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## REKRUTACJA JAKO SPOSÓB ZATRUDNIANIA PRACOWNIKÓW SAMORZĄDOWYCH NA STANOWISKACH URZĘDNICZYCH W POLSCE

## RECRUITMENT AS A WAY OF EMPLOYING SELF-GOVERNMENT EMPLOYEES IN CLERICAL POSITIONS IN POLAND

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### Streszczenie

Rekrutacja jest podstawowym sposobem zatrudniania pracowników samorządowych na stanowiskach urzędniczych w Polsce. Rekrutacja kandydatów na te stanowiska odbywa się w sytuacji istniejącego wakatów stanowiska urzędnika w danej jednostce administracyjnej. Proces rekrutacyjny pracowników urzędników prowadzony jest przez komisję rekrutacyjną wyznaczoną przez kierownika jednostki. Spośród wszystkich kandydatów uczestniczących w rekrutacji, komisja wybiera nie więcej niż pięciu najlepszych kandydatów. Kandydaci muszą spełniać wszystkie przedstawione zasadnicze wymagania i w jak największym możliwym stopniu wymagania dodatkowe. Kandydaci zostają przedstawieni kierownikowi jednostki, który spośród nich wybiera kandydata na ogłoszone stanowisko. Celem niniejszego artykułu jest analiza środków prawnych i prawno-organizacyjnych procesu rekrutacji jako sposobu zatrudniania pracowników samorządowych na stanowiskach urzędniczych w Polsce.


**Słowa kluczowe:** pracownik samorządowy, rekrutacja, stanowisko urzędnicze, wymagania kwalifikacyjne

### Abstract

Recruitment is the basic way of employing self-government employees in clerical positions in Poland. The recruitment of candidates for these positions takes place in the situation of exist-

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ing a clerical vacant position in a given administrative unit. The recruitment process is run by a recruitment committee appointed by the head of the unit. From among all the participating candidates, not more than five best applicants are selected by the committee. The candidates must comply with the essential requirements and, to the greatest extent, meet the additional requirements. These candidates are introduced to the head of the unit who, from among them, selects the candidate to be employed for the clerical position. The purpose of this article is to analyze the legal and legal-organizational measures of the recruitment process as a way of employing local government employees in official positions in Poland.

**Keywords:** self-government employee, recruitment, clerical position, qualification requirements

## **Introduction**


Self-government employees employed in clerical positions in Poland are a group of about 250,000 people (Ornoch – Tabędzka M., Porawski A., Potkański T., Ziółkowska E., Krawczyk P., Kręc A., 2014), and every year, several thousand officials are employed in self-government administration (Serwis Samorządowy PAP, Zatrudnienie w JST). Therefore, the analysis of recruitment as a way of employing self-government employees in clerical posts is important not only from the scientific point of view, but above all from a practical perspective. In accordance with Article 2 of the Act on Self-Government Employees dated 21 November 2008 (hereinafter: the Act on Self-Government Employees), self-government employees are employees employed in:

- 1) marshal's offices and voivodeship self-government organisational units
- 2) district offices and district organisational units
- 3) municipal offices, auxiliary units of communes, municipal budgetary units and self-government budgetary establishments;
- 4) offices (their counterparts) of unions of self-government units and self-government budgetary establishments set up by these unions;
- 5) offices (their counterparts) of administrative units of self-government units.

The acquisition of the status of a self-government employee results only from the fact of being employed in organisational units specified by the legislator. As Marcin Wujczyk rightly points out, "The question whether a person is a self-government employee is not determined by the nature of the work, the way in which

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the employment relationship is established or performing a specific function, but by the place of employment." (Wujczyk M., LEX, 2014). Self-government employees are employed in clerical positions, including clerical managerial positions as well as auxiliary and service posts (Article 4 (2) of the Act on Self-Government Employees). The Act in itself does not specify in details the positions of self-government employees, including clerical positions. It is specified by the Regulation on the remuneration of self-government employees dated 18 March 2009 (hereinafter: the Regulation on the remuneration of self-government employees). The regulation defines, inter alia, a list of positions, including the division into managerial, clerical, auxiliary and servants' positions as well as advisors and assistants (§ 1 point 1 of the Regulation on the remuneration of self-government employees). According to Article 4 (1) point 3, self-government employees in clerical positions are employed under a contract of employment.


### **Recruitment and its essential features**

The establishment of employment relationship as an official takes place as a result of recruitment, the relevant rules of which are set out in the Act on Self-Government Employees. It ought to be emphasized that the Act on Self-Government Employees does not specify the definition of a legal recruitment. As stated in the definition contained in the Polish Language Dictionary, the recruitment is "accepting new members, employees, students, etc. to an organisation, institution or university". On the contrary, according to Bolesław Maciej Ćwiertniak and Daniel Książek "on the one hand, recruitment can be understood as an institution within the official law aiming to fill a free position (in the strict sense), and on the other hand as a series of organisational and technical activities (in the broad sense)" (Ćwiertniak B. M., Książek D., LEX 2014).

According to Article 11 (1) of the Act on Self-Government Employees, the recruitment process of candidates for vacant official positions is open and competitive. As stated by the Voivodship Administrative Court in Gdańsk in the judgment of 21 July 2016 "The recruitment of candidates for a vacant clerical position is open and it takes the form of a formal procedure in which everyone who fulfills the conditions

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provided in the recruitment announcement may submit their candidacy." Openness of the recruitment is retained if the requirement of public recruitment is met. The transparency of the recruitment is guaranteed by the obligation to disseminate information on the vacant clerical position [...] and by the fact that the announcement of the recruitment and its result is public. [...] In turn, the competitiveness of the recruitment is related to the implementation of the postulate of reliable and impartial performance of public tasks by self-government bodies. These bodies ought to strive to select the best candidate based on substantive criteria." (Judgment of the Provincial Administrative Court in Gdańsk of 21 July 2016, III SA/Gd 107/16).

### **Vacant clerical position**


The recruitment of candidates for the office post takes place in the situation of a vacant clerical position in a given organisational unit. According to Article 12 (1) of the Act on Self-Government Employees, a vacant clerical position is a position on which, in accordance with the provisions of the Act or by an agreement, a self-government employee with the qualifications required for a given position employed in an official position has not been transferred or no recruitment has been carried out, or despite the recruitment an employee was not employed. As Bogusław Przywora notes, "a vacant clerical position occurs when a self-government employer has a range of official duties, not assigned to any employee who is in the employment relation with that employer." (Przywora B., ST 2014/7-8/104-113).

### **Replacement employment contract**

According to Article 12 (2) of the Act on Self-Government Employees, the employment of a replacement person in connection with the justified absence of a self-government employee does not require a recruitment. The justification of absence of an employee due to illness, maternity leave, holiday leave or unpaid leave does not result in the dismissal of his position. Therefore, this position does not become a vacant position in case of a justified absence of an employee. As stipulated in Article 16 (1), the second sentence of the Act on Self-government employees, if it is necessary to replace the employee during his justified absence from work, the em-

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ployer may employ another employee for this purpose. The employment of a replacement employee is temporary and its purpose is to ensure the continuity of tasks belonging to the employee's duties during his or her justified absence. A replacement employee enters into an employment contract of employment for a fixed term, covering the period of that absence (Article 16 (1) the second sentence of the Act on Self-Government Employees). As Wojciech Drobny emphasizes: "A replacement employment contract is [...] a fixed-term employment contract made in special circumstances and for a specific purpose." (Drobny W., 2010). Replacement employment may apply to all clerical positions.

### **The announcement of the recruitment**


The recruitment for a vacant official position begins with the announcement of a vacant clerical position and the recruitment of candidates for this position. Such an announcement is placed in the Public Information Bulletin, referred to in the Act on Access to Public Information of 6 September 2001 (hereinafter: PIB) and on the information board in the unit where the recruitment is conducted (Article 13 (1) of the Act on Self-Government Employees). The announcement of the recruitment can also be additionally placed on a website (or websites) other than PIB websites, in the press or on bulletin boards.

The announcement of the recruitment should contain:

- 1) name and address of the unit;
- 2) determination of the position;
- 3) specification of requirements related to the position, in accordance with the description of the position, with an indication of which ones are necessary and which requirements are additional;
- 4) indication of the scope of tasks performed at the position;
- 5) information on working conditions at the position;
- 6) information whether in the month preceding the date of publication of the announcement the employment rate of disabled persons in the office, in the view of regulations of the Law on Social and Vocational Rehabilitation and Employment of the Disabled (The Law on Social and Vocational Rehabilitation and Employment of

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the Disabled dated 27 August 1997 - consolidated text, Journal of Laws of 2016, Item 2046, as amended), is at least 6%:

7) indication of the required documents;

8) date and place of submission of documents (Article 13 (2) of the Act on Self-Government Employees).

The recruitment announcement may also contain other than the above-mentioned elements - information relevant to the recruitment. As Jakub Stelina points out, "There are no obstacles to the inclusion of additional information in the announcement of the recruitment, which could, for example, approximate the specificity of the position (e.g. the need for frequent trips), or make the offer more attractive (e.g. information about additional benefits)." (Stelina J., Komentarz, ed. II, WK 2016, LEX).

The necessary requirements specified in the announcement of the recruitment (Article 13 (2) Item 3 of the Act on Self-Government Employees) are the requirements indispensable to take up a job at the position (Article 13 (2a) Item 1 of the Act on Self-Government Employees). The minimum eligibility requirements for clerical positions are set out in Article 6 (3) in connection with Article 6 (1) of the Act on Self-Government Employees. Accordingly, a self-government employee employed under an employment contract as an official may be a person who:

- 1) is a Polish citizen (However, the head of the unit that employs self-government workers spreading information about vacant clerical positions, including managerial clerical positions, points out the positions which the citizens besides Polish citizens can apply for. The people who can apply for such positions are the citizens of the European Union and citizens of other countries, who pursuant to international agreements or provisions of the community law are eligible to commence employment in the Republic of Poland (Article 11 (2) of the Act on Self-Government Employees). The person who is not of Polish nationality may be employed in the position, where work does not require direct or indirect participation in carrying out the tasks of public authority and performing functions aiming to protect general interests of the state. The knowledge of Polish language confirmed with a document, the type of which is specified in Civil Service

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regulations, is required (Article 11 (3) of the Act on Self-Government Employees).

- 2) has full legal capacity and enjoys full public rights,
- 3) has the professional qualifications required to perform work at the position,
- 4) has at least secondary education,
- 5) was not convicted by a valid court sentence for an intentional offense prosecuted by public prosecution or intentional fiscal offense (Płażek S., PPP 2010/7-8/131-153).
- 6) enjoys good reputation (Article 6 (3) in connection with Article 6 (1) of the Act on Self-Government


Employees) (Szewczyk H., I PK 85/09, OSP 2011/11/119).

In addition to the Act on Self-Government Employees, the qualification requirements for individual clerical positions are set out in the regulation on the remuneration of self-government employees. For example, at the position of the clerk, at least an intermediate and two years' seniority is required, while at the position of inspector - higher education and 3 years of seniority (Appendix no. 3 to the Regulation on the remuneration of self-government employees, IV Table F. Positions for which a self-government employee was employed under an employment contract in all offices). The eligibility requirements for individual clerical positions are also specified in the regulations of remuneration for self-government employees in force in the organisational unit (Article 39 (1) Item 1 of the Act on Self-Government Employees). These requirements may be higher than the minimum eligibility requirements set out in the Act on Self-Government Employees and the Regulation on the remuneration of self-government employees. Such requirements should also be defined as necessary in the announcement of the recruitment. The failure of the candidate for the clerical position to meet necessary requirements specified in the announcement of the recruitment disqualifies the candidate in the recruitment procedure.

The additional requirements specified in the vacancy notice (Article 13 (2) Item 3 of the Act on Self-Government Employees) are other requirements allowing for optimal performance of tasks on a position (Article 13 (2a) Item 1 of the Act on Self-Government Employees). In the case of recruitment for an official position, addition-

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al requirements may also include: high personal culture, impeccable work, knowledge of the rules of territorial self-government and related laws, the ability to interpret legal provisions or computer proficiency. As emphasized by the Supreme Administrative Court in Warsaw in the judgment of 20 May 2016, "additional requirements formulated in the announcement (Article 13 (2a) Item 2 of the Act on Self-Government Employees of 2008), allowing for optimal performance of tasks at a position are a different matter from the qualifications and skills that the candidate believes to be related to a position, but which are not explicitly referred to as additional requirements" (judgment of the Supreme Administrative Court in Warsaw of 20 May 2016, I OSK 1996/14). The failure of the candidate for the clerical position to meet additional requirements specified in the announcement of the recruitment does not disqualify the person in the recruitment procedure, but reduces the chances in relation to candidates who meet these requirements.

The obligation to provide information about the employment rate of disabled persons in the unit within the meaning of the provisions on vocational and social rehabilitation and employment of disabled persons (that is whether in the month preceding the date of publication of the announcement the rate was at least 6%) (Article 13 (2) Item 4b of Act on Self-Government Employees) is associated with granting special rights to a candidate who is a disabled person. According to Article 13a (2) of the Act on Self-Government Employees, if in the unit the employment rate of disabled people, in the meaning of the provisions on vocational and social rehabilitation and employment of disabled people, is lower than 6% in the month preceding the date of publication of the announcement of the recruitment, the priority for employment in clerical positions is given to a disabled person as long as the candidate is among the five best candidates who meet the necessary requirements and to the greatest extent meet the additional requirements presented to the head of the unit in order to be employed (Article 13a (1) of the Act on Self-Government Employees) (Przywora B., 2013/4/154-166).

In addition to the above-mentioned elements, the announcement of the recruitment should specify the date and place of submission of documents. According to Article 13 (3) of the Act on Self-Government Employees, the deadline for the

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submitting specified in the announcement of recruitment cannot be shorter than 10 days from the date of publication the announcement in Public Information Bulletin. The deadline for submitting documents specified in the vacancy notice may be longer than the 10-day period specified by the legislator (e.g. 14 days from the publication of the announcement of the recruitment in Public Information Bulletin). The deadline for submitting documents should be defined by specifying the date – the day until which candidates is able to submit documents should be clearly indicated.


Information about the candidates who applied for the recruitment is public information in the scope covered by the requirements related to the position specified in the announcement of the recruitment (Article 13 (4) of the Act on Self-Government Employees). The information is not published in Public Information Bulletin, but can be made available on the grounds of Article 13 (1) of the Act on Access to Public Information. As stated in the judgment of Provincial Administrative Court in Lodz of 23 August 2016, "Public information will be not only the rules of recruitment, the list of candidates for the positions of team members, the list of people who have been employed, but also concerning the candidate's internship, the previous employment, fulfilled duties, official experience or other information regarding the requirements related to the position indicated in the announcement of the recruitment" (judgment of Provincial Administrative Court in Lodz of 23 August 2016, II SAB/Łd 155/16).

### **Recruitment committee**

The recruitment is conducted by a committee appointed by the head of the unit (a recruitment committee). Constituting the committee, the head of the unit defines its composition, detailed scope of its tasks and the rules of operation. The obligation to appoint a committee to conduct the recruitment results from Article 14 (2) Item 5 of the Act on Self-Government Employees in which, as one of the elements of the minutes of the recruitment, the composition of the recruitment committee is indicated. According to Article 13a (1) of the Act on Self-Government Employees, the task of the committee is to select from among candidates taking part in the recruitment no more than five best candidates that meet the necessary requirements, and to

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the greatest extent meet the additional requirements. In order to employ a chosen candidate, all the candidates are presented to the head of the unit by the committee. The head of the unit chooses a candidate for employment from the presented candidates. As mentioned above, if the employment rate of persons with disabilities in the meaning of the regulations on vocational and social rehabilitation and employment of disabled persons is lower than 6% in the month preceding the date of publication of the announcement of the recruitment, the priority in employment in clerical positions (excluding managerial clerical positions) is entitled to a disabled person, if the person is in the group of not more than five best candidates, meeting the necessary requirements and to the greatest extent meeting the additional requirements (Article 13a (2) of the Act on Self-Government Employees).

The minutes of the recruitment of candidates for a vacant clerical position are drawn up (Article 14 (1) of the Act on Self-Government Employees). The minutes should be prepared by the committee member appointed by the committee, and signed by all the committee members. Although the legislator does not indicate the time when the minutes should be drawn up, it should certainly take place immediately after the recruitment procedure. The minutes of the recruitment of candidates for a vacant clerical position should include:

- 1) specification of the position for which the recruitment was carried out, number of candidates and names, surnames and place of residence within the meaning of the Civil Code (Civil Code dated 23 April 1964 (consolidated text, Journal of Laws of 2017, Item 459, as amended, pursuant to Article 25 of the Civil Code, the place of residence for a natural person is a place where this person is staying with the intention of permanent residence ) of not more than five best candidates (in case of recruitment for a clerical position , which is not a managerial clerical position, among the candidates presented to the head of the unit, the disabled candidates should be shown) presented to the head of the unit;
- 2) the number of offers submitted for the position, including the number of offers meeting the formal requirements;
- 3) information on the recruitment methods and techniques used;
- 4) justification of the choice made;

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5) the composition of the recruitment committee (Article 14 (2) of the Act on Self-Government Employees).

### **Completion of the recruitment process**

According to Article 15 (1) of the Act on Self-Government Employees, immediately after the recruitment process, the information about the recruitment result is disseminated by being placed on the information board in the unit in which the recruitment was conducted and by being published in Public Information Bulletin for a period of at least 3 months. The information about the recruitment result should include:


- 1) the name and address of the unit;
- 2) determination of the position;
- 3) the name and surname of the selected candidate and the place of residence within the meaning of the Civil Code;
- 4) justification of the choice made or justification for the failure to decide the recruitment for the post (Article 15 (2) of the Act on Self-Government Employees).

The justification of the choice made in case of selecting a candidate for a given position should include the reasons which the head of the unit was followed by when selecting a given candidate and the arguments for choosing a candidate from among the presented candidates. As Jakub Stelina rightly points out, "in the justification of the choice made, all the information contained in the minutes of the recruitment committee does not have to be repeated, but it cannot be too synthetic. The purpose of publishing the recruitment results is to create a mechanism that guarantees the correctness of the recruitment, as well as the launch of a verification procedure" (Stelina J., II, WK 2016, LEX).

The head of the unit establishes the relationship of employment with the candidate selected to be employed in a clerical position. As already mentioned, an employee in a clerical position is employed on the basis of an employment contract (Article 4 (1) Item 3 of the Act on Self-Government Employees). According to Article 16 (1) sentence 1 of the Act on Self-Government Employees, the employment relationship of a self-government employee employed under a contract of employ-

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ment is established for an indefinite period or for a limited period. If within 3 months from the date of establishing an employment relationship with a person selected through the recruitment process there is a necessity for re-filling the same position, it is possible to employ another person from among the candidates who were selected by the committee and presented to the head of the unit to select the candidate for employment (Article 15 (3) of the Act on Self-Government Employees). As Wojciech Drobny emphasizes: "To take advantage of these regulations, it is necessary to include the following premises jointly:

- 1) termination of the employment relationship with the person selected in the recruitment process;
- 2) termination of the employment relationship with the aforementioned person within 3 months from the date of its establishment;
- 3) meeting formal and substantive requirements in the recruitment process by more than one person" (Drobny W., 2010).


The solution adopted by the legislator should be positively assessed - it allows to fill the clerical position with observance of the principle of openness and competitiveness of the recruitment, and at the same time without repeating the entire procedure. In case of re-filling a vacant clerical position under Article 15 (3) of the Act on Self-Government Employees, the priority principle in employment for a disabled person specified in Article 13a (2) of the Act on Self-Government Employees, finds the application.

## **Conclusions**

Although recruitment is the basic way of filling clerical positions, it is not the only way. The clerical positions may also be filled by internal promotion specified in Article 20 of the Act on Self-Government Employees (Szewczyk H., ST 2018/1-2/66-76) and as a result of a transfer to work in another unit under Article 22 of the Act on Self-Government Employees (Dubowik A., 2014). However, only the recruitment, through its open and ensuring competitiveness procedure provides the possibility of access to clerical positions in self-government administration to citizens who meet the qualification requirements necessary to work in a given position.

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