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Auxiliary units of communes in rural areas – a few words on the functioning and financing of villages

Abstract

The aim of this article is to bring closer the issues related to the functioning of villages – auxiliary units of a commune characteristic for rural areas. The study indicates the legal basis for the functioning of these units, starting with the Constitution, through statutory acts, ending up with acts creating their legal position, that is statutes. The status of individual village authorities and the basic principles of their financing have also been discussed, often referring to the reality of the Gryfino commune. In addition, the opinion of legal scholars and commentators as well as the jurisprudence on the above issues has been taken into account.

Key words:

auxiliary unit of a commune, village fund, local government

Introduction

The subject matter concerning auxiliary units of a commune is an interesting and very extensive subject of research as well as disputes in legal scholarly circles. Creating auxiliary units undoubtedly facilitates the development of the idea of self-governance and other constitutional principles. The following study, based on a legal thought-related and analytical research method, presents the institution of a village as an auxiliary unit of rural areas in the most complementary manner.

In the first part of the study, an attempt has been made to bring closer the legal regulations relating to the issues of auxiliary units of a commune. Further, the subject matter of statutory issues of villages is examined and the authorities of these units are discussed. At the end of these reflections focus is given to the analysis of village financing solutions within the village fund.

General substantive issues

While undertaking the analysis of issues relating to local government units, even auxiliary ones, it is impossible not to mention, even very generally, the regulations contained in the

Constitution of the Republic of Poland.¹ It is the constitutional norms that are the basis of the entire legal system and they determine the position of other norms and acts in the hierarchical system of the sources of law. One should begin here with constitutional principles the implementation of which should be a priority in the process of creating and applying the law. With constitutional values, one cannot confine oneself to indicating specific articles because a constitutional norm, having the nature of a legal principle, is not limited to a legal provision but, on the contrary, may logically or instrumentally derive from several norms or provisions. As regards the local government, the focus should be on three basic principles, i.e. the principle of subsidiarity, the principle of decentralisation and the principle of self-governance. In this case, the preamble and Articles 15 and 16 of the Polish Constitution will be crucial.

As I. Maruszewska points out, the three principles of self-governance, decentralization and subsidiarity currently form the structure of local government activity in Poland. Self-governance is a principle that allows social groups to make sovereign decisions about social life and its problems. The principle of decentralisation assigns to local governments the maximum number of issues not related to the general population of the country. The principle of subsidiarity, on the other hand, states that the state helps to solve problems and issues that local communities cannot cope with.²

The remaining assumptions and values concerning local government were mostly regulated in Chapter VII of the Constitution of the Republic of Poland, entitled simply: Local Government, i.e. in Articles 163–172. Naturally, none of these provisions referring to local government units apply directly to auxiliary units. Nevertheless, Article 164(2) of the Constitution of the Republic of Poland provides for a possibility of creating other regional and/or local government units by way of a statute. Thus, it would be necessary to move from constitutional regulations to the level of statutory regulations.

Therefore, a statute is the decisive act determining, to a significant extent, the situation of local government auxiliary units. The legislator has created the possibility of creating auxiliary units only for commune local government, whereas there are no regulations in the district or province which could assume the possibility of creating auxiliary division units. The creation and structure of auxiliary units is currently regulated by the Act on Commune Local Government.³ Article 5(1) and (2) of this Act gives a commune, and specifically the commune council, the competence to establish auxiliary units by way of a resolution, whereas the commune or its council does not have to use them. Therefore, it is important to underline the optionality of setting up auxiliary units. Obviously, the social factor must be taken into account, thus the establishment of an auxiliary unit can be effected on the initiative of the residents themselves or following consultations with them. The right conclusions are drawn by B. Dolnicki, who claims that the Act does not determine the legal nature of the consultations and the legal effects they will have on the commune authorities.⁴ In addition, he emphasises that

1 Constitution of the Republic of Poland of 2 April 1997 (Dz. U. (Journal of Laws) of 1997 no. 78 item 483 as amended), hereinafter: the Constitution of the Republic of Poland.

2 I. Maruszewska, *Znaczenie funkcji sołtysa we współczesnej Polsce*, “Civitas Hominibus. Rocznik Filozoficzno-społeczny” 2018, no. 18, p. 191.

3 Act of 8 March 1990 on Commune Local Government (consolidated text: Dz. U. (Journal of Laws) of 2019, item 506 as amended), hereinafter ACLG.

4 B. Dolnicki, *Samorząd Terytorialny*, 7th edition, Warsaw 2019, p. 82.

the view of Z. Leoński should be agreed with, according to whom consultations are a form of seeking the residents' opinion.⁵ The results of this opinion are not binding – unlike a referendum – for the commune authorities, although this opinion should be taken into account by the council and commune authorities if it is to be a form of local democracy. On the other hand, where the activity of the council (another authority) is conditional on consultation, the absence of such consultation would render the act null and void.⁶

Within views of legal scholars and commentators, the most frequently presented position is that a local referendum can sometimes act as a consultation. The above thesis seems to be confirmed by Article 4a(4) ACLG, which states that consultations with residents shall not be held in the case of a local referendum on the establishment, merger, division and abolition of a commune and the establishment of the boundaries of a commune. The decisions of the Supreme Administrative Court (further referred to as the SAC) are also of significant importance in this case. This is confirmed by the decision of 21 June 2016, pursuant to which, in the procedure of creating, merging, dividing, abolishing or establishing new commune boundaries, the legislator provided for alternative forms of expression of the their inhabitants – consultations or referendum.⁷ Nevertheless, there are some important differences here; namely, consultations are only supposed to provide an opinion, whereas this is quite different for a local referendum, which is, in principle, binding for the authorities conducting it. In support of this thesis, another judgement of the SAC can also be quoted, according to which, as a consequence, a referendum question is inadmissible and thus leads to illegal decisions if it results in obtaining only the opinion of the local community (opinion-giving referendum) instead of an explicit obligation for the authorities of a specific local government unit to take a specific decision which remains within their competence. The judgement of the Provincial Administrative Court in Białystok shall also be mentioned here, pursuant to which the Local Referendum Act does not provide for any local opinion-giving referenda in the Polish legal system, but only binding ones.⁸

In the provision of Article 5.4 ACLG, the legislator explicitly states that the principles of creation, merger, division and abolition of an auxiliary unit are set out in the commune statute. It is the commune council pursuant to Article 18(2)(1) ACLG that has the exclusive competence to adopt the commune statute. *Ergo* in the case of creating or modifying auxiliary units, the freedom of regulation is left with the commune. Other issues related to auxiliary units are regulated in Articles 35–37b and 48 ACLG and will be discussed in detail later in the study. Here, it can only be pointed out that they concern respectively the statute of the auxiliary unit, the legal position of its authorities as well as the management and use of the commune assets. In addition, it can be mentioned that this position is also determined by such acts as the already mentioned village statute and, as far as financing is concerned, the Village Fund Act⁹, which will also be discussed further in this work.

Bearing this in mind, there are two points worth noting. First of all, the provisions concerning the legal position of a commune auxiliary unit can be found in various acts, starting

5 Z. Leoński, *Samorząd terytorialny w RP*, Warsaw 1998, p. 71.

6 B. Dolnicki, *Samorząd...*, pp. 8ff.

7 Judgement of the Supreme Administrative Court of 21 June 2016, case file no. II OSK 1236/16, LEX no. 2097518.

8 Judgement of the Supreme Administrative Court of 2 February 2016, II OSK 2851/15, not published.

9 Act of 21 February 2014 on the Village Fund (Dz. U. (Journal of Laws) of 2014 item 301).

with the Constitution of the Republic of Poland, through statutory acts and ending with local laws, such as the statutes of the commune and its auxiliary unit respectively, which will have the greatest impact on the final position of that unit. Secondly, in the process of establishing a village, the following stages can be distinguished:

1. The commune council defines the rules for creating, changing, merging and abolishing auxiliary units in the commune statute.
2. Establishment by the commune council of an appropriate auxiliary unit by way of a resolution, whereas the optionality of such a resolution should be noted here as well as the previous obligation to consult.
3. Providing an auxiliary unit with a statute by the commune council.

The statute of a village and its status

The statute is a legal act that most completely determines the actual position of the village, while at the same time indicating its tasks or the way it operates. The general guidelines that these statutes should contain are set out in Article 35 ACLG. Being aware of the difficulties that discussing these elements in isolation from a specific actual state of affairs may cause as well as in order to enable an in-depth analysis of the discussed issues, the author decided to refer directly to the Statute of the Gardno Village.¹⁰

The aforementioned Article 35 ACLG refers only to regulations of fundamental importance, which should be included in the statute of a village. This catalogue is open, as evidenced by both the general competence of the commune decision making body to actually create, determine the organisation or the rules of operation of the village and the phrase “in particular” used in section 3 of this article. The individual elements of the statute are illustrated by the following table with a reference to the reality.

Table 1. Example regulations included in the Statutes of the Gardno Village

Obligatory statute elements	Example proposal of solutions in the Gardno Village
1. Name	Gardno village (§ 1)
2. Area	The area of operation is Gardno (§ 2)
3. Principles and procedures for selecting the authorities	Secret, equal, direct, general and majority elections, by entering the name of the candidate for whom the vote is cast on the ballot paper. (§ 29 and 30)

¹⁰ The Statute of the Gardno Village, constituting Appendix no. 9 to Resolution no. XXI/294/04 of the Gryfino Town Council of 29 April 2004, source material of the website: https://bip.gryfino.pl/chapter_56087.asp (access: 19.11.2019).

<p>4. Organisation and tasks</p>	<p>The village assembly is the legislative body which is made up of permanent residents of the village with voting rights and rights to be elected. The village administrator is the executive body, whose activities are supported by the village council. (§ 9. and 12.)</p> <p>§ 7. The tasks of the village council include all matters important for its residents, in particular (open catalogue):</p> <ol style="list-style-type: none"> 1) participation of residents in the consideration of matters important to the functioning of the village, 2) management and proper use of commune property, provided that it has been transferred to the village, 3) organising self-help for residents and joint work for the benefit of the place of residence, especially in the field of social assistance, maintenance of order, promotion of sports, culture and education.
<p>5. The scope of tasks delegated to the unit by the commune and the manner of their implementation.</p>	<p>§ 8. The tasks specified in § 7 are carried out by the village by through</p> <ol style="list-style-type: none"> 1) giving an opinion on matters falling within the scope of activity of the village, 2) participation in organizing and carrying out public consultations on draft resolutions of the Town Council in matters of fundamental importance to the residents of the village, 3) filing motions to the commune authorities for consideration of matters the settlement of which is beyond the capacity of the residents of the village, 4) cooperation with council members in the organization of meetings with the residents and submitting applications to them concerning the village.
<p>6. Scope and forms of control and supervision</p>	<p>§ 37. 1. Supervision over the activities of the village is exercised by the Town Council and the Mayor, reviewing the financial management at least once a year, provided that part of the commune property and budgetary funds have been transferred to the village.</p> <p>2. The Town Council shall evaluate the functioning of the village at least once in its term of office.</p> <p>3. Reviewing the current activities of the village on the basis of the criterion of legality, purposefulness, reliability and efficient management is exercised by the Mayor.</p> <p>§ 38. The supervisory and review authorities shall have the right to request the necessary information and explanations concerning the functioning of the village.</p>
<p>7. Possibility of setting up a subordinate unit</p>	<p style="text-align: center;">None</p>

Source: author's own compilation on the basis of the Statute of the Gardno Village, constituting Appendix no. 9 to Resolution no. XXI/294/04 of the Gryfino Town Council of 29 April 2004, https://bip.gryfino.pl/chapter_56087.asp (access: 19.11.2019).

In addition, it should be emphasized that each statute should be sufficiently different from others, be a separate, individual and named act. Such a statute will be an act of local law, which, in turn, is considered to be a common act of law. They contain norms of both a general nature (they indicate the addressee by indicating its characteristics and not by naming it) and an abstract nature (they concern behaviour that is generally repetitive under the circumstances and are not “consumed” by a one-off behaviour). Moreover, one can also point out such features as the fact that these acts are in force in the area of activity of the relevant local government unit, they regulate matters of public nature and local range or the fact that their addressees are not only the inhabitants of the local government community, but also individuals temporarily staying in the area of the local government unit and entities conducting their activity there.¹¹ Therefore, the statute should also specify such issues as in particular: who has the voting right and the right to be elected, when the election takes place, how and on what dates the residents will be notified about the place and date of the elections, who convenes the election meeting and announces the elections as well as the issue of the election turnout or the rules of the returning committee.¹²

It should be noted that such a model of solutions provided by the legislator arouses some controversy as to how to treat the village. B. Dolnicki presents them in a comprehensive manner, claiming that the ACLG has not defined the status of the auxiliary unit in a clear and explicit manner. The legal scholars and commentators and the established line of judicial decisions distinguish two methods of determining the legal nature of an auxiliary unit: negative and positive. The negative method is based on the claim that an auxiliary unit – unlike a commune – is not a communal legal person, does not constitute a territorially separate local government association and does not have a corporate nature. Moreover, there are no legal grounds for treating the village as a social organisation, in particular the one referred to in Article 64 of the Code of Civil Procedure. The Supreme Administrative Court, in a judgement of 6 March 1992, excluded the local government and, thus, all the authorities of that government, including the authorities of auxiliary units, from the concept of a local government organisation. The supporters of the positive method treat the village, city district, housing estate only as an auxiliary (internal) unit of territorial division. The position of the Supreme Court treating an auxiliary unit as a local government auxiliary authority of the commune also does not deserve to be accepted. Since, no auxiliary unit is an auxiliary commune authority.¹³

Similar controversies may arise with regard to the recognition of ability of auxiliary units to act as legal entities within the scope of using the property transferred to them. Pursuant to Article 48(1) ACLG, the auxiliary unit has the competence to manage and use the commune property and to dispose of the income from that source to the extent specified in the statute. The statute also determines the scope of activities to be carried out by an auxiliary unit on its own, within the scope of its property. In this respect, it should be noted that legal scholars and commentators expressed a view that both the management, use of commune property

11 Cf. M. Stych, *Wybrane zagadnienia prawne statutu gminy jako aktu prawa miejscowego o charakterze ustrojowym*, “Ius et Administratio” 2014, no. 4, pp. 2–3.

12 Cf. A. Gołębiowska, P.B. Zientarski, *Podstawy prawne działania gminnych jednostek pomocniczych*, in: Sołectwo – studium prawnoustrojowe, A. Gołębiowska, P.B. Zientarski (eds.), Warsaw 2017, pp. 9–10.

13 B. Dolnicki, *Samorząd...*, pp. 147–148.

and disposal of the income from this source must be determined in the statute. Failure to determine these activities and their scope makes it *de facto* impossible for an auxiliary unit of a commune to exercise the rights granted to it under the provisions of Article 48(1), sentence 1 ACLG.¹⁴

It is doubtful whether the above-mentioned regulation allows one to conclude that auxiliary units have legal personality or legal capacity in relation to the communal property transferred to them. As rightly noted, what the legislator has defined as the use of communal property and the disposal of the income it generates does not constitute a disposition. This is the transfer of the management of the components of this property to the authorities of the auxiliary units to the extent specified in this provision.¹⁵ The decision of the Provincial Administrative Court in Łódź of 23 July 2015 can be considered conclusive as regards this doubt. Pursuant to thereto: it should be pointed out that both the legal writings and judicial decisions establish the view that an auxiliary unit is not another local government unit, but is a part of a larger structure which is the commune. As the name suggests, such entities are of an auxiliary nature, perform tasks entrusted to them and operate within the ability of the commune to act as legal entity. The auxiliary units themselves do not have legal personality and are not authorised to act independently in legal transactions. Therefore, they cannot be an independent holder of rights and obligations in the sphere of substantive administrative law. The lack of legal regulations in the ACLG granting the villages, city districts and housing estates the right to participate in administrative proceedings on the principles set in the Act of 14 June 1960 – Code of Administrative Procedure¹⁶ for social organizations also excludes the possibility of granting these auxiliary units of a commune with the position of an entity with the rights of a party in administrative proceedings.¹⁷ Independently – on their behalf and in their own interest, the auxiliary units cannot effectively initiate any administrative procedure and cannot participate in the procedure as a party to that proceedings.¹⁸

The essence of the ability to act as legal entity is aptly described by E. Hadrowicz, according to whom the notion of the ability to act as a legal entity in the Polish legal system is closely connected with having the attribute of legal personality (i.e. normative qualification as a legal person) or legal capacity (i.e. normative qualification as the so-called legal person without corporate status) in the sphere of legal relations. In this context, it should be emphasised that the basic attribute of a commune (as a legal person) is its subjective separation from the state (understood in a narrow sense), both in the private (civil law) and public law sphere. This is because granting legal personality to a basic local government unit creates the possibility for it to act in legal relations on its own behalf and at its own risk. This means that it may have its

14 M. Augustyniak, *Status prawny jednostki pomocniczej gminy w sferze prawa prywatnego*, “Administracja: Teoria, Dydaktyka, Praktyka” 2008, no. 3(12), pp. 72–108.

15 Cf. A. Agopszowicz, in: A. Agopszowicz, Z. Gilowska (eds), *Ustawa o samorządzie gminnym. Komentarz*, A. Agopszowicz, Z. Gilowska (eds), Warsaw 1999, p. 324.

16 Consolidated text Dz. U. (Journal of Laws) of 2018 item 2096 as amended.

17 Judgement of the Supreme Administrative Court of 29 April 2003, case file no. IV SA 2841/2001

18 Judgement of the Provincial Administrative Court in Łódź of 23 July 2015, case file no. II SA/Łd 519/15, LEX no. 1757739 (compare judgements: Supreme Administrative Court of 26 May 1992, case file no. SA/Wr 1248/91, not published; Supreme Administrative Court of 20 September 2001, case file no. SA 1539/2000, not published; judgement of the Provincial Administrative Court in Białystok of 9 November 2006, case file no. II SA/Bk 414/2006, not published).

own rights and obligations. It acquires them or disposes of them on its own behalf. It also has assets separate from other legal entities (i.e. legal persons, legal persons without corporate status or natural persons). Like other legal entities, the commune is also liable with all its assets for non-performance or improper performance of its obligations. According to the position expressed by the author, the village, in the current legal status, does not have the ability to act as a separate legal entity from the commune, which means that its activities are carried out within the limits set out in the statute within the legal personality of the commune. The village is granted powers within the framework of managing the commune property, taken out of the competence of the commune administrator and granted by a resolution of the commune council. *Ergo* the commune delegates its competences, while, at the same time, depleting the possibility of its own authorities to operate in this area.¹⁹

Village authorities

The basic issues concerning the authorities in the village council were resolved by the legislator in the aforementioned Article 36 ACLG, while, in the remaining scope, the freedom of regulation was left with the commune authorities. Taking into account the subject under consideration, it is necessary to point out the dualism of village authorities, as the legislator has distinguished two authorities of this auxiliary unit: the legislative one – being the village assembly and the executive one – the village administrator.

The village assembly is usually understood as a gathering of all the inhabitants of a given village, which is additionally characterized by the permanence of residence of the members of the assembly within the territory of the village. In addition, the residents must, as a rule, have voting rights.²⁰ In the legal writings the village assembly is assigned the presumption of jurisdiction. This means that this authority is competent in all matters not reserved for the village administrator and the village council. In order to determine the characteristics of the village assembly, a detailed analysis is required of the provisions of substantive law which attribute specific competences to the village administrator.²¹ Therefore, it cannot be assumed that only those activities which are enumerated in the statutes will be included in the competences of the village assembly, such a catalogue will rather be open and, therefore, it will usually be preceded by the phrase “in particular”.

In the literature the most important competences of the village assembly include matters that concern the village and influence its organization and structure, i.e.: election of the village administrator and the village council as well as dismissal of these authorities, examination of annual reports on the work of the village administrator and the village council, determination of the objectives of spending the budget funds at the disposal of the village, submission of ap-

19 E. Hadrowicz, *Implikacje prawne wokół statusu sołectwa w kontekście podmiotowości prawnej gminy. Dylematy i wyzwania*. in: *Sołectwo...*, pp. 49ff.

20 The statutes regulate the notion of the village assembly in a different manner; the above definition was developed referring to the Statute of the Gardno Village, constituting Appendix 9 to Resolution no. XXI/294/04 of the Gryfino Town Council of 29 April 2004, https://bip.gryfino.pl/chapter_56087.asp (access: 19.11.2019).

21 Cf. Z. Niewiadomski, W. Grzelak, *Ustawa o samorządzie terytorialnym z komentarzem*, Warsaw 1990, p. 38 after: B. Dolnicki, *Samorząd...*, pp. 150–151.

plications and comments on the statute of the village, decisions on undertaking social actions or managing the entrusted communal property.²²

The village administrator, as an auxiliary unit of local government at the commune level, is an authority that has one of the longest traditions in Polish history. From the very beginning of its existence, it has played a significant role in the life of rural communities, being a local leader and an institution connecting citizens with the authorities.²³ It is the executive, management and representative authority of a rural auxiliary unit. Its most important tasks include: convening and proposing the agenda of the village assembly and the village council meetings as well as presiding over these meetings, implementing resolutions of the village assembly, participating, pursuant to the principles specified in the provisions of the statute, in the sessions of the town council as well as in the meetings of and training for village administrators, submitting annual reports on its own and the village council's activities to the village assembly. Moreover, the village administrator may also be responsible for performing tasks resulting from the resolutions of the commune councils (e.g. collection of local fees and taxes) or other legal regulations (e.g. authorisation to serve various documents and to issue administrative decisions).²⁴

However, the position of the village council may raise doubts. The legislator merely mentioned that it supports the activities of the village administrator, without specifying the nature of the authority. The legal thought is currently dominated by the view on two fundamental issues in this subject matter. First of all, it is pointed out that the village council is obligatory in the village. This can be seen from the wording of the phrase 'shall assist' instead of 'may assist' in paragraph 1 of Article 36 ACLG. Secondly, it is treated only as an advisory and opinion-giving body, although the village council cannot be denied the actual function of initiating the village administrator's or village assembly's activities. The above seems to be confirmed by the judicial decisions of the Supreme Administrative Court, where, in its decision of 20 May 1991, it states that, pursuant to Article 36(1), sentence two of the Act of 8 March 1990 on Local Government²⁵, the village council is not an authority of an auxiliary unit of the commune with the power to act independently, in particular, it does not pass resolutions on the use of legal means available to the village as a possible party in administrative proceedings nor does it have the power to organise the implementation of such a resolution and to represent the village outside. The village council does not have the right to lodge a complaint with the Supreme Administrative Court.²⁶

The review and supervision of the activities of the village should also be mentioned and, thus, the following issues shall be pointed out. First of all, the competent authorities exercising review shall involve: the executive authority of the commune (commune administrator, town or city mayor), with respect to the financial management of the village and the manner of commune property management as well as the commune council, which may also review the

22 Cf. A. Gołębiowska, P.B. Zientarski, *Podstawy prawne działania gminnych jednostek pomocniczych*, in: *Sołectwo – studium prawnoustrojowe*, A. Gołębiowska, P.B. Zientarski (eds.), Warsaw 2017, p. 12.

23 Cf. I. Maruszewska, *Znaczenie funkcji sołtysa we współczesnej Polsce*, "Rocznik Filozoficzno-Społeczny Civitas Hominibus" 2013, no. 18, p. 191.

24 Cf. A. Gołębiowska, P.B. Zientarski, *Podstawy prawne działania gminnych jednostek pomocniczych...*, pp. 12–13.

25 Dz. U. (Journal of Laws) no. 16, item 95, as amended).

26 Decision of the Supreme Administrative Court (to 2003.12.31) in Wrocław of 20 May 1991 SA/Wr 381/91, "Wspólnota" 1991, no. 29, p. 9.

activities of auxiliary units with the help of a committee, including a specific review committee (Article 18a ACLG). Secondly, the review criteria shall include: legality, reliability, cost efficiency and expediency. Thirdly, the most important powers of the reviewing authorities shall include: the right to inspect all documents related to the activities of the village authorities, the possibility to observe the course of certain activities, the right to demand oral and written explanations from the village administrator, the right of free access to the premises intended for the activities of the village authorities and the possibility to carry out an inspection of the assets held by the village. And finally, fourthly, the supervision measures may include: examination of reports on the socio-economic and financial activities of the village, inspection of the village authorities, repealing resolutions of the village assembly, the right of direct insight into the activities of the village authorities (inspection), suspension of the execution of the resolution of the village assembly, requesting necessary information, data and explanations concerning the functioning of the village and the right of direct insight into the course of individual matters dealt with by the village authorities (vetting).²⁷

Village fund

The village fund (hereinafter referred to as the fund) was introduced into the Polish legal order by the Act on the Village Fund (hereinafter AVF) in 2009.²⁸ Currently, the legal basis for its operation is the act of the same name, i.e. the Act on the Village Fund. Due to formal limitations, the circumstances related to the enactment of this act, as well as the history of shaping this institution will be omitted. Even though according to some legal scholars and commentators these changes were only of editorial nature, they cannot be denied a significant impact on the formation of the finances of the village, especially as regards carrying out joint projects by villages or the possibility of changing projects during the financial year.²⁹

Given the legislation in force, it is difficult to answer the question as to what a social fund explicitly is. The legislator does not formulate a legal definition of this concept. Reference should, therefore, be made to definitions provided by legal scholars and commentators.³⁰ On this basis, it can be pointed out that the village fund is the resources, or colloquially speaking money, which are to be used to carry out undertakings ensuring improvement of the living conditions of the commune inhabitants. It should also be stressed here that the village fund is not a separate budget of an auxiliary unit, but separate resources from the commune budget and remains a part of it at all times. Also, Article 2(5) AVF should be quoted, pursuant to which the fund is not a special purpose fund within the meaning of the Public Finance Act.³¹

27 Cf. A. Gołębiowska, P.B. Zientarski, *Podstawy prawne działania gminnych jednostek pomocniczych...*, pp. 14–15.

28 The Act on Village Fund of 20 February 2009 (Dz. U. (Journal of Laws) of 2009 no. 52 item 420, as amended), which became effective as of 1 April 2009.

29 See also K. Hennig, W. Biesiacki, M. Pintara, *Funkcjonowanie Funduszu Sołeckiego w latach 2010–2017. Analiza prawno-statystyczna i postulaty de lege ferenda, Opinie i analizy* 2018, no. 38, pp. 5–9.

30 Cf. *Fundusz sołecki w pytaniach i odpowiedziach*, Stowarzyszenie Liderów Lokalnych Grup Obywatelskich, K. Batko-Tołuć (ed.), source material of the website: <https://siecobywatelska.pl/fundusz-solecki-w-pytaniach-i-odpowiedziach/> (1.12.22019).

31 Act of 27 August 2009 on Public Finance (consolidated text: Dz. U. (Journal of Laws) of 2019 item 869, as amended).

The decision on which specific tasks the financial resources from the fund will be allocated is made directly by the inhabitants of the village participating in the village assembly. On the other hand, the implementation of the village fund as well as the entire budget is the responsibility of the executive authority of the commune. The decision to separate the fund is taken by the commune council in the form of a resolution, but a resolution giving consent to separate the fund also applies to subsequent financial years following the year in which it was adopted, while a resolution not giving such consent is valid for one financial year only. This can be read in line with the idea of self-governance as a general directive, pursuant to which separation of the fund will be a rule, whereas its non-separation – an exception from the rule. Furthermore, a resolution adopted after 31 March of the year preceding the financial year to which it relates shall be absolutely null and void.

Another issue that needs to be raised is the amount of this fund. Each village has a specific amount of money assigned calculated according to the formula contained in Article 2 AVF:

$$F = \left(2 + \frac{L_m}{100} \right) \times K_b$$

Where individual symbols have the following meaning:

F – the amount of the resources allocated to the relevant village, but not more than 10 times K_b

L_m – the number of residents of the village as at 30 June of the year preceding the financial year, determined on the basis of the permanent residents' dataset kept by the commune referred to in Article 44a(1)(1)(a) of the Act of 10 April 1974 on the Population Register and Identity Cards (Dz. U. (Journal of Laws) of 2006 no. 139 item 993, as amended),

K_b – base amount – calculated as the quotient of the current income of a given commune, as referred to in the public finance regulations, obtained for the year preceding the financial year by two years and the number of inhabitants living in the area of a given commune, as at 31 December of the year preceding the financial year by two years, determined by the President of Statistics Poland.

The amount of resources allocated to individual villages depends on the number of inhabitants of the village and the income of the commune. It should be stressed that the commune council may increase the amount of the fund by way of a resolution, however, as regards the amount exceeding the resources calculated according to the statutory formula, no reimbursement of the part of the expenditure for this purpose is due. These reimbursements amount to 40, 30 and 20% of expenditures respectively and depend on the income of the commune. It can, therefore, be concluded that separation of the fund brings benefits not only to the village but also to the commune. On this issue one should also agree with I. Maruszewska. According to this author's reflections, "the communes which have carried out their tasks using the resources from the village fund are granted a return of a part of the incurred expenses, so it is an attractive form of carrying out investments by communes. (...) However, the biggest beneficiary of the changes that are taking place thanks to the resources from the village fund is ourselves as a local community. Thanks to the implemented projects, the village and its image is changing, for example, for city dwellers, who eagerly use agritourism, which is an attractive way to have a cheap holiday and, at the same time, sustains the traditions and culture of the

region. The great efforts of the countryside to create a civil society are visible and the next generations are also involved.”

Another thing worth noticing is the procedure for the creation of the village fund, specified in Article 5 AVF. Its first stage will be the submission by the village administrator, by 30 September of the year preceding the financial year, of a motion adopted by the village assembly to the commune administrator (town or city mayor), which, the same time, is a *sine qua non* condition for the allocation of resources from the fund in a given financial year. The commune administrator may accept the motion or reject it for formal reasons within 7 days. In such a case, the village administrator may, within 7 days from the date of receiving the information about the rejection of the motion, uphold the motion that does not meet the conditions, referring it to the commune council through the commune administrator and also the village assembly may re-adopt the motion. Then, the commune council finally considers the motion within 30 days of its receipt.

Summing up, the formal requirements of such a motion should also be presented. Firstly, the motion should include an indication of the undertakings to be carried out in the area of the village within the resources specified for the village with an estimate of their costs and a justification. Secondly, the resources of the fund are allocated to the implementation of undertakings which are, at the same time, the commune’s own tasks, serve to improve the living conditions of the inhabitants and are consistent with the commune’s development strategy. In addition, the legislator also provided for the possibility of using these resources to cover the expenditures related to actions intended to remedy the effects of a natural disaster. An exemplary statement of expenditures from the village fund for the aforementioned Gryfino commune is illustrated in the table below.

Table 2. Planned expenditures from the village fund for individual tasks in the financial year 2020 for all villages in the Gryfino commune

Category of public issues	Specific public issue	Expense intended for	Planned amount of expenses for 2020 (in PLN)
Transport and connections	Public commune roads	Purchase of renovation services	53,022.25
Transport and connections	Public commune roads	Investment expenses of budgetary units	30,996.98
Services	Cemeteries	Purchase of renovation services	18,864.57
Public administration	Promotion of local government units	Various fees and contributions	500.00
Public administration	Promotion of local government units	Purchase of other services	1,000.00
Public security and fire protection	Voluntary fire brigades	Purchase of materials and equipment	12,400.00

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Communal services and environmental protection	Cleaning of towns and villages	Purchase of materials and equipment	9,200.00
Communal services and environmental protection	Maintaining greenery in towns and communes	Purchase of materials and equipment	22,643.75
Communal services and environmental protection	Lighting of streets, squares and roads	Purchase of other services	6,000
Communal services and environmental protection	Lighting of streets, squares and roads	Investment expenses of budgetary units	15,000.00
Culture and heritage protection	Culture centres, community centres and clubs	Purchase of materials and equipment	32,218.68
Culture and heritage protection	Culture centres, community centres and clubs	Purchase of renovation services	9,000.00
Culture and heritage protection	Culture centres, community centres and clubs	Purchase of other services	3,500.00
Culture and heritage protection	Culture centres, community centres and clubs	Investment expenses of budgetary units	61,256.38
Culture and heritage protection	Other activity	Remunerations not falling under employment contracts	15,500.00
Culture and heritage protection	Other activity	Purchase of materials and equipment	36,382.91
Culture and heritage protection	Other activity	Purchase of other services	162,738.86
Physical culture	Sport facilities	Purchase of materials and equipment	11,985.00
Physical culture	Sport facilities	Purchase of other services	168,581.20
Physical culture	Sport facilities	Investment expenses of budgetary units	40,324.33
In total			711,114.91

Source: author's own compilation based on the data included in the project of the Gryfino Commune budget for the year 2020, https://bip.gryfino.pl/UMGryfino/files/D59C92B4D2A445358E10CF0EB7C12231/uchwala_projekt_budzet_2020.pdf (access: 26.11.2019).

Conclusions

Summarizing the whole range of issues and institutions presented in the study, it can be unequivocally stated that the issue of functioning of auxiliary units of a commune, especially of villages, is very complicated and relatively broadly defined. As a result, it causes numerous interpretation problems, which is reflected in the practice of applying certain solutions. This is also evidenced by the judicial decisions cited in the study.

Moreover, it should be noted that the status of auxiliary units of a commune is very important from the point of view of local government functioning. It affects not only the scope and quality of the tasks performed, but also facilitates the implementation of important social issues. The tasks which are carried out by villages are only those own tasks of the commune which have been delegated to them by the local authorities, i.e. the commune councils. Thus, the scope of the competences of villages is limited in this manner. It should also be emphasised that the actions taken by villages are subject to review.

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