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„Application of public-private partnership in performing the commune's own tasks”

Summary of doctoral dissertation

Municipalities in Poland implementing the norm resulting from Art. 166 section 1 of the Constitution, meet the numerous needs of residents who constitute the local government community, performing a number of public tasks as their own tasks. Their spectrum remains very broad, including tasks of an investment nature and those that do not have such a nature. The commune's own tasks include those carried out by its bodies in the sphere of imperium and dominium.

Regardless of the method of implementing its own tasks, the commune remains a public authority that can choose the form in which it will fulfill its obligations.

With regard to most of its own tasks, the commune has the freedom to choose the method of their implementation. As an example, it should be mentioned that the competence of the commune is carried out in the scope of public tasks relating to: spatial order, safety, public transport infrastructure, including municipal roads, utilities, water supply, sewage disposal, waste management, municipal housing, greenery maintenance, social welfare. e.t.c.

A direct impact on the possibility and quality of the implementation of these tasks, in addition to a number of other factors, is exerted by processes taking place in the economy and social life, such as: the phenomenon of economic crisis, demographic decline, population migration, but also changes in the mentality of local communities related to the increase in the awareness of individuals in scope of their powers and, consequently, expectations towards the commune related to the implementation of its statutory obligations.

Negative economic phenomena do not release the commune from the obligation to carry out its own tasks (including the provision of specific public services), and their catalog, expanding over the last dozen or so years, forces the commune to look for sources of financing for tasks, especially those of an investment character.

In addition to the „traditional methods” of performing municipalities' own tasks, an alternative is the legal institution of public-private partnership, which has so far been marginally used in practice, often referred to in the doctrine as the PPP formula.

The institution of public-private partnership has been the subject of significant interest of representatives of legal doctrine over the last dozen or so years, which resulted in the publication of several dozen studies, including several smaller works (scientific articles) devoted to the PPP formula in the context of the tasks of municipal government. Despite this, as part of the conducted query, the author did not identify a work entirely devoted to the issue of using public-private partnership to implement the commune's own tasks, which would cover this topic broadly and comprehensively.

Preliminary observations led to the conclusion that despite the lack of popularity of the PPP institution, municipal governments in Poland most often act as a public entity within the framework of implemented partnerships. This, in turn, inspires to ask questions about the causes of the observed phenomenon.

The question arose: whether the low use of PPP in the implementation of the commune's own tasks results only from the lack of knowledge of local government officials in the field of PPP, or whether there are significant legal obstacles limiting or hindering the use of PPP as a way to implement the commune's own tasks. The mentioned problem can be reduced to the question: can PPP be used to implement the commune's own tasks?

The author's thesis made it possible to answer the question in the affirmative – the commune's own tasks can be implemented using the institution of public-private partnership. The main goal of the undertaken research was to analyze the applicable legal status in terms of the possibility of implementing the commune's own tasks through the use of PPP.

As part of the work on this study, the author did:

- compilation of a catalog of concepts related to PPP issues and an overview of public tasks, with particular emphasis on the commune's own tasks;
- analysis of the commune's responsibility for the implementation of its own tasks and the forms in which these tasks can be implemented;
- proposed the author's division and classification of the commune's own tasks;
- a detailed analysis of the PPP institution, including: an analysis of the possibility of using this formula in the performance of the commune's own tasks and an analysis of the barriers and threats related to its use;
- a review of projects implemented in the PPP formula in Poland and attempted to determine the participation of the municipal government in these projects.

In order to achieve the main goal presented above, the author formulated the hypothesis of the dissertation according to which: The current legal status allows the implementation of the commune's own tasks using a public-private partnership, however, this is not possible in relation to all tasks arising from the scope specified in Art. 7 section 1 of the Act of March 8, 1990 on municipal self-government.

The following categories of source materials were used to prepare the dissertation: primary sources of European Union law, the Constitution of the Republic of Poland, acts and regulations and orders of state administration bodies, case law of the Court of Justice of the European Union and national courts, compact publications and articles in scientific journals, other studies, reports, documents duplicates, e-mail correspondence, websites.

The basic research methods used by the author were: analysis, synthesis and comparison. The detailed methods used in the research were: the dogmatic-legal method used to perform a linguistic-logical analysis of legal texts, the theoretical-legal method enabling the analysis and verification of theories regarding individual legal institutions discussed in the work in the light of the views of the doctrine, the historical-legal method used to analyze the stages of development and present the history and evolution of the institution of public-law partnership, elements of the comparative method used to present the application of the PPP formula in other

countries and comparison of Polish legal regulations regarding the use of PPP with the regulations of the European Union, elements of the sociological method (limited to screening review tools) enabling analysis of the application of the PPP formula in practice.

The analysis of the legal provisions in force in the field of public-private partnership, as well as the historical and current views of representatives of the legal doctrine relating to various aspects related to these issues, allows to confirm the thesis that the use of public-private partnership in the implementation of the commune's own tasks is possible, and in desirable in some cases.

The use of this institution may be beneficial both from the perspective of public finances and the quality of public service provision. However, to make this possible, it is necessary to intensify activities aimed at disseminating knowledge in the field of public-private partnership and promoting good practices related to it. Knowledge should reach not only representatives of the public finance sector but also entrepreneurs who may be potential private partners under PPP projects.

With regard to employees of public institutions, it would be reasonable to attempt to develop a certain level of legal awareness (understood as: knowledge, opinions and demands regarding legal solutions) in the field of PPP. This can be achieved, for example, by introducing a training program in this area in the public bodies (e.g. as part of training related to the preparatory service of local government employees). It would be optimal to achieve a situation in which public administration employees would know and understand the institution of public-private partnership to an extent similar to the popular institution of public procurement.

The author of this work is of the opinion that public-private partnership, used as one of the methods of implementing a commune's own tasks, will gradually become more popular in Poland.

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