

AUXILIARY UNITS OF THE COMMUNE – FROM EVOLUTION TO THE DIRECTIONS OF CHANGE

Dr. habil. Monika Augustyniak, University Professor

Kozminsky University, Poland

e-mail: monikaaugustyniak1@gmail.com; <https://orcid.org/0000-0001-6196-1989>

Dr. habil. Jarosław Czerw, University Professor

Jan Kochanowski University of Kielce, Poland

e-mail: czerw@post.pl; <https://orcid.org/0000-0003-2042-3177>

Abstract. Auxiliary units of the commune are a key element of the reborn system of local government. Thirty-five years of the functioning of local government is an opportunity to reflect on the legal position of auxiliary units of the commune, both in an evolutionary context and *de lege ferenda* proposals. Contemporary local government faces new challenges in organizational and functional terms, hence, the role of auxiliary units of the commune is becoming more significant and should be viewed through the prism of current needs and the possibilities for implementing tasks of local communities. The article presents the stages of evolution of auxiliary units that have influenced the current shape of the local community and the way the commune carries out its own tasks. Four models of directions for change (from the most progressive to the conservative one) have been proposed, which the legislator faces in shaping the legal position of the auxiliary unit of the commune.

Keywords: decentralization; subsidiarity; auxiliary units of the commune; evolution of the legal status of auxiliary units of the commune; and directions of change for auxiliary units of the commune.

INTRODUCTION

Auxiliary units of a commune are a key element of the local government system. Taking into consideration the fact that year 2025 marks the 35th anniversary of the reborn self-government, it is worth devoting some reflections on the legal position of commune auxiliary units both in terms of evolution and *de lege ferenda* proposals. The contemporary local government is facing new challenges in organisational and functional terms, therefore the role of commune auxiliary units is gaining greater significance and should be seen through the prism of contemporary needs and possibilities of implementing the tasks of local communities.

Local government units are the implementation of the principle of de-concentration [Ura 2012] and subsidiarity [Dolnicki 2012, 25; Stec 2022, 31] in a local government, serving to perform the commune's own tasks. They are a form of social participation, increasingly activating local communities. They belong to the auxiliary territorial division of the state. They are optional and obligatory structures (Warsaw districts) that can be established in communes or cities with district rights.

The aim of this article is to answer the following questions. What is the legal position of commune auxiliary units in evolutionary terms and what are the directions of changes in the systemic, functional and competence scope of auxiliary units? Do the foregoing experiences concerning the functioning of commune auxiliary units make it possible to indicate the desired direction of changes to their legal status, resulting in modifications to statutory regulations or even changes at the level of the Constitution of the Republic of Poland?

The article uses the dogmatic-legal method consisting in the analysis of the legal text and the historical-legal method. It shows views presented in the doctrine and administrative literature and in the case-law in the field of the discussed issues. The whole is crowned with conclusions, which summarise the considerations presented in the text.

1. COMMUNE AUXILIARY UNITS IN THE REBORN LOCAL GOVERNMENT IN POLAND – EVOLUTION

The initial norms concerning auxiliary units were of a fragmentary nature, but as the awareness of the identity and interest of individual local communities grew, the legislator expanded the statutory normative scope of their functioning, creating the current shape of the legal position of commune auxiliary units. Thirty-five years of the existence of these structures have shown the need for changes in the provisions concerning their system and functioning, which correspond to the discussion on the changes in the legal framework of contemporary communes.

Auxiliary units of the commune are the implementation of the principle of subsidiarity. This principle makes it possible to define the relationship between the resident and the local authority and to distribute competences between the levels of local government [Dolnicki 2023]. The evolution of their legal status thus concerns systemic and functional issues. We can distinguish three stages in the evolution of commune auxiliary units.

1.1. The first stage of evolution – the formation of auxiliary units of the commune in 1990-1995

The first stage involves defining a catalogue of auxiliary units of a closed nature, the manner in which they are established and the type of bodies within them. It also includes the basic elements of the legal status of auxiliary units in the public-law sphere (judicial powers) as well as in the private-law sphere (disposal of commune property by an auxiliary unit).

In accordance with Article 5(1) of the Act of 8 March 1990 on local government,¹ the legislator introduced a closed catalogue of auxiliary units of the commune, exclusively of an optional nature. He included in this catalogue village districts and urban districts and settlements. He also indicated that in towns where administratively separate districts existed on 1 January 1990, they could be given the status of a commune. The decision to do so was taken by the Prime Minister, after prior consultation with the communities concerned. On the other hand, districts constituting communes formed *ex lege* an obligatory association of communes (see Article 5(3) of the A.l.g.).

The first stage also encompasses the manner in which commune auxiliary units are established, indicating that this is the exclusive competence of the commune council, adopted by way of a resolution after consultations with residents or on their initiative. The legislator has indicated *expressis verbis* that “establishing the scope of activities of the village district and the district (estate) and the transfer of property components to them for use” (Article 18(2)(7) A.l.g.) falls within the exclusive competence of the decision-making body in the commune.

Moreover, the legislator has entrusted the rules for the establishment of commune auxiliary units to the statutory matter of the commune. This has certainly fostered greater diversity in the regulation of their establishment.

It was also within the competence of the commune council to define the organisation and scope of activities of a village district, a district (estate) by means of a separate statute. As rightly emphasised by the Voivodship Administrative Court in Kielce in its judgement of 15 May 2024, “in certain situations it is permissible to create (the existence of) a village district on the territory of a city. Such a possibility must be considered within the limits and on the basis of the law, and therefore it is permissible to create village districts only in areas to which rural characteristics can be attributed. Although village districts are generally created in rural communes and districts and estates – in urban areas, the possibility of creating village districts in urban communes is not excluded and is sometimes used. As a result of shifting the urban boundaries, areas with a rural or formerly

¹ Act of 8 March 1990 on local government, Journal of Laws No. 16, item 95 [hereinafter: A.l.g.].

rural and now suburban character on which there are village districts are included in its area.”² From the very beginning of functioning the reborn local government, the legislator categorically defined the catalogue of bodies of the village district and the district (housing estate) while indicating the legal nature of the individual bodies functioning therein. It introduced a certain freedom in the selection of the decision-making body in an estate, indicating that this body could also be the general meeting of inhabitants. These regulations also covered the manner of electing the village head and the members of the village council (see Article 36(1) A.l.g.).

An important regulation that accompanied the beginnings of the commune auxiliary units was Article 48 of the Act on local government, which allowed the village district, the district (estate) to manage and use communal property and to dispose of income from this source to the extent specified in the statute. The statute also defined the scope of activities to be performed independently by the bodies of auxiliary units in relation to the property to which they were entitled. The legislator introduced a certain degree of autonomy for village districts with regard to municipal property, indicating that “the commune council may not deplete the existing rights of village districts to use the property without the consent of the village assembly [...] and all village inhabitants’ rights of ownership, usufruct or other property rights, hereinafter referred to as commune property, shall remain intact” (see Article 48(2) and (3) A.l.g.).

The legislator, in the local government act, has indicated *expressis verbis* that auxiliary units do not create their own budgets and the commune statutes will define their powers to carry out financial management within the commune budget. Thus, it has defined their legal position in the financial sphere in relation to the commune.

Within the scope of administrative authority, commune auxiliary units, from the very beginning of their functioning, had the possibility of issuing administrative decisions, as Article 39(3) of the A.l.g. provided that “the commune council may also authorise the executive bodies of auxiliary units to deal with individual matters of public administration.” Thus, the executive bodies of the commune auxiliary units were equipped (after prior authorisation) with adjudicatory powers [Czerw 2022].

By virtue of Act of 6 November 1992 amending the Act on local government,³ the village head and the chairman of the district (housing estate) board were granted the legal protection enjoyed by public officials.

² Judgement of Voivodship Administrative Court in Kielce of 15 May 2024, ref. no. II SA/Ke 211/24, Lex no. 3722335. See also judgement of Voivodship Administrative Court in Poznań of 16 August 2013, ref. no. II SA/Po 682/13, Lex no. 1373850.

³ Act of 6 November 1992 on amending the Act on local government, Journal of Laws No. 100, item 499 [hereinafter: 1992 amendment].

Special regulations apply to the capital city of Warsaw. Pursuant to Article 1(1) of the Act of 25 March 1994 on the system of the capital city of Warsaw (this act created new Warsaw communes (11 communes, as provided for in Article 1(2) of this act),⁴ the city was a commune association within the meaning of the Act on local government. Auxiliary units and lower-level units could be created in Warsaw communes on the principles set out in the local government act, taking into account, however, the provisions of the 1994 Act.

The first stage of the evolution of commune auxiliary units involves the formation of their legal status as structures with substantial powers in the public law sphere, devoid of subjectivity in the private law sphere, equipped with competences, tasks and resources delegated to them by commune councils in their statutes on the basis of deconcentration and subsidiarity.

1.2. The second stage of evolution – system and functional strengthening of the commune auxiliary units in 1995-2000

The second stage involves extending the catalogue of auxiliary units to include unnamed and lower-level units and the scope of mandatory regulations in the commune statutes concerning the organisation and functioning of auxiliary units. The legal position of the holders of executive bodies of commune auxiliary units has been strengthened by law.

By virtue of the Act of 29 September 1995 amending the Act on local government and certain other acts,⁵ the legislator introduced an open catalogue of auxiliary units, introducing a greater freedom in their appointment, also with regard to the bodies of units not named by the legislator [Augustyniak 2010, 34]. An obligatory regulation was also introduced in the statute of the commune concerning the inclusion of the principles of creation, merger, division and abolition of an auxiliary unit. Thus, the legal character of these norms was strengthened.

With the 1995 amendment, the legislator also clarified the scope of the exclusive competence of the commune council concerning the determination of the scope of activities of auxiliary units, the principles of transferring property components to them for use, adding to it the determination of the principles of transferring budget funds for the implementation of tasks by these units.

Another important amendment was the introduction of the possibility of establishing lower-level units within basic-type auxiliary units by statute, without specifying their names and bodies.

⁴ Act of 25 March 1994 on the structure of the Capital City of Warsaw, Journal of Laws No. 48, item 195 as amended.

⁵ Act of 29 September 1995 amending the Act on local government and certain other acts, Journal of Laws No. 124, item 601 [hereinafter: 1995 amendment].

In addition, the legislator decided to specify that the rules and procedure for the election of the village head and village council and their dismissal were to be defined in the statutes of the village district (this regulation was repealed by virtue of Article 1(38) of the Act of 11 April 2001 amending the acts: on commune self-government, on county self-government, on voivodeship self-government, on government administration in the voivodship and amending some other acts⁶). These actions were aimed at introducing mechanisms for proper operation taking into account the specific nature of village communities.

Under the 1995 amendment, the competences of the chairperson of the executive body of an auxiliary unit were extended and he/she was given the right to participate in the work of the commune council on the principles set out in the commune statutes, but without the right to participate in voting. Additionally, a regulation was introduced that allowed the commune council to establish the rules under which the chairman of an executive body of an auxiliary unit would be entitled to a daily allowance and reimbursement of travel expenses. As Kazimierz Bandarzewski rightly points out, the following principles of determining per diems for village heads may be identified: 1) optionality of the commune council to determine per diems for village heads, 2) freedom of determination of criteria allowing for the granting of per diems, 3) admissibility of variation in the amount of per diems, 4) lack of statutory determination of the minimum and maximum amount of per diems for village heads [Bandarzewski 2022]. The resolution of the commune council on the principles of granting and the amount of per diems for village heads constitutes an act of local law.⁷ These regulations strengthened the legal position of the heads of executive bodies of commune auxiliary units.

Subsequently, by the Act of 31 July 1997 amending the local government act,⁸ the subjective power of the commune council to establish the rules under which members of the executive body of an auxiliary unit and members of the district (housing estate) council, village council, will be entitled to an allowance or reimbursement of business travel expenses was extended.

It should be noted that the previous adjudicatory powers granted to the executive bodies of auxiliary units did not indicate the body to which an appeal could be lodged against a decision issued on their behalf. By virtue

⁶ Act of 11 April 2001 on amending the following acts: on commune self-government, on county self-government, on voivodship self-government, on government administration in the voivodship and on amending some other acts, Journal of Laws No. 45, item 497.

⁷ Judgement of Voivodship Administrative Court in Poznań of 9 May 2024, ref. no. IV SA/Po 154/24, Lex no. 3714922. See also judgement of Voivodship Administrative Court in Gdańsk of 11 April 2024, ref. no. III SA/Gd 485/23, Lex no. 3708400.

⁸ Act of 31 July 1997 amending the local government act, Journal of Laws No. 107, item 686.

of the 1995 amendment, a standard was introduced that “decisions issued, inter alia, by the executive bodies of the units, in matters concerning the commune’s own tasks may be appealed to the local government appeals board, and in matters concerning tasks delegated to the community – to the voivode” (Article 39(5) of the A.l.g.). This made it possible to appeal against administrative decisions issued by executive bodies of auxiliary units on their own behalf. These decisions were not issued on behalf of the commune mayor or the council, which, despite being able to authorise the issuance of decisions, did not itself have adjudicatory powers

By virtue of the 1995 amendment, the statutory regulations of the commune auxiliary units were strengthened, indicating that they belonged to the constitutional regulations in the nature of local laws issued by the community, which raised the rank of these acts and the possibility of judicial review.⁹

The 1995 amendment also extended the powers of the auxiliary unit to manage and use municipal property and to dispose of income from that source to the extent set out in the statutes of the commune auxiliary unit. The statutory matter also established the scope of activities performed independently by the auxiliary unit within the scope of its property. These regulations were extended to lower-level units.

The subjective scope of the financial powers of commune auxiliary units has been widened by specifying that the municipal statutes define the powers of an auxiliary unit (named and unnamed) to carry out financial management within the commune budget.

By the Act of 2 February 1996 amending the local government act,¹⁰ the legislator expanded the catalogue of named units to include the city, located within the territory of the commune.

The introduction of the three-tier territorial division of the state¹¹ made it possible to create auxiliary units in towns with county rights.

In the second stage of the evolution of commune auxiliary units, elements of strengthening their legal status by extending their property and financial rights are noticeable.

The systemic conditions of auxiliary units were also strengthened as a result of reflection on the already existing legal regulations in this area.

⁹ See judgement of Supreme Administrative Court of 17 September 2024, ref. no. III OSK 4535/21, Lex no. 3765709.

¹⁰ Act of 2 February 1996 amending the local government act, Journal of Laws No. 58, item 261 [hereinafter: amendment of 1996].

¹¹ Act of 24 July 1998 on introduction of the three-tier territorial division of the state, Journal of Laws No. 96, item 603.

1.3. The third stage of evolution – from control elements to consultation. Increasing the participation of residents in the functioning of the commune auxiliary units from 2001 to 2024

By the Act of 11 April 2001, the legislator broadened the material scope of the audit committee's scrutiny to include control over the activities of commune auxiliary units (in Article 18a(1) of the Act on commune self-government as amended by Article 1(16) of the Act). The composition of the audit committee was also specified, indicating that there should be councillors, including representatives of all clubs, which was to create a guarantee of participation in the control process also of opposition councillors [Augustyniak 2024, 493]. Thus, an important subject of control was established with regard to the activities of the commune auxiliary units, thus not leaving their activities outside the control of the commune decision-making body.

The 2001 amendment introduced obligatory consultation of residents,¹² on the statutes of the auxiliary unit. These consultations also apply to the amendments to the statute of an auxiliary unit of the commune [Czerw 2017, 651-59]. As pointed out by the Supreme Administrative Court in its judgement of 2 August 2023, narrowing the circle of persons entitled to consult on changes to the statute to the residents of a given district, instead of all residents, constitutes a significant violation of the law.¹³

By virtue of the 2001 amendment, it was clarified that the matter of the charter of an auxiliary unit will determine, in particular: the name and area of the auxiliary unit, the principles and procedure for the election of its bodies, the organisation and tasks of the bodies of the auxiliary unit,¹⁴ the scope of tasks delegated to the auxiliary unit by the commune and the manner of their implementation, as well as the scope and forms of control and supervision by the commune council over the activities of the bodies of the auxiliary unit.

The amendment also included system modifications, as it was specified that the legislative body in the district (housing estate) will be the council with the number of members determined in accordance with Article 17 of the Act on commune self-government, but not more than 21. In addition, the chairman of the commune council was obliged to notify, on the same principles as councillors, the chairman of the executive body of an auxiliary unit about a session of the commune council.

¹² See judgement of Voivodship Administrative Court in Poznań of 5 June 2024, ref. no. IV SA/Po 291/24, Lex no. 3727575.

¹³ Judgement of Supreme Administrative Court of 2 August 2023, ref. no. III OSK 1790/22, Lex no. 3595170.

¹⁴ See judgement of Supreme Administrative Court in Warsaw of 6 November 2000, OSA 2/00, ONSA 2001, no. 2, item 48.

The 2001 amendment also introduced a regulation according to which consultations with the inhabitants in matters concerning the change of commune or town boundaries consisting in the exclusion of an area or a part of an area of an auxiliary unit of a commune and its inclusion in a neighbouring auxiliary unit of that commune or in a neighbouring commune may be limited to: 1) the inhabitants of the commune auxiliary unit covered by the change – by the respective commune councils; 2) the inhabitants of commune covered by the change violating district or voivodship boundaries – by the relevant district or voivodship councils.

An important constitutional element that influenced the evolution of the commune auxiliary units was the constitutional changes concerning the appointment of a monocratic commune executive body in place of a collegial body introduced by the Act of 20 June 2002 on the direct election of the mayor of the commune, the mayor and the president of the city.¹⁵ This led to a change in the regulation of the subjective scope concerning control and supervision over the activities of the local government units, as the legislator indicated that the statutes of the subsidiary unit would determine the scope and forms of control and supervision of the commune authorities over the activities of the auxiliary unit bodies (see Article 35(3) (5) as amended by Article 43(33) of the Act on direct election of the mayor of the commune, the mayor and the president of the city). The previous regulation empowered only the commune council to control and supervise.

Additionally, under the Act of 20 February 2009 on the village fund¹⁶ (see Article 5 of the Act on the village fund) the legislator introduced two significant changes in the functioning of auxiliary units. Firstly, he added to the catalogue of the commune's own tasks the tasks concerning the creation of conditions for the operation and development of auxiliary units and implementation of programmes stimulating civic activity (see Article 7(1)(17) of the Act on commune self-government¹⁷). Secondly, it strengthened village districts financially by enabling them to use the village fund to implement projects (submitted by the village districts), which are the commune's own tasks, serve to improve the living conditions of the inhabitants and are in line with the commune's development strategy (however, the village fund is not a special purpose fund within the meaning of the Public finance act). The village fund may also be used to cover expenses for activities aimed at removing the consequences of a natural disaster [Augustyniak 2014, 66]. It should be emphasised that the village fund has also become an important element in terms of the active participation of the local community in the implementation of the proposed tasks,

¹⁵ Act of 20 June 2002 on the direct election of the mayor of the commune, the mayor and the president of the city, Journal of Laws No. 113, item 984.

¹⁶ Act of 20 February 2009 on the village fund, Journal of Laws No. 52, item 420.

¹⁷ Hereinafter: A.c.g.

as the legislator, by virtue of the Act, has granted 15 adult inhabitants of the village district the right of initiative to apply for the allocation of fund resources to the village district, which is adopted by the village meeting (see Article 5(2) of the Act of 21 February 2014 on the village fund¹⁸). As Rafał Trykozko pointed out, “The allocation of fund resources to the village districts can only mean the possibility of deciding on their allocation (this is also where the statutory regulations came in), and not the physical transfer of money or powers to them in terms of, for example, incurring liabilities” [Trykozko 2018].

By the Act of 11 January 2018 amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies,¹⁹ the legislator included *ex lege* the auxiliary units of the commune in the civic budgeting process, indicating that the funds spent under the civic budget may be divided into pools covering the entire commune and its parts in the form of auxiliary units or groups of auxiliary units of the commune (Article 5a (6) A.c.g.).

The Act of 15 June 2018 amending the Electoral code act and certain other acts²⁰ introduced a new provision prohibiting the ordering of elections to the bodies of auxiliary units of the commune and elections to the bodies of subordinate units for the day for which other elections have been ordered. This prohibition, however, does not apply to the election of a village mayor by a village assembly or the executive bodies of a settlement or district [Marchaj 2021]. The legislator excluded from the application of this regulation elections to district councils of the capital city of Warsaw. In addition, this regulation does not apply to “the ordering of elections to the bodies of auxiliary units of the commune or elections to the bodies of lower-tier units for the day on which by-elections to the Senate, early, supplementary or re-elections to the constitutive bodies of local government units or elections to a new constitutive body of a local government unit, as well as early or re-elections of the commune mayor” have been ordered (see Article 35a(3) A.c.g.). This amendment entered into force on 1 January 2019. Combining the elections to the bodies of auxiliary units with other elections, in particular elections to local government bodies, was often dictated by a desire to increase voter turnout, although it certainly constituted their marginalisation in the light of other elections.

The legislator continues to strengthen the legal position of commune auxiliary units and their bodies. One of the manifestations of this is the

¹⁸ Act of 21 February 2014 on the village fund, Journal of Laws item 301.

¹⁹ Act of 11 January 2018 amending certain laws in order to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies, Journal of Laws item 130 [hereinafter: amendment of 2018].

²⁰ Act of 15 June 2018 amending the Electoral code act and certain other acts, Journal of Laws item 1349.

provisions of the Act of 26 May 2023 on the monetary benefit for the function of the village head,²¹ which lays down the conditions and procedure for granting, as well as rules for the payment and financing of, a cash benefit for performing the function of a village head. A person entitled to receive the benefit is a person who has performed the function of a village head for at least 7 years (however, continuity in performing this function is not required) and has reached the following age: 60 for women and 65 for men. The benefit is granted in the amount of PLN 336.36 per month and is subject to annual valorisation. The benefit, together with the costs of its service, is financed from the state budget. The introduction of the benefit is a form of tangible recognition and appreciation of village heads in the performance of their functions.

It should be noted that the third stage in the evolution of commune auxiliary units involves the establishment of mandatory Warsaw districts under the Act of 15 March 2002 on the system of the capital city of Warsaw.²² However, Warsaw districts cannot be a separate subject of civil law rights and obligations from the City of Warsaw. They may act as a party to administrative proceedings or as a public administration body [Augustyniak 2008]. The creation of Warsaw districts is inextricably linked to the delegation of specific tasks and competencies belonging to the commune and the guarantee of specific financial resources for their implementation. Warsaw districts have a certain normative range of tasks assigned to them by the legislator of an obligatory nature, and *a contrario* to other auxiliary units of the commune.

The third stage in the evolution of commune auxiliary units is characterised by the introduction of control elements and increased participation of residents in the functioning of commune auxiliary units, e.g. through the introduction of obligatory consultations with regard to the adoption of the statutes of a commune auxiliary unit or the proposal initiative to the village fund. Systemic conditions have also been strengthened and regulations of a significant nature with regard to the organisation and functioning of commune auxiliary units have been given the form of a local law act. This raised the legal value of the statutes of the auxiliary unit of the commune, with all the consequences envisaged for the judicial review of the local law act.

This stage involves active involving the residents in social participation in the local community, indicating the important place of the commune auxiliary unit in this process.

²¹ Act of 26 May 2023 on the monetary benefit for the function of the village head, Journal of Laws of 2024, item 1650.

²² Act of 15 March 2002 on the system of the capital city of Warsaw, Journal of Laws of 2018, item 1817.

2. COMMUNE AUXILIARY UNITS – DIRECTIONS OF CHANGE

The directions of change facing auxiliary units include several options. Their implementation, together with the change of legal regulations, depends on the political will and the legislator's determination to strengthen or weaken this self-government structure, possibly changing its legal character. However, bearing in mind that the development of local government is continuous and important from the point of view of satisfying the collective needs of the local community, it is worth reflecting on several system-functional models of commune auxiliary units in Polish local government.

The first model of functioning of the auxiliary units of the commune is based on changing the territorial division of the country and introducing auxiliary units into the basic territorial division of the state. This would create the possibility of granting auxiliary units of the commune the status of a local government unit with all the legal consequences, including legal personality, performing tasks in its own name and at its own responsibility, as well as the possibility of being a subject of civil rights and obligations and judicial protection. Thus, the auxiliary units of the commune would be independent in terms of performing tasks based on decentralization, rather than deconcentration. This would require a change to the Constitution of the Republic of Poland and relevant laws. Currently, there is no political will in this regard.

The second model of functioning of the auxiliary units of the commune is based on strengthening the legal position of the auxiliary unit by expanding the range of its public and private law competencies, without granting it the status of a local government unit. This means bringing the structure of optional units closer to the legal position of the districts of Warsaw, but with varying emphasis on the elements of their subjectivity. There would also be a legal possibility to expand the competencies of the auxiliary unit in the area of public and private law, even in relation to the current legal position of the districts of Warsaw.

This model allows for the creation of a system based on the obligatory establishment of districts in large agglomerations in Poland, similar to the districts of Warsaw, with a possible broader statutory catalogue of tasks and ensuring their financing. Under the law, auxiliary units would be equipped with specific adjudicatory competencies, thus not requiring authorization from the commune council in this regard.

This model requires the introduction of a greater categorization of auxiliary units, while simultaneously strengthening their legal status within the commune structure, expanding their scope of competencies, and allowing them to act *pro foro externo*. This creates the possibility of more efficient implementation of public tasks.

This model would also enable the establishment of other optional units with consultative and advisory competencies, based on the currently applicable principles. The aim of this model would be to ensure the full integration of auxiliary units within the commune structure.

The legislator seems to recognize the need for normative changes in this direction [Bandarzewski 2019], yet there is still a lack of will to adopt comprehensive regulations regarding the strengthening of the legal position of auxiliary units of the commune, including the mandatory introduction of, for example, districts into large urban agglomerations.

The third model of functioning of the auxiliary units of the commune is based on increasing the residents' activity in the process of social participation, while maintaining the current legal position of these units. It involves the implementation of various participatory instruments at the level of the auxiliary units of the commune, including the possibility for an auxiliary unit to submit a draft resolution of the commune council for discussion at the council's session under statutory regulations. This would serve as a kind of alternative to the institution of citizen legislative initiative, as defined in Article 41a of the Act on commune self-government.

Other participatory instruments, such as public consultations and the civic budget, should be more closely linked to the functioning of auxiliary units. Strengthening the legal position of auxiliary units is a realization of the subsidiarity principle, highlighting the essence of the issue of civil society [Dolnicki and Augustyniak 2010]. The legislator is slowly beginning to recognize the importance of implementing this model, yet there is still no normative decision in this regard.

Comprehensive regulation of issues related to "all participatory mechanisms in the auxiliary units of the commune based on the law (and not, as previously, based on the statute), which would provide participants in these forms with a tool for the protection of subjective rights before the administrative court, still seems to be a relevant postulate *de lege ferenda*" [Augustyniak 2017, 373].

The fourth model of functioning of the auxiliary units of the commune is based on maintaining this structure as a merely auxiliary, consultative, and pro-educational formula, increasing the possibility of supporting and promoting the idea of local government and stimulating civic activity, without equipping it with significant task-related competencies in the public and private spheres. A weakly competent auxiliary unit does not pose a threat to representatives of indirect democracy in local government. It does not require the sharing of power by the commune authorities. Thus, adopting this model does not require expanding the scope of tasks or competencies of the auxiliary unit in the act, but only regulating its scope of action in the statutory domain, tailored to the needs of a given commune.

The auxiliary unit of the commune then plays an advisory and petitioning role, serving as a platform for dialogue between councillors and residents. It does not have executive powers or significant competencies and operates within the legal subjectivity of the commune.

CONCLUSIONS

Optional and mandatory auxiliary units are an element of the auxiliary administrative division, a derivative of the basic territorial division. They are an important participatory instrument, facilitating the implementation of the commune's tasks [Augustyniak 2021]. *De lege lata*, the auxiliary units of the commune have been equipped with significant competencies in the area of public law, but are devoid of legal subjectivity in the field of private law. They are equipped with competencies and tasks granted to them by the commune councils in the statutes. It should be noted that the commune exercises its constitutionally granted autonomy, and the authorization to shape the content of the auxiliary unit statute is general, not casuistic. Therefore, each commune can freely regulate in its statute all matters concerning its structure, as long as it does not conflict with statutory provisions.²³

We can distinguish three stages in the evolution of the auxiliary units of the commune, which have influenced the current shape of the local government community and the way in which the commune own tasks are carried out.

The first stage of evolution of the auxiliary units of the commune involves shaping their legal status in both public law (adjudicatory competencies) and private law (management of municipal property by the auxiliary unit), along with the establishment of the foundations of their normative subjectivity.

The second stage of evolution is the statutory strengthening of the organizational and functional structure of the auxiliary units and their bodies.

The third stage involves the expansion of the control and consultative instruments in the commune within the auxiliary units, as well as the normative increase in the participation of residents in the functioning of these structures.

The article presents four models of directions for change (from the most progressive to the conservative) that the legislator faces in shaping the legal position of the auxiliary unit of the commune.

The legitimacy of establishing auxiliary units of the commune is grounded in the initiative of the residents of the local community. The awareness of realizing the interests of the local community gradually strengthens the legal position of the auxiliary units of the commune in the reborn local

²³ Judgement of Voivodship Administrative Court in Gliwice of 9 December 2024, ref. no. III SA/GI 789/24, Lex no. 3825786.

government in Poland, which still requires modifications and the adoption of a specific model for directions of change.

REFERENCES

- Augustyniak, Monika. 2008. "Status prawny jednostek pomocniczych gminy w mieście stołecznym Warszawie." *Przegląd Prawa Publicznego* 12:47-57.
- Augustyniak, Monika. 2010. *Jednostki pomocnicze gminy*. Warszawa: Wolters Kluwer Polska.
- Augustyniak, Monika. 2014. *Prawa i obowiązki radnego jednostki samorządu terytorialnego*. Warszawa: Wolters Kluwer Polska.
- Augustyniak, Monika. 2017. *Partycypacja społeczna w samorządzie terytorialnym w Polsce i we Francji. Studium administracyjnoprawne na tle porównawczym*. Warszawa: Wolters Kluwer Polska.
- Augustyniak, Monika. 2021. "Art. 36-37." In *Ustawa o samorządzie gminnym. Komentarz*, edited by Bogdan Dolnicki, 3rd ed. Warszawa: Wolters Kluwer Polska.
- Augustyniak, Monika. 2024. "Ewolucja funkcji kontrolnej w organach stanowiących jednostek samorządu terytorialnego w latach 1990-2023. Kierunki zmian." In *Założenia nauki administracji*, edited by Joanna Smarż, Sławomir Fundowicz, and Paweł Śwital. Warszawa: Wolters Kluwer.
- Bandarzewski, Kazimierz. 2019. "Czy jednostki pomocnicze staną się nowym stopniem samorządu terytorialnego? Uwagi na tle projektowanych zmian." *Samorząd Terytorialny* 9:7-19.
- Bandarzewski, Kazimierz. 2022. "Problematyka ustalania wysokości diet radnych i sołtysów." *Samorząd Terytorialny* 11: 18-28.
- Czerw, Jarosław. 2017. "Jawność w procesie stanowienia statutów jednostek pomocniczych gminy." In *Aksjologia prawa administracyjnego*, vol. I, edited by Jan Zimmermann, 651-59. Warszawa: Wolters Kluwer Polska.
- Czerw, Jarosław. 2022. "Art. 39." In *Ustawa o samorządzie gminnym. Komentarz*, edited by Paweł Chmielnicki. Warszawa: Wolters Kluwer Polska.
- Dolnicki, Bogdan, and Monika Augustyniak. 2010. "Jednostki pomocnicze gminy w latach 1990-2010." *Zeszyty Prawnicze Wyższej Szkoły Ekonomii i Administracji w Bytomiu* 1:11-35.
- Dolnicki, Bogdan. 2012. *Samorząd terytorialny*. Warszawa: Wolters Kluwer.
- Dolnicki, Bogdan. 2023. "Wpływ konstytucyjnej zasady pomocniczości na kształt i funkcjonowanie samorządu terytorialnego." *Przegląd Prawa Konstytucyjnego* 3:107-25.
- Marchaj, Roman. 2021. "Art. 35(a)." In *Ustawa o samorządzie gminnym. Komentarz*, edited by Bogdan Dolnicki, 3rd ed. Warszawa: Wolters Kluwer Polska.
- Stec, Mirosław. 2022. "Zasada pomocniczości i decentralizacji." In *System Prawa Samorządu Terytorialnego*. Vol. 2: *Ustrój samorządu terytorialnego*, edited by Irena Lipowicz, 31. Warszawa: Wolters Kluwer Polska.
- Trykozko, Rafał. 2018. "Fundusz sołecki." *Finanse Komunalne* 11:45-54.
- Ura, Elżbieta. 2012. *Prawo administracyjne*. Warszawa: LexisNexis.