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STATE TREASURY LANDS RESOURCES – SELECTED REMARKS ON LEGAL PRINCIPLES OF ADMINISTRATION

1. INTRODUCTORY REMARKS

The political system changes in Poland from the 1990s brought about an economic transformation which has lasted until now¹. In terms of the public real estate economy extensive changes should be noted – concerning both individuals and legal forms. One should remember a number of regulations related to privatization or re-privatization, enfranchisement of individuals and legal entities, municipalization of state property and finally the public real estate turnover transactions alone as a source of dynamic changes in their individual resources. Simultaneously with the return the concept of local government and shift from the centralized socialist model of the state a large amount of the State Treasury resources were transferred to the communes (one of the three tier local self-governing units) Then in the early 90s' of the XX century, after the reform of the political system in 1999 – to other local government units such as local district and provinces. The changes made on the basis of art. 73 of the Act of October 13, 1998 should also be indicated².

2. PUBLIC ADMINISTRATION AND TERRITORIAL DIVISION OF THE COUNTRY

To have a better idea about the structure and governing public bodies associated with state land resources we shall start with introductory remarks con-

¹ More about political and historical changes see A. Niewiadomski, *Gospodarowanie państwowymi nieruchomościami rolnymi w Polsce oraz w Republice Federalnej Niemiec w okresie transformacji ustrojowej po 1989 roku*, Warszawa 2012, p. 87 and next.

² See laws introducing regulations reforming public administration, Official Journal of Laws No. 133, item 872, as amended.

cerning the territorial division of the country. We recognize three types of the division: basic, auxiliary and the special.

The basic territorial division is created mainly for the bodies of central (state) government administration and local government authorities units to improve and adapt the administration's tasks to local conditions and the citizens needs³.

The principal legal basis for territorial division of Poland can be found in the Constitution of the Republic of Poland (art. 15, art. 152 paragraph 1 and art. 164 paragraph 1) as well as in the Act of July 24, 1998 on the introduction of the three-tier division of the country⁴. The units of the basic territorial division of the state are: commune (in Polish: gmina), district (in Polish: powiat) and province (in Polish: województwo). According to the territorial division the whole country⁵ consists of the provinces, the province of districts, while in the districts there are the communes (sometimes referred to in the literature as municipalities or counties). The Council of Ministers (government) is the body which, by the law creates divides, merges and cancels all the abovementioned units. The Council of Ministers creates, by Regulation, a town from villages or rural municipalities located in urban areas.

In the current legal status auxiliary divisions exist only at the level of communes and for quantitative reasons, mainly in rural communities. These should include village councils, which are units of auxiliary bodies of mainly rural municipalities. A rural administration unit (Sołectwo) is created as an option on the initiative of the municipal council, after consultation with resident citizens or at the request of residents. In the municipalities auxiliary units can also be towns located in the communes⁶.

The rural administrative unit is an important element of agricultural administration – from the point of view of the local structure, as well as the citizens' access to organs of this administration. It is as a auxiliary unit of division of the country. A Rural administrative unit can only be created by communes, the superior authority of local government. A rural administrative unit as an auxiliary unit of the municipality is an institution of public law. It has, specified in the law sub-authorities, its own voting procedure and – since 2009 – its own rural administration unit fund.

Special territorial divisions are divisions **made in order to adjust public administration to specific actions**, which for various reasons do not coincide with the grid of authorities of the territorial division of basic and auxiliary state.

³ See also M. Możdżeń-Marcinkowski, *Introduction to Polish administrative law*, Warsaw 2012, pp. 71–77.

⁴ Official Journal of Laws No. 96, item 603 with further amendments.

⁵ In Poland terms “country” and “state” are used interchangeably contrary to the American nomenclature.

⁶ See art. 5 of the Act of March 8, 1990 on Local Government, Consolidated text: Official Journal of Laws 2013, item 594, as amended.

Special divisions are made on the basis of separate laws. Examples of the many special territorial divisions can be found in the structures of central governmental authorities and local agricultural administration. These should include the areas of territorial jurisdiction:

- 1) complex administration in the province and district (agricultural inspections independent from the governor of the province, e.g. provincial, district and border veterinarians,
- 2) regional branches of state agricultural executive agencies (e.g. Agricultural Property Agency, the Agricultural Market Agency, Agency of Restructuring and Modernisation of Agriculture)
- 3) regional offices, local branches of Agricultural Social Insurance Fund,
- 4) 16 local provincial agricultural counseling centers along with the Agricultural Advisory Centre,
- 5) regional branches of the State Forests,
- 6) customs chambers within the framework of rules of procedure of the goods covered by the Common Agricultural Policy.

3. STATE TREASURY LANDS MANAGEMENT

At the same time we have binding Law on Real Estate Management. By the intention of the state legislator (parliament) it is an act which regulates complex issues of rules for management of the public land resources (real estates). In art. 20 of the mentioned act the legislator creates:

- 1) State Treasury property resources;
- 2) Municipal (communal) property resources;
- 3) The district property resources;
- 4) Province property resources.

While in article art. 21. the legislator decides that those property resources are State Treasury properties, which are the subject of the State Treasury and have not been transferred to the perpetual usufruct. The real property of the State Treasury, referred to in art. 21, does not include land covered by surface flowing water according to the Water Law Act.

Reviews upon the effectiveness and legitimacy of particular regulations of the featured Real Estate Management Law and other laws encompassing the issues of public resources will always remain a matter of controversy. However, the general assessment of both the content of the commented Act, and administrative policies of the state and its organs, in fact, shows a consistent protection mechanism of State Treasury (broader public) land resources. Sometimes resource protection takes the form of preservation of the status quo of resources policy by the application of laws in the direction of not diminishing of resources. It can be seen in the

precautionary practice of public bodies in the application of regulations in relation to the individuals affected by nationalization or maintenance of the leases (not sales) of the Agricultural Property Resource of the State Treasury. On the other hand, there are many legal mechanisms, not only in the commented Act, but also in the entire legal system, which head towards the increase of collecting public resources (e.g. expropriations institutions, inheritance by municipalities and the State Treasury, rights of first refusal and repurchase by Agricultural Property Agency and municipalities as well as donating private lands in return for the state guaranteed agriculture social pensions.

The distinction in the commented article of the four resources of public lands, namely the State Treasury, municipal, district and province has its origins in a number of laws prior to the Law on Real Estate Management. We discuss here acts which contributed to the reform of public administration after the historical period of communism in Poland called PRL (Polish Republic of People) and significantly changed both the authorities and the competences of almost all the bodies of public administration.

For example, prior to January 1, 1999 only the State Treasury and municipal resource of real estate were distinguished. That changed after that date, when the laws relating to public administration reform came into force. These regulations include, in particular, three Acts of June 5, 1998 namely: Law on the government administration in the province⁷, present Law of January 23, 2009 on the governor of the province and government administration in the province⁸, Law on province local government⁹; Law on district local government¹⁰. There are also two Acts of July 24, 1998 namely on the introduction of the three-tier territorial division of the state¹¹ and amending certain laws defining the competencies of public administration authorities in connection with the political system reform of the state¹² followed by the Act of October 13, 1998 – Regulations introducing laws reforming public administration¹³ and related to it: the Act of December 29, 1998 on amending certain acts in connection to the implementation of the political system reform of the state¹⁴ and the Act of January 21, 2000 on amending certain acts related to the functioning of public administration¹⁵.

The socio-economic problems of the usage of the State Treasury, municipalities, districts and provinces resources are extremely complex. It seems that the objectives for which public resources are created and how they are managed

⁷ Consolidated text of Official Journal of Laws 2001, No. 80, item 872, as amended.

⁸ Official Journal of Laws No. 31, item 206, as amended.

⁹ Consolidated text of Official Journal of Laws 2013, item 596, as amended.

¹⁰ Consolidated text of Official Journal of Laws 2013, item 595, as amended.

¹¹ Official Journal of Laws No. 96, item 603, as amended.

¹² Official Journal of Laws No. 106, item 668, as amended.

¹³ Official Journal of Laws No. 133, item 872, as amended.

¹⁴ Official Journal of Laws No. 162, item 1126, as amended.

¹⁵ Official Journal of Laws No. 12, item 136, as amended.

should be inextricably linked with the concept of the public interest (social) in the sector of public real estate management. And although an unambiguous definition of contemporary public interest is an equally difficult task, a juxtaposition of the objectives of the resources management and the public interest in this matter, in my opinion, is indispensable. Of course, the legislator does not leave us in this matter completely without any guidance. In the case of public resources referred to in art. 20 of the Law of Real Estate Management an analysis is required each time for a public purpose defined in art. 6 points 1–9, not including the art. 6 paragraph 10, which to a certain degree opens up the possibility of using the resources of the State Treasury, municipal, district and provincial also for other public purposes, provided that they are foreseen in other laws (e.g. local government laws, law on roads, law on research institutes, etc.).

In the art. 21 of the abovementioned act the legislator clarifies the commented provision and moves on to a detailed description of the State Treasury resources, stressing that they belong to the real property that is the subject of the State Treasury and have not been entrusted to the perpetual usufruct and the property being subject to perpetual usufruct of the State Treasury. For the correct systematic interpretation of that provision it is necessary, however, to recall the content of art. 2 the same act, according to which the Law on Real Estate in terms of determining the detailed composition of the real property of the State Treasury does not violate other laws in the scope relating to property management there specified. This means that in the case of the State Treasury real estate mentioned art. 21 only includes some part of them, mainly as for the ones built or designated for development, thus leaving the regulation of the legal status of a significant amount of resources to other treasury laws¹⁶.

Those parts of the State Treasury land resources removed from the direct binding of Land Management Act include the above mentioned regulations concerning: public agricultural property remaining in the hands of the Agricultural Property Agency managing resources of the Agricultural Property of the State Treasury, resources remaining the responsibility of the National Forest Institution called “State Forests”, the Military Property Agency and those related to the accommodation of Polish Armed Forces, national parks, the General Directorate for National Roads and Motorways, the National Water Management and other so-called auxiliary State Treasury farms and the real estate which is in perpetual usufruct under separate regulations (e.g. in accordance with art. 4 paragraph 2 of the Act of September 28, 1991, Law on forests¹⁷).

In the margin, it is worth noting that systemically the contents of art. 21, covering the scope of the State Treasury resources, are formed broadly and in case

¹⁶ See. B. Wierzbowski, *Gospodarka nieruchomościami. Podstawy prawne*, Warszawa 2010, p. 4 also

¹⁷ Szachulowicz, *Gospodarka nieruchomościami*, Warszawa 2001, p. 12.

¹⁷ Consolidated text of Official Journal of Laws 2014, item 1153, as amended.

of repeal of any of the acts listed in art. 2 (without a specific decision of the legislature to continue the assignment of organizational and legal specific parts of the State Treasury resource) art. 21 will be applied. The State Treasury resource of property includes real estate owned by the State Treasury and that, possibly owned by local self-government units, for which the State has the right of perpetual usufruct. Whereas, the State Treasury real estate given to third parties in the lease are excluded from the State Treasury real property, although some management operations of these resources remained a duty to the Chief official of the district¹⁸ (e.g. Registry).

Article 21 of the featured act recognizes the issue of resource management of the State Treasury of the subjective and objective sides. We should remember that the activities in the area of resource management of State Treasury, municipal and district legislator referred to in art. 12 norm of a very general character, according to which all the bodies mentioned in art. 11, acting as a proxy for the State Treasury and the local government unit, are required to manage real estate in a manner consistent with the principles of good administration management. Chief official of the district manages a resource for the State Treasury property within the limits of art. 23, but with certain statutory exceptions.

One should also raise the question of a general nature. The wording of art. 23 paragraph 1 saying that the real estate stock the State Treasury by counties, performing the mandated tasks of governmental administration, can cause some problems of interpretation of the general nature of political law. Anyway, in the politico-organizational administrative law the status of the Chief Official of the District (in Polish *Starosta*) is quite complex. It is not a strictly representing body of the district in terms of the political system (these are in fact the district council and county board), but he is in fact acting as an important organ within the district. The Chief Official, as was already mentioned, performs several functions: chairs the board of the district, is the head of the district office and the public body issuing administrative acts within the meaning of a code of administrative procedure. The Chief Official of the District plays, however, also another role. He is a superior of a *strictly* governmental integrated (territorial) district administration.

The phrase “management” of the State Treasury lands in commented Law is not covered by the definition of a classical type. Posted in art. 23 definition of management is neither a definition of analytic type (i.e. reporting, the importance of the word meaning in the language), synthetic type (proposing the meaning of the word) or regulating type (i.e. a mixed with analytical and synthetic) one. Since paragraphs

¹⁸ Chief official of the district as a representative of the State Treasury has significant powers in accordance with art. 11 of Law on Real Estate. It is a body representing the State Treasury in matters of real estate management, performing the tasks of government. On the basis of the same Act, the district board manages the public property of the local government district. The Chief official of the district also hosts many administrative proceedings within the entrusted tasks of central (state) government administration.

1–9 contained in art. 23 paragraph 1 represent, in principle, an open list of activities (legal and factual) of a chief official of the district, thus we deal with the procedure to determine the expression in way beyond the definitional manner to explain the meaning of words: we have to explain the meaning of management by example (contemporarily it is referred to as equality non-classical definition)¹⁹.

Management within the meaning of the Act is therefore an example of a list of activities which, moreover, do not limit the competence of a chief official of the district. This opinion is supported also by the judicature

4. THE COMPONENTS OF THE STATE TREASURY LANDS MANAGEMENT

The components of the management of the instruments are namely listed in art. 23 on the commented law. Chief officials of the districts, performing the tasks of governmental administration, and in particular they:

- 1) record the property according to the real estate cadastre;
- 2) provide a valuation of the property;
- 3) draw up plans to use the resource;
- 4) protect the property from damage or destruction;
- 5) perform activities related to the accrual of receivables for the property made available to the resource and lead the recovery of those charges;
- 6) cooperate with other authorities who, under separate regulations manage a real estate the State Treasury, as well as with the relevant local self-government units;
- 7) dispose of and acquire, with the consent of the Chairman of the Board of province, the property included in the resource, subject to art. 17;
- 7a) let out, rent and lend the property included in the resource, and the agreement concluded for a definite period longer than 3 years or indefinite period of time requires the consent of the Chairman of the Board of province; the consent of the Chairman of the Board of province is also required if the agreement concluded for a definite period to 3 years the parties conclude further agreements whose object is the same property;
- 8) take action in court proceedings, particularly in matters relating to ownership or other rights (latin *in rem*) on real estate, to pay the fee for the use of the property, with a claim of tenancy, lease, or lending, for a declaration of inheritance;

¹⁹ See J. Gregorowicz, *Zarys logiki dla prawników [Outline of logics for lawyers]*, Warsaw 1962, p. 57; R. Piotrowski, *Logika elementarna*, Warszawa 2005, p. 223 and following; A. Malinowski, *Redagowanie tekstu prawnego. Wybrane wskazania logiczno-językowe*, Warszawa 2008, p. 53.

9) submit applications for the establishment of the land register for the property the State Treasury and the entry in the land register.

However, the Polish Supreme Court noted in its judgment of April 4, 2008²⁰ that, according to the paragraph 1 point 8 of art. 23 that norm only specifying one of the competences of the chief official of the district and cannot be understood as a limiting the right of the chief officials of the district to represent the State Treasury only for matters listed in it and does not result from that provision exclusion from the powers of the chief official of the district to act on other matters concerning the State Treasury lands. Note, however, that some restrictions on the activities of management and turnover are included in art. 19 (i.e. mining areas, national parks, marine areas).

According to art. 23 paragraph 2 performance of the actions referred to in, paragraph 1 point 1–6, it can be also entrusted to experts or relating to property entities that employ these people. Their selecting takes place on the basis of the Law of January 29, 2004 – Public Procurement Law²¹. The possibility of entrusting to perform operations of management has been statutorily excluded primarily in relation to activities that require the consent of the governor of the province, such as the disposal and acquisition of real estate included in the land resource (with the exceptions set out in art. 17); lease, rental and lending of real estate included in the resource, both concluded for a definite period longer and shorter than three years or an indefinite period. The law has excluded a possibility of action by experts or entities that employ them in the case of actions in court proceedings, particularly in matters relating to: ownership or other rights in property on real estate, to pay the fee for the use of the property, with a claim of tenancy, lease, or lending, to declare inheritance, to declare the acquisition of real property by adverse possession, and on proposals for the establishment of the land register for the property of the State Treasury and the entry in the land register.

STATE TREASURY LANDS RESOURCES – SELECTED REMARKS ON LEGAL PRINCIPLES OF ADMINISTRATION

Summary

The article concentrates on a brief description of Polish modern law and regulation concerning state land resources as a result of a political system changes in Poland from the 1990s of XX century. I discusses basic regulatory topics as: public administration

²⁰ I CSK 462/07, LEX No. 424351.

²¹ Consolidated text of Official Journal of Laws 2013, item 907, as amended.

and territorial division of the country, instruments and forms of State Treasury lands management, types of state and other public lands resources, main competences and public bodies that are responsible for administering along with the crucial components of the state lands management.

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