

## THE SCOPE OF ACTIVITIES OF MUNICIPALITIES IN THE REPUBLIC OF POLAND

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**Abstract.** The municipality plays a very important role in the structure of the state as it is the basic territorial unit formed by the local community of residents. It is a fundamental public institution which also serves as the basic unit that carries out public tasks. This study is an analysis of the current legal provisions regarding the tasks assigned to the municipal government. The basic issues regarding the catalog of tasks performed by the municipality for the community of local government residents are discussed.

**Keywords:** public tasks; own tasks; delegated tasks; municipal government; local government autonomy.

### INTRODUCTION

Municipal self-government is the basic form of state organization. It is widely recognized as the decisive form of public participation in the process of exercising and building democratic power. It is a grassroots form of citizen participation in government and an expression of unity and local identity. The essence of local government, and in particular municipal government, is independent decision-making on its own affairs. In the case of local government, it is reasonable to clearly and precisely define the limits of its activities, competences, and tasks that fall within the specified area. It is also important to eliminate any conflicts of competence that could potentially arise. Provisions of general law should regulate the above issues at every level. In the case of the Polish legal system, the Constitution itself contains a catalog of provisions and refers to the institution of local government. In this way, the constitutional legislator emphasized the essence and importance of local government in Poland.

From the perspective of the functioning of municipal self-government, it is important to define by law the scope of its activities, indicating the powers and tasks to be performed by the municipality and its subordinate units.

This study analyzes the current legal provisions regarding the functioning of the municipality as a local government unit, with particular reference to the statutory list of tasks. The research aims to demonstrate and determine the legitimacy of the current list of municipal tasks. It is important to find an answer to the question of whether the scope of matters carried out by the municipality is appropriately defined and selected, whether the current regulations governing the scope of tasks are complete, and whether the interests of individual local communities are adequately satisfied and protected.

The author's intention is primarily to attempt to draw conclusions *de lege lata* and *de lege ferenda* in the context of the issue under discussion, which will allow an assessment of the validity of the current catalog of tasks performed by the municipality, or will provide a basis for a different assessment, indicating the need for reform in this area.

## 1. PUBLIC TASKS

The basic duty of a municipality is to meet the needs of the local community. As a unit of local government, the municipality was established primarily to perform public tasks which, in turn, are intended to serve the local community. The *raison d'être* of local government is to perform public tasks that serve to materialize the common good.

According to the Constitution of the Republic of Poland, all residents of basic territorial units constitute a local community by virtue of law. Local government, through appropriately appointed bodies within a specific territorial unit, participates in the exercise of public authority. Local government performs a significant part of its public tasks within the framework of laws on its own behalf and on its own responsibility.<sup>1</sup> The fundamental issue is to determine the position of local government in the process of participating in and exercising public authority as well as to define the concept of public tasks.

The exercise of public authority by local government is directly connected with its position in the state structure. In constitutional terms, the leading position is one that does not approve of the natural law justification of the right to local government, according to which it is a primary entity preceding the state [Skoczylas and Piątek 2016]. The constitution refers to the municipality as a co-created local government community whose functioning is closely linked to the functioning of a certain group of people within a specific territory in connection with their residence there.<sup>2</sup> It is within the

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<sup>1</sup> Constitution of the Republic of Poland of April 2, 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Constitution], Article 16.

<sup>2</sup> Judgment of the Constitutional Tribunal of December 9, 2008, ref. no. K 61/07, OTK-A 2008, No. 10, item 74.

community that integration takes place and common needs or goals are defined. Furthermore, there is a view in academia that takes a corporate approach to the community, according to which each local government unit forms a corporation, i.e. an association of persons whose purpose is to carry out common tasks. Due to the fact that these matters concern specific public tasks, this corporation is of a public law nature [Kisiel 2005, 45].

However, the functioning of the community cannot take place in isolation from the broadly understood concept of statehood. In this case, priority is given to the state, which sets the directions for the development and functioning of the community as a whole. Nevertheless, the exercise of power is only one of the methods of performing public tasks [Fundowicz 1999, 64-71]. This state of affairs is an element of local government, the basis of which is the performance of some tasks belonging to the state. The exercise of public authority by municipal self-government is inextricably linked to administrative authority, the scope and form of which are defined by statutory provisions. In one of its judgments, the Constitutional Tribunal pointed out that Article 16(2) of the Constitution clearly indicates the statutory framework within which local government should operate in each case.<sup>3</sup>

The exercise of public authority by a municipality is both a right and an obligation of local government, from which there can be no derogation. Bearing in mind that, from a formal point of view, local government exists by the will of the state, the public authority it exercises cannot be opposed to the authority of government bodies. Despite the existing difficulties in distinguishing between the competences and tasks of all public authorities, they should complement each other.

In addition to the above considerations, it should be pointed out that the participation of local government in the exercise of public authority consists in the performance of a significant part of public tasks originating in statutory provisions. At the same time, the difference between a public task and a competence should be emphasized. Competence is directly related to a specific local government body, while a task concerns the entire local government unit. Furthermore, there is a view that a task is a specific goal pursued by the local government, while competence is a set of rights and obligations of a body, including legal forms of action, i.e. forms of task implementation [Zimmermann 2022, 190].

As a consequence of the above, all entities, including municipalities, which occur to varying degrees in the structure of the state and, at least in part, have a public element, are empowered to exercise public authority and, to varying degrees, act as public entities – state entities.

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<sup>3</sup> Judgment of the Constitutional Tribunal of November 28, 2013, ref. no. K 17/12, OTK-A 2013, No. 8, item 125.

The Constitution contains a provision which defines the scope of public authority exercised by all local governments, including municipalities. The constitutional legislator used the formulation of an essential part of public tasks that is addressed to the legislator. It requires the latter to transfer a significant scope of tasks to local governments for implementation. This shows that the intention of the constitutional legislator is to assign a significant number of public tasks to local government units. Local government cannot therefore be treated by the ordinary legislator as an insignificant element of the legal system, but as a significant component of the structure exercising public authority [Skoczylas and Piątek 2016]. Contrary to this is the weighing up of local government and not burdening it with excessive responsibilities. Local government units, in parallel with being entrusted with public tasks, should be adequately secured in organizational and material terms [Gromek 2022, 28].

The performance of public tasks by local government depends on its units being equipped with the resources necessary for the proper performance of public tasks [Skoczylas and Piątek 2016]. The exercise of a significant part of public authority on its own behalf and on its own responsibility establishes the principle of local government autonomy. Nonetheless, this is not absolute. In reality, it consists in equipping local government with a specific range of its own tasks appertaining to meeting the needs of residents and tasks assigned to it by law. Local government units perform their tasks independently, expressing the will of residents.<sup>4</sup>

It should be emphasized once again that the independence of local government is not absolute. In practice, it consists in providing local government with a specific range of its own tasks in regard to meeting the needs of residents and tasks assigned to it by law [Tuleja 2023, 79]. Local government units carry out their tasks independently, expressing the will of their residents [Banaszak 2012, 139].

The admissibility of interference by state executive authorities has been limited to supervisory procedures based on the criterion of legality. Any interference in the sphere of autonomy of local government units must comply with the principle of proportionality [Skoczylas and Piątek 2016].

Recognizing the essence of local government in one of its rulings, the Constitutional Tribunal stated: "The essence of local government is that certain areas of affairs, separated from the scope of state authority, are entrusted to these communities for independent resolution. The tasks assigned

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<sup>4</sup> Judgments of the Constitutional Tribunal of: May 26, 2015, ref. no. K 2/13 OTK-A 2015, No. 5, item 65; November 28, 2013, ref. no. K 17/12, OTK-A 2013, No. 8, item 125; September 26, 2013, ref. no. K 22/12, OTK-A 2013, No. 7, item 95; December 18, 2008, ref. no. K 19/07, OTK-A 2008, No. 10, item 182; July 18, 2006, ref. no. U 5/04, OTK-A 2006, No. 7, item 80.

to local government bodies are part of the tasks of public administration and are carried out by local government bodies subordinate to the community and representing its interests.”<sup>5</sup>

Continuing the analysis of this issue, it is also appropriate to refer to the concept of a public task performed by a municipality. Polish legislation does not provide a legal definition of this concept, but it is used in a broad context. Taking into account the above considerations, it is accurate to say that every task performed by a municipality is a public task. At the same time, taking into account constitutional and statutory norms, any action legally provided for and imposed by law on local government, the purpose of which is to satisfy the collective needs of a given local community, can be considered a public task performed by local government.

In academic literature, one may encounter a formulation referring to the concept of a task, indicating that a task is understood as a state of affairs to be achieved or maintained by an acting entity, but not determined by it, only assigned from outside. Additionally, if the concept of “task” is used in this way in legal provisions, it becomes a legal obligation. Tasks are normative, general objectives to be achieved by local government in its activities, or specific courses of action, taking into account the scope of matters falling within the remit of local government. In summary, it should be assumed that “task” in its legal and juridical sense should refer to a goal [Góralczyk 1986, 39].

## 2. OWN TASKS

The discussion so far has focused on issues concerning the systematization of local government positions in the public sphere, the concept of public tasks, and the position of local government in the state structure. At the same time, research conducted to date has revealed an area of local government activity that pertains to meeting the needs and interests of the community that co-creates it. At the same time, the conducted analyses have shown a close link between the activities undertaken by central state authorities and those carried out by local governments. The basis for the tasks performed by local government is their statutory authorization and the definition of the scope of the anticipated task. This means that every action taken at the local level requires a statutory delegation. The rest of this paper will focus exclusively on issues regarding municipal government.

Pursuant to Article 166(1) of the Constitution, tasks serving to satisfy the needs of the local community performed by a local government unit

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<sup>5</sup> Judgment of the Constitutional Tribunal of November 30, 1999, ref. no. TS 104/99, OTK 2000, No. 1, item 21.

are defined as its own tasks. In addition, if justified by the needs of the state, other public tasks, referred to as commissioned tasks, may be delegated by statutory provisions. In addition, Article 6(1) and (2) of the Act on Municipal Self-Government<sup>6</sup> explicitly states that the scope of a municipality's activities includes all public matters of local importance, i.e. those defined as own tasks.

The above establishes the principle of presumption in favor of the municipality's competence to perform all public tasks at the local level, which is enshrined in the constitutional principles of local government participation in the exercise of public authority through the performance of its assigned public tasks, on its own behalf and on its own responsibility, in addition to the decentralization of public authority ensured by the territorial system. From this principle, it can be concluded that the municipal government has the authority to deal with all local public affairs in an authoritative manner as well as through non-authoritative forms of action, in terms of substance, i.e. tasks that other entities are not statutorily authorized to perform, and in terms of territory, which means that this power exists within the territory of the local government unit. The essence of administrative authority is the ability to decide unilaterally on the content of an administrative-legal relationship, to determine the powers and obligations of the administered entity, and to apply sanctions [Młotkowska 2023, 92].

These provisions are supplemented by Article 7(1) MSG, which states that meeting the collective needs of the community is one of the municipality's own tasks. However, pursuant to Article 8(1) of the same Act, statutory provisions may impose on the municipal government obligations delegated from the scope of government administration. The above is referred to in the literature as task dualism [Czarny 2023, 547]. With regard to both its own tasks and those delegated to it, the legislator is obliged to be guided by the criteria of subsidiarity, effectiveness, and the common good, which should be clearly indicated in the explanatory memorandum to the draft act and in the regulatory impact assessment.<sup>7</sup>

In accordance with the principle of presumption of competence, the municipality performs public tasks of local importance, but only those whose performance is not reserved for other entities. The tasks of municipalities do not have a uniform legal character. The Act on Municipal Self-Government divided them into own tasks: optional (Article 7(1)) and mandatory (Article 7(2)) delegated: from the scope of government administration, i.e.

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<sup>6</sup> Act of March 8, 1990 on Municipal Self-Government, Journal of Laws of 2023, item 40 as amended [hereinafter: MSG].

<sup>7</sup> Judgment of the Constitutional Tribunal of November 20, 2019, ref. no. K 4/17, OTK 2019, item 21.

transferred by acts (Article 8(1)); by way of administrative agreement, i.e. performed on the basis of agreements (Article 8(2)); entrusted from the scope of local government by other local government units (Article 8(2a)) [Dobosz 2022a, 251].

When defining the scope of mandatory tasks, the legislator indicated that specific legal acts will determine which tasks will be mandatory tasks performed within the framework of municipal self-government. Under the current legal framework, mandatory tasks include those related to maintaining cleanliness and order in municipalities, including the development of a waste management system within the municipal government.<sup>8</sup> Another mandatory task of the municipality is to provide a very broad and demanding range of social assistance services.<sup>9</sup> Another issue characterized as a mandatory task of the municipality is the organization of the education system in local government.<sup>10</sup> The current legal situation indicates that the municipality is obliged to organize and conduct cultural activities within the local government, which consists in creating, promoting, and protecting culture.<sup>11</sup>

It should be noted here that the fact that a task is specified in the law does not in itself make it mandatory for the municipality. There are numerous cases where a law specifies the possibility for a municipality to undertake certain tasks, as well as their standards, but leaves the decision on whether to undertake them to the discretion of the municipality. This means that the law must therefore additionally contain a specific provision that the task in question is mandatory, rather than merely mentioning it as an option. Nevertheless, when the legislator decides to devote a separate act to a specific task of the municipality, it usually establishes the scope of mandatory tasks. In such a case, optionality may be limited to the manner of performing the task, e.g. the choice of the organizational form in which it will be performed [Płażek 2023, 97].

Moving on to the next scope of tasks recognized in the subject as own tasks – optional tasks – it is worth noting that the legislator, when defining the catalog of these tasks, used the phrase “in particular,” which clearly means that we are dealing with a statutory open catalog of tasks. The catalog of tasks contained in Article 7(1) MSG is very differently assessed in conceptual terms. Some argue that it does not contain any concept, but is merely a collection of successive legislative decisions taken solely on the basis

<sup>8</sup> Act of September 13, 1996 on maintaining cleanliness and order in municipalities, Journal of Laws of 2025, item 733 as amended.

<sup>9</sup> Act of March 12, 2004 on social assistance, Journal of Laws of 2024, item 1283 as amended.

<sup>10</sup> Act of September 7, 1991 on the education system, Journal of Laws of 2024, item 750 as amended.

<sup>11</sup> Act of October 25, 1991 on organizing and conducting cultural activities, Journal of Laws of 2024, item 87 as amended.

of whether a given task can be performed independently by the municipality [Kornberger-Sokołowska 2017, 214; Ruczkowski 2017, 312].

Nonetheless, there are also other voices saying that although there are no tasks that are inherently incumbent on the municipality, it is possible to see a certain consistency in the existing ones, consisting in the existence of permanent areas of activity which the legislator assigns to municipalities.

If we trace the evolution of paragraf. 1 over the thirty-odd years of its existence, we can observe its considerable stability and the fact that the list of tasks within the sphere in question has remained unchanged. The changes consist mainly of additions to existing tasks and are always made with clear respect for the principle of subsidiarity. The catalog does not therefore appear to be a collection of random legislative decisions, but rather a consistent and consistently maintained concept of the scope of the municipality's own tasks [Augustyniak and Moll 2021, 192].

Under the current legal framework, the list of tasks has been defined as follows, taking into account issues in regard to spatial planning, real estate management, environmental and nature protection, in addition to water management; municipal roads; municipal water and sewage management; maintenance of cleanliness and order, sanitary facilities, landfills and municipal waste disposal, supply of electricity, heat and gas; telecommunications; local public transport; health care; social assistance, including care centers and institutions; family support and foster care; municipal housing; public education; culture, including municipal libraries and other cultural institutions, as well as the protection and care of historical monuments; physical culture and tourism, including recreational areas and sports facilities; municipal green areas and tree planting; municipal cemeteries; public order and safety of citizens, in addition to fire and flood protection, including the equipment and maintenance of the municipal flood protection warehouse; maintenance of municipal public facilities and administrative buildings; pro-family policy, including social, medical, and legal care for pregnant women; senior citizen policy; supporting and promoting the idea of local government, including creating conditions for the operation and development of auxiliary units as well as implementing programs to stimulate civic activity; cooperation with local and regional communities of other countries (Article 7(1) MSG).

The list of matters that a municipality may deal with contained in the Act is only illustrative, as indicated by the phrase "in particular." The wording of the quoted provision indicates that these are to be activities aimed at benefiting the general population constituting the local community [Moll 2010, 115].

The above list covers a very wide range of tasks that the legislator has assigned to the municipal government in terms of its own tasks. In principle,

this may mean that, in systemic terms, the municipality, as a public entity operating closest to the citizen, is best aware of the needs of the local community and is in a position to take the most appropriate measures to meet them.

Mandatory tasks are non-transferable, require constant implementation and cannot be treated as optional, regardless of the complexity of the administrative reality, including the cost-effectiveness of the task or its attractiveness. Therefore, one must agree with S. Nitecki's statement that: "The Local Government Act, in Article 7(2), stipulates that laws determine which of the municipality's own tasks are mandatory. Therefore, it must be clear from the law that a given task of the municipality is a mandatory task." The position of K. Płonka-Bielenin should also be approved, namely that: "If the legislator defines a specific task as mandatory, then the municipality is obliged to perform it, and the citizen is entitled to a specific claim in this respect" [Płonka-Bielenin 2007, 145-70].

### 3. ASSIGNED TASKS

Parallel to the scope discussed above are tasks assigned within the framework of which the legislator, through statutory provisions, may impose on the municipality the obligation to perform tasks in the field of government administration, as well as in the field of organizing and conducting general elections and referendums. In addition, the municipality may also perform tasks in the field of government administration on the basis of an agreement with the authorities of that administration (Article 8 MSG).

The doctrine indicates that the criterion by which tasks delegated to municipalities can be distinguished from other public tasks performed by municipalities is that they are performed by all basic local government units according to identical rules and in a formalized manner. The difference between delegated tasks and own tasks seems to lie in the fact that they do not "serve to satisfy the needs of the local community, but rather [...] the legitimate needs of the state" [Wiktorowska 2002, 136].

The performance of delegated tasks by a municipality means that it has the character of a local government community and an executive unit of government administration. Thanks to the commissioning of government administration tasks to municipalities, there is no need to create separate government administration bodies at the level of the basic local government unit [Boć and Miemiec 2005, 205].

Tasks of this type are not local or regional in nature, as is the case with own tasks. They are not assigned to local government bodies to meet the needs of the local community, but are typically state tasks, in other words, they concern the functioning of the state and not only the local

community. This does not mean, however, that they are irrelevant to the local community. Local governments perform tasks assigned to them on the basis of a mandate contained in the act. This means that the legislator, guided by the need to perform a certain category of tasks as effectively as possible, has transferred the responsibility for their implementation to a specific municipality. The introduction of a statutory requirement to assign other public tasks serves at the same time to limit the discretion in their transfer. Nevertheless, tasks of this kind are mandatory. It is emphasized that the issue of the connection with "legitimate needs of the state" will be subject to review by the Constitutional Tribunal [Lipowicz 1998, 99].

The transfer of tasks from the government administration to local government does not transform them into the local government's own tasks in the Polish legal system. Thus, we can see that the constitutional legislator, as well as the ordinary legislator, implement the concept of dualism of tasks of local government [Dobosz 2022b, 277].

Currently, the area of delegated tasks includes tasks appertaining to the protection of cultural property and the care of military graves and cemeteries; tasks arising from water law and environmental management; activities including tasks in the field of public roads; combating infectious diseases; state border protection; family and welfare matters, as well as pension and insurance matters; population registration; civil status; identity cards; business registration; exclusion of land from agricultural production, including the imposition of penalties for the unauthorized exclusion of land from production; planning of population evacuation and other civil defense activities; preventing and counteracting drug addiction.

Moving on to the last issue concerning the performance of public tasks by the municipal government, it is worth noting the differences between own tasks and delegated tasks. T. Bigo points out that the purpose of dividing public tasks into own and delegated tasks boils down to supervision. In the area of delegated tasks, the municipality is subject to strong state supervision, which is similar to official supervision in a hierarchical system of government authorities. On the other hand, when performing its own tasks, the municipality makes decisions at its own discretion [Bigo 1990, 193]. J. Zimmermann sees differences in the form of the competence clause for their implementation, responsibility for the performance of both types of tasks, financial resources for their implementation, procedural differences, and judicial protection [Zimmermann 2022, 191].

Nevertheless, some representatives of the doctrine present an alternative view, pointing to the absence of differences. J. Panejko recognizes that both government and local government administration deal with state affairs. The type and number of these affairs do not affect the legal concept of local government [Panejko 1990, 94]. A different position in this regard

is presented by Z. Niewiadomski, who emphasizes that despite the division of public tasks into own and delegated tasks in the Constitution, the differences between the various categories of tasks are blurred in ordinary legislation. As a result, the practical significance of the division of local government tasks boils down to the way they are financed. Own tasks are financed from the local government's own resources, while delegated tasks are financed from the resources of the delegating entity [Niewiadomski 2011, 143-44].

It should be recognized that it is precisely the factor of financing individual tasks that constitutes the most clear distinction between them. Own tasks are financed from own revenues and subsidies, while delegated tasks are financed from grants provided by the delegating entity. The second clear factor determining the division of public tasks is the standardization of their implementation within the framework of commissioned tasks in relation to all municipalities, while own tasks are performed with a greater degree of local government autonomy [Augustyniak and Moll 2021, 188].

The differences indicated result from adopted conventions and not from objective conditions. In each case, tasks are performed on one's own behalf and on one's own responsibility, even in the case of commissioned tasks. In view of the above, there is a growing view in doctrine that it is not advisable to maintain such a division, while at the same time pointing to the abandonment of the existing division into own and delegated tasks and its replacement by a precise description of tasks and the manner of their performance in statutes.<sup>12</sup>

## CONCLUSIONS

An analysis of the current legislation and case law concerning the performance of public tasks has shown that a significant proportion of such tasks have been delegated to local government. Local government plays a very important role in the exercise of power. The autonomy of local government guarantees its independence, but in certain circumstances it does not exempt municipalities from complying with specific rules resulting from their participation in the broadly understood process of public administration. In such cases, municipalities retain their independence while performing tasks that have been delegated to the unit that is closest to citizens in the state structure.

Activities aimed at meeting the needs of the local community are not uniform in nature. They have been systematically divided into own tasks: optional and mandatory. The second group of tasks is commissioned tasks: in the

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<sup>12</sup> More in Ruczkowski 2017, 323; Kornberger-Sokołowska 2017, 220.

field of government administration, i.e. those transferred by law or by administrative agreement, and those entrusted within the scope of local government by other local government units. In the context of the statutory systematization of the division of tasks, the prevailing view in doctrine is that of task dualism.

The analysis of the provisions has identified specific areas that are covered by legal regulations, which also define the tasks to be performed by the municipal government. The catalog covering the above set of public tasks is open-ended. In this way, the legislator has secured itself and made it possible to introduce changes in this area, depending on the needs of local communities or the vision of the state's development in a specific direction. Nonetheless, over the more than thirty years of the statutory catalog of tasks, its significant stability can be observed. The changes consist mostly in supplementing existing tasks.

The permanence of the division into own and delegated tasks in the context of a single entity that performs them remains a debatable issue. It is reasonable to analyze this issue because the municipality performs individual tasks independently, regardless of whether they are its own tasks or those delegated by the government administration. A consistent point is the need to meet the needs and interests of the citizens who make up a specific local community.

Taking the above into account, it should be recognized that the municipal government properly performs and completes the tasks incumbent upon it, both those which it creates independently and those that are based on the implementation of specific instructions issued by the government administration.

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