użyteczności publicznej we Francji,* Samorząd Terytorialny 1992, no. 1-2, p. 76.

Cited statutes

The Act of 2 April 1997. Konstytucja RP JL RP, No. 78, item 483 as amended.

The Act of 8 March 1990 on Municipal Management, consolidated text: JL RP 2001, No. 142, item 1591, as amended.

The Act of 5 June 1998 on County Self-government, consolidated text: JL RP 2001, No. 142, item 1592, as amended.

The Act of 5 June 1998 on Act on Voivodeship Self-government, consolidated text: JL RP 2001, No. 142, item 1590 as amended.

Cited judgements

The resolution of the Constitutional Tribunal of 27 September 1994, K 10/93, OTK 1994, part II, item 46.

The judgment of the Constitutional Tribunal of 23 October 1995, K 4/95, OTK z 1995, part II, item 11, and MP 1998, no. 12.

The decision of the Supreme Court of 26 September 1996, III ARN 45/96, OSNAPiUS 1997 no. 8, item 125.

The judgment of the Office of Competition and Consumer Protection of 20 March 2008, XVII Ama 78/07 unpublished.

The judgment of the Office of Competition and Consumer Protection of 1 December 2004, XVII Ama 70/03, Wokanda 2005, no. 11, p. 53.

The judgment of the Office of Competition and Consumer Protection of 13 June 2006, XVII Ama 48/05 unpublished.

The judgment of the Office of Competition and Consumer Protection of 20 March 2008, Ama 78/07.

PROBLEMS ASSOCIATED WITH THE NOTION OF "PUBLIC DUTIES" AND "PUBLIC UTILITY SERVICES" WITH REGARD TO THE PRINCIPLE OF THE AUTONOMY OF LOCAL SELF-GOVERNMENTS IN POLAND – AN ANALYSIS OF SELECTED ISSUES

Abstract: The aim of this paper is to highlight specific features related to the performance of public duties by local self-governments, focusing on their autonomy. Hence, it is essential that the conceptual boundaries of such notions as 'public duties' and duties associated with 'public services' are established at the outset. The current lack of clarity contributes to the complexity of the issue, and this is further complicated by a lack of clear legal regulations which would explicitly define the acceptable way in which public duties assigned to local self-governments are to be implemented. These issues suffice to explain the choice of the topic tackled in this study. Admittedly, it will not provide answers to all the problems associated with the public utility services which fall within the scope of the public duties discharged by particular local self-government units: *gmina* (municipality/commune), *powiat* (county), or *województwo* (voivodeship). However, it may form the basis for further research to be conducted in this field. Therefore, within the framework of this paper, issues related to local self-governments, their autonomy, and the concepts of 'public duties' and 'duties in the field of public utility' will be discussed. These issues are important, as they are inextricable from the decentralization of public authority, which consists in assigning numerous public duties to be fulfilled by local self-governments.

Keywords: LOCAL SELF-GOVERNMENT, AUTONOMY, LEGAL PERSONALITY, PUBLIC DUTIES