ECONOMIC FUNCTIONS OF SELF-GOVERNMENT – EXPERIENCE AND PROSPECT

This article presents the processes that occurred while fulfilling the economic function by local government in Poland. Receiving in the frame of communalization a part of the property of state companies and an obligation to perform public utility tasks posed new challenges and possibilities for local authorities, but, at the same time, threats. In the beginning, communes, directly on their own or indirectly through their entities, dealt with running such an activity. By doing so, local authorities wanted to have a direct control and a possibility of interference in realization of the tasks, which were assigned to them. They often used their monopolistic position. Generally, such a model of operation did not motivate to effective work and in many cases was contradictory to the principles of market economy.

In recent years in Poland we can observe that communes tend to perform a role of an organizer and manager of communal services in the scope of satisfying the collective needs of the communities. Such a strategy determines the development of economic entities and providing communal services. It also helps a commune to maintain relatively high standard of services, launch competitiveness mechanisms in a greater degree and to objectify the costs of services.

Key words: self-government, commune, communal economy, public utility tasks

Restoring the institution of self-government in 1990 in Poland became one of the most essential signs of political, economic, structural and social transformation. The recreation of local democracy at the commune¹ level was a part of structural changes aiming at creation of a democratic state and market economy. The commencing decentralization of power based on subsidiarity was a ground for functioning of self-government and it gave authorization to hold public power at the lowest level. The concept of self-government has many definitions. Depending on the character of the study, the definitions put an emphasis on social, legal or economic features. It seems that a universal definition of self-government is included in the European Charter of Local Self-Government, according to which “self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population”.

The basic function of local self-government, both in a social and economic context, is the empowerment of local society as a community. Legal structural empowerment is reflected in gaining independence by a community as a power and public administration entity. The empowerment in an economic context means
separation of property and financial rights and the ability to manage them, but also creating conditions for development of entrepreneurship and supporting the entrepreneurs. Following Walerian Pieńko – one of the outstanding co-authors of the self-government reform in Poland in 1989, we can say that “functioning of communal property is on its own a function of local self-government, which, in order to become an efficient tool of decentralization of political authority, has to have a support by the decentralization of economic power” (Pańko 1991). Since one of the main tasks of self-government is to satisfy the collective needs of the community, i.e. all the citizens of the commune, the issues of communal property are of specific importance. The recreation of self-government in Poland in 1989 was significantly influenced by social and economic processes in the states of Western Europe. Many advisors and consultants financed by the World Bank, USAID, British Know How Fund participated in the works on the act on local self-government. In the eighties and nineties of the previous century many western states questioned the role of the state in economy derived from the Keynesian concept of economy (Świaniewicz 1998). The essence of the changes was to introduce market elements on a larger scale to services provided by self-governments.

The act of 10 May 1990 divided the state property in Poland, the owner of which was State Treasury and introduced the property of communes. According to this act, the state companies, the founders of which were local state administration bodies, became communal companies as of 27 May 1990. In the beginning of their activity, local self-governments took over more than 900 public utility companies and 600 companies acting on general terms. This was the beginning of the process of state property communalization on a broad scale. Apart from the public utility property, self-governments could apply for communalization of other state property situated on their area and connected with realization of statutory tasks of a commune. Upon the above mentioned act, commune’s councils were obliged to choose organizational and legal forms of running the economic activity of their companies. It was obviously a conscious choice the aim of which was to put an end to the activity of communal companies acting on the base of the act on state companies and to start the activity in another organizational-legal form (Aziewicz 1998). The change of the form shall be understood as continuing the activity but in a new form. The change concerned the entity not the subject of the activity (Aziewicz 1998). Generally speaking, the legislator allowed for two solutions: running the activity in the form of a budget
company or transforming the company into a commercial law company. In the beginning period there was a tendency to transform companies into budget companies. The reason of that was first of all a more beneficial form of taxation, especially the possibility to escape from the above-average increase of remuneration, and income tax exemption (Ryszkiewicz 1998).

As of 1992 budget companies became also payers of income tax on legal persons so the scope of their tax burden became similar to the taxation of commercial law companies. The act on communal economy dated December 1996 stipulated that the companies which privatization or choosing the new organizational-legal form was not approved by a commune’s council, became by virtue of law sole companies of a commune.

It is worth noting that until 1 January 1999, i.e. until establishment of local self-government at the voivodship² and poviat³ level, the problem of acceptability and the scope of business activity referred only to communes. The notion “business activity” itself has many definitions; it was even included in the jurisdiction of the General Administrative Court. According to M. Zdyb, the basic factors of “business activity” are as follow:

- economic character of the activity being conducted;
- aiming at gaining a profit;
- independent character of the activity (Zdyb 2000).

A similar definition has been adopted by the Supreme Court, according to which, the elements necessary for the “business activity” concept are as follow:

- performing this activity as production, construction, commercial and service activity;
- running it for profit purposes;
- conducting it on the owner’s own account.

Using the concepts “production activity, construction activity, commercial and service activity” does not mean there is no possibility for their wider interpretation. Pointing at profit gaining aim as one of the indicators of the business activity should be treated as directional recommendation and it does not mean that the aim of the business activity is only bringing a profit to a business entity (Dolnicki 2004). In the case of limited liability communal companies only economic objective should be defined. The commercial law does not automatically define economic aim with profit-gaining aim. In practice, it means that a business activity can be run also by the
entities for which this activity is not the basic activity. It mainly concerns various associations, foundations, where revenues from the activity should serve statutory activity and should not be divided among its members (Zdyb 2000). In the case of communes, the basic act essential for running business activity by these entities is the act on commune self-government. This act stipulates that a commune or commune’s legal persons can run business activity in the field of public utility. Beyond this field, such an activity can be run only according to the act on communal economy. Of course, there may arise questions how to understand public utility field. While defining this concept, the legislator indicated that the public utility tasks are own tasks of a commune, the aim of which is current uninterrupted satisfying of collective needs of the people by providing widely available services. Own tasks of a commune include quite a wide scope of activity. Their range is continuously increasing due to transferring new tasks reserved so far only to government administration. These are the most important tasks connected with communal economy transferred to the competences of commune self-governments, such as:

- spatial order, real estate management, environment and nature protection, water management;
- commune’s roads, streets, bridges and squares;
- water systems and water supply, sewage systems, disposal and treatment of communal sewage, maintaining cleanliness and order of sanitary facilities, dumping grounds and disposal of communal sewage, providing electric and heat energy as well as gas;
- local transport;
- health care;
- social help, including caring centres;
- commune housing construction;
- public education;
- culture;
- physical education and tourism;
- market places and fair halls;
- greenery and trees.

The notion of communal economy was defined by the legislator in a general way. It means performing public utility tasks in order to satisfy collective needs of the community. The possibility to run business activity by local government entities
raised many controversies from the very beginning of reactivation of self-government in Poland. The most questionable point was the scope of the activity, especially restraints to perform only public utility tasks.

In the frame of communalization, communes took over a part of the property from the state companies. As a result of it, communes started to run business activity which was out of the public utility scope. The act of 1990 allowed for such a possibility but under one condition – it had to be required by social needs. Communes had a lot of freedom in creating own companies and organizational entities. It was an intentional action as commune self-government was supposed to play an essential role in the whole process of economic changes. The fact that self-government was represented by the people opposing former system was an additional advantage (Regulski 2005). It seems that the most important thing was to eliminate monopoly of the state in all the fields of economic life and to transfer more competences to self-government. The omnipresent state was to limit its role for the benefit of market economy (Baszkiewicz 1998). Market forces should regulate the functions of economy on local, regional and global level. It is known by assumption that excessive sluggishness of the state suppresses human initiative and entrepreneurship (Lipowicz 2000).

At that time there was a stormy discussion on the right of communes to run business activity. There were two options – one of them assumed a ban on running a business activity which was beyond public activity character, the other one gave such a possibility. The followers of the first option indicated that while running a business activity, a commune could use monopolistic practices and thus make it difficult for the competitors to run their activity. The followers of the second option indicated that communes, especially rural ones, had already been the founding bodies of many companies which ran business activity - exclusion of these companies from the commune operations area would again lead to nationalization of communal economy and restoring the state monopoly. Moreover, enabling communes to run earning activity gave a chance to local community for effective management and taking own initiatives.

After two years of functioning of the self-government reform, the Members of the Parliament radically decreased the rights of a commune and restricted its business activity to the scope of public utility (Lipowicz 2005). It resulted in strong criticism of self-government organizations and communes as inconsistent with the principles of
economic freedom. The decision of the General Administrative Court as of 6 October 1994 banned communes from running business activity which was beyond the limit of public utility tasks. The ban also referred to commercial law companies and the companies in which a commune was a founding body. Such interpretation of legal regulations was connected with the then attitude to tasks and role which was supposed to be performed by a newly reactivated local self-government. An essential role was performed here by central administration, which was not willing to dispense with its powers in the beginning of the system transformation (Ofiarska 2001).

In 1996, the rights of communes were extended and it was allowed for a commune to run business activity beyond the sphere of public utility if the needs of a local market were not satisfied and there was unemployment having a negative impact on the living standard of the local community. The change in perception of local self-government in the public authority system resulted in accepting the need to run business activity in a broader scope. The practice and analysis of the activity of self-government clearly showed that there was no use to restrict to run business activity by a commune. The activity of a self-government, the aim of which is to satisfy collective needs of the community, is business activity and gaining profit from this activity is desirable, even though it is not its main aim by nature (Aziewicz 1998). Such activity constitutes essential rights allowing communes to contribute effectively to local economic development. Obviously, there were questions whether economic activity of communes, considering its specific character, is economic activity in the general understanding of the law, and whether a company status can be assigned to a commune (Dudzik 1998). According to the law of those times, economic activity referred to profit-gaining production, construction, commercial and service provision activity as well as searching for, recognition and exploitation of natural resources, performed in organized and continuous way, whereas, an entrepreneur could be physical person, legal person, an organizational entity not having legal status and a commercial law company that could take up and perform business activity on its own behalf. It is beyond doubt that conducting business activity by self-government is one of many elements of the activity of a commune and the organizational entities appointed by it can be referred to as companies according to regulations on business activity. This part of the activity of self-government is characterized by acting on its own account, subjection to profitability rules, management of own property in a rational way, repeatability and participation in economic turnover. Due to a very wide
scope of the notion of public utility tasks and difficulties connected with defining the
boundary of this sphere, it may be said that communes can participate in many
elements of economic life of the local society. It is assumed that a characteristic
feature of public tasks is the fact that they serve all the people and they are realized in
the public, not private interest (Leoński, Niewiadomski 1994). Public tasks are not
only investments in technical infrastructure, building roads, water systems, sanitary
facilities and public utility objects but also safety and public order, social welfare,
maintenance of schools, culture and sports institutions, etc. (Ochenowski 2001).

Economic activity of self-government is strictly connected with communal
economy. Communal economy of self-government entities refers to “performing own
tasks in order to satisfy collective needs of self-government community and it
includes in particular the tasks of public utility character, the aim of which is
uninterrupted satisfying of collective needs of the people by providing widely
available services”. In the frames of communal economy we can distinguish non-
commercial activity- conducted beyond this sphere. In literature it is assumed that the
sphere of public utility is a narrower concept than public tasks. Not all tasks of a
commune are public utility tasks. The latter ones realize collective needs, which, in
the case of a big group require a separate organization of the method of their
fulfilling. In many cases this sphere requires a financial support from public funds as
it is not profit-oriented and the consumers of such services do not fully pay for them
(Kosikowski 1997). A communal business activity can be an example of the activity
which is not only profit-oriented. The motive of income is replaced here with a
motive of effective and economic realization of the given task. Thus, the economic
activity of self-government entities cannot be reduced only to economic phenomena
and factors, it should be very widely perceived as its forms can be diverse and
sometimes untypical (Zdyb 1997). Self-government should also perform investment
functions in economy. It mainly concerns socially indispensable activities, in which
private entities do not want to participate, for example due to difficulties in realizing
them or there is no profit involved. It may concern the issue of maintaining local
traditions connected with for example tourism activity or folk art (Leoński,
Niewiadomski 1994).

Communal economy in Poland can be conducted by the entities of local
government in the form of a budget company or commercial law companies. This is
quite a broad range of running business activity by a commune. The organizational-
legal form as well as the way of its running is decided by decision-making bodies of
the given entity. This right is restricted only when the regulations of law require in the
given case a concrete form of conducting the activity (Kosikowski 1997). Economic
activity which is beyond public utility boundaries shall constitute an element of
communal economy and it should serve satisfying the needs of local society.
According to the subsidiarity rule, it should be conducted and realized only in the
fields and in the scope, where defined social needs cannot be properly satisfied by the
forces of private economy. The entities of self-government should not run commercial
activity if it collides with the activity of private entrepreneurs functioning on their
area or willing to run such an activity on their area (Byjoch, Redel 2000). Communes
are allowed to run commercial activity and join or establish commercial companies if
the needs of the community on local market connected with unemployment are not
satisfied. It concerns unemployment which considerably influenced the quality of life
of the community and other tasks undertaken by, for example, poviat labour offices
“did not lead to economic activation or permanent reduction of unemployment”
(Czarnow 2002). In many cases self-government authorities are evaluated for an
active fight with unemployment and creating new job places. It was assumed that the
market mechanism itself will not reduce the high unemployment rate in Poland
revealed at the times of economic changes in the state. The actions to fight
unemployment should include a wide set of local and regional policy, micro and
macroeconomic policy and the policy of job market, all leading to structural changes
and economic development. It required cooperation of the local government entities,
government, employers and especially the unemployed. Inclusion of self-government
to run economic activity in this scope was also to influence investment conditions,
supporting business infrastructure and attracting outside investors.

While running business activity communes often establish single-person
companies. It is connected with the possibility to control the activity of the company
on one hand and limiting the responsibility for the activity of such companies on the
other hand. In economic turnover commercial law communal companies appear as
independent entities and they act based on their own separated property (Kulesza,
Banasinski 2000). It is difficult to state which organizational-legal form of the entities
of self-government is more beneficial for self-government. Both the advantages and
disadvantages depend on concrete applications (Aziewicz 1998). The necessity to
provide certain services on proper level causes that local government authorities often
establish prices which do not cover full costs of producing these services. As a result, the entities providing these services are dependent on the decision-making bodies in double ways. On one hand, it is a commune’s bodies that establish some prices of the services; on the other hand, realization of these services is dependent on financial support from the commune’s budget. Here comes the basic question whether economic functions of a commune shall be directed at satisfying current needs or shall take into account competitiveness and creating high standards.

In global market economy a commune shall mainly be determined to play a function of the organizer and controller of services. It is worth to refer here again to the encyclical of Pius XI “Quadragesimo Anno” of 15 May 1931 concerning the subsidiarity principle. It was formulated in the following way: “state authority should leave less important roles and tasks, which could distract them, to the lower societies. (...) What an individual can do on their own initiative and with their own forces, should not be torn away for the benefit of the society (...) it is unfairness, social harm and disruption of order to deprive the smaller and lower communities of the tasks which they can fulfill and then transfer to bigger and higher societies. Any activity of the society has a subsidiary character by virtue of its nature, it should support the elements of social organism, not destroy or imbibe”.

Competiveness policy should play an essential role in the process of running economic activity by self-governments. Its main pillars are based on the UE law and its basic elements assume, among others, a ban on overusing a dominant position, a ban on creating cartels and the control of company connections (Emmert, Morawiecki 2001).

It must be remembered that while delegating its own tasks to self-government, the state did it “in conviction that self-government administration will perform them better and more effectively than centralized state administration” (Wykretowicz 1998). In practice, it did not mean that a commune shall perform these tasks on its own or by own entities established for this purpose. In fact, it depends on whether a commune wants to perform the function of the organizer and manager of the communal services or it wants to directly realize the public tasks in the scope of satisfying collective needs of local communities on its own. In the first case, the main task of a commune is to create conditions and opportunities for economic entities as well as for physical persons to perform services in the scope of own tasks of a commune. The actions undertaken in this scope by a commune should comply with
the conditions connected with market strategy and long-term strategy of development of communes in the scope of development of communal services. The system of management of communal services should include the following elements (Żuk 2002):

- selecting objectives of the actions and defining strategic objectives and short-term objectives;
- planning the actions and resources, including strategic planning and operational planning;
- the sphere of realization of specific tasks;
- controlling and evaluating the realization of tasks.

Such a strategy should determine the development of economic entities providing communal services. It should also help a commune to secure effective and efficient activity on a high quality level. In order to do it, it is needed to elaborate a long-term programme of financing the development of technical infrastructure and to monitor the needs concerning the direction of development of services. It is essential to analyze necessary technical investment in the scope of providing services on a high quality level. Focusing of a commune on the role of the organizer and manager of communal services may contribute in a bigger degree to start competition mechanisms and to objectify the costs of services. Such a model includes long-term activity in the scope of development and supply of services with consideration of development of communal services based on the principles of market economy. The second element assumes that a commune, directly on its own or indirectly through its own entities, provides communal services. It is connected with two phenomena. First of all, the authorities want to have a direct control and often a possibility to interfere in realization of the tasks which were assigned to them. Secondly, there is often no social approval for restructuring of communal services, especially in smaller communes. Therefore, direct provision of services by the entities of local government may be contrary to the rules of market economy. Such a method of providing communal services causes that the mechanisms influencing a financial result are independent on the mechanisms influencing the amount of own costs. Such a model of operation does not motivate to effective work. In many cases these entities act in the conditions of full monopoly. Realizing the above mentioned method of service provision, local authorities have to decide on either the superiority of economy or the superiority of social criteria. In the case of the later ones, it will be required to
financially support a communal company from the local government budget (Bratkowska-Nowak 1998).

It is worth noting that introducing market mechanisms to communal economy may lead to the following:
- minimalization of budget expenditures and maintaining the quality of provided services at the same time;
- improvement of the quality and efficiency of communal services;
- rationalization of consumption of some communal goods and services;
- eliminating the influence of political factors on economic decisions;
- establishing competitive agreements;
- attracting and involving external capital;
- introducing new technologies and new organization;
- introducing instruments of professional management (Aziewicz 1998).

The realization of public tasks by external economic entities or by physical persons may have positive effects in the social and economic context since private entities act on the base of free-market economy. Therefore, the following factors will be of great importance in managing services in self-government: access to latest knowledge, efficient organization, rational management of financial resources and competent coordination in using human resources and using innovative solutions. Innovative attitude, research, implementations and patents will be the canon of economic organization in the future (Grabczuk 2012).

Summary

Restoring local government in Poland in 1990 was a part of structural changes aiming at creating a democratic state and market economy. The decentralization of the power based on subsidiarity principle transferred a part of the tasks from government administration to local government.

This article presents the processes that occurred while fulfilling the economic function by local government in Poland. Receiving in the frames of communalization a part of property of state companies and an obligation to perform public utility tasks posed both new challenges and possibilities for local authorities, and also threats.

In the beginning, communes, directly on their own or indirectly through their entities, dealt with running such activity. By doing so, local authorities wanted to have a direct control and a possibility of interference in realization of the tasks, which were
assigned to them. They often used their monopolistic position. Generally, such a model of operation did not motivate to effective work and in many cases was contradictory to the principles of market economy. In recent years in Poland we can observe that communes tend to perform a role of the organizer and manager of communal services in the scope of satisfying collective needs of the communities. Such a strategy determines the development of economic entities and providing communal services. It also helps a commune to maintain relatively high standard of services, launch competitiveness mechanisms in a greater degree and to objectify the costs of services.

¹ commune - the smallest self-government unit in Poland

² voivodship - the largest self-government unit in Poland, an equivalent of the region

³ poviat – the second-level self-government unit in Poland, an equivalent of the county

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Экономические функции самоуправления – опыт и перспективы

Резюме

Восстановление в Польше в 1990 году местного самоуправления было частью системных изменений, направленных на создание демократического государства и рыночной экономики. Децентрализация власти, основанная на принципе субсидиарности, передавала часть задач от государственного управления к местному самоуправлению.

В этой статье представлены процессы, которые происходили при выполнении экономической функции органами местного самоуправления в Польше. Принятие в рамках муниципализации части имущества и активов государственных компаний, а также обязательство выполнения задач в области общественной полезности стали новыми трудностями для местных властей: новые возможности, но также новые риски.

В самом начале, гмины непосредственно сами или косвенно, через свои единицы, занимались ведением такой деятельности. Местные власти хотели таким образом обеспечить себе прямой контроль, а также возможность вмешательства в выполнение задач, которые были на них возложены. Они очень часто использовали свою монопольную позицию. Такая модель, как правило, не мотивировала работать эффективно и во многих случаях противоречила правилам рыночной экономики. В последние годы мы наблюдаем в Польше следующую тенденцию: гмины все чаще выбирают модель организатора и управляющего муниципальными услугами в области удовлетворения коллективных потребностей местных общин. Такая стратегия детерминирует развитие субъектов, предоставляющих коммунальные услуги. Запуск механизмов конкуренции и объективация затрат в значительной степени позволяют повысить уровень сервиса, предоставляемого для гмин.