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LOCAL GOVERNMENT AND THE EXECUTION OF DUES

The execution of dues in the Polish system of administrative law was regulated as a whole in a bill of acts dated 17th June 1966 [Dziennik ustaw, 1991] together with its executive acts [Dziennik Ustaw, 2001a]. Passed nearly 35 years ago, this bill introduced general rules for the execution of dues to local government. In particular, a model was accepted with special bills regarding specific issues, as well as a comprehensive bill regarding the procedure of executing dues. On the one hand, this model is intended to ensure the proper functioning of the whole system, on the other it is supposed to lead to the execution of dues and means of control being handled by official bodies, specified by law and equipped to carry out these tasks in an appropriate and efficient way. Other rules included in the primary form of the bill worth mentioning consist of the introduction of a dichotomous division of dues into financial debts and non-financial dues. Moreover, the principles of executing dues were formulated and the duties and rights of specific participants, including the body enforcing the execution of dues, the body to which a due is owed (the creditor) and the body owing a due (the obliged) were defined.

The procedure of the execution of a due is undoubtedly a significant part of administrative procedure. It is a kind of 'buckle', a finishing element, a closing of administrative proceedings, which are often long and arduous, and is crowned by an administrative act in the form of an administrative decision. Even general administrative proceedings are regulated by the provisions of the codex of administrative procedures [Dziennik Ustaw, 1980] and concrete proceedings regulated in a number

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of specific bills, only the execution procedure allows for the effective implementation of the conclusions reached. This is particularly visible when the obliged on the basis of an administrative decision does not want to perform his duty on a voluntary basis. This lack of performance of a duty activates the whole procedure of execution by the appropriate bodies as specified in the bill obliging the obliged to perform his duty.

One could venture so far as to say that there is no efficient and tangible proof of the realization of decisions reached during the initial investigative procedure, as they cannot be realized by the application of the rules regarding execution procedures. This dependence works both ways, apart from a few exceptions foreseen by the provisions of law [Prawo Gospodarcze, 1998]. Conducting and completing the investigation is the beginning, the sine qua non condition for conducting the execution of a due. The initial investigative and executive procedures in administration work on the basis of 'communicating vessels', where one procedure depends on the other, complementing each other as a unity. Only then, such regulation supported by the proper functioning in practice of these two elements is a condition of the effective and modern functioning of public administration including local government.

Lack of proper regulations in the scope of execution procedures could cause a flaw in that executing the decision made in the course of such a procedure would depend on the will of the obliged, and it would not effectively enforce the execution of dues and would mean that public administration acts would just be instructions on a sheet of paper without the possibility of putting them in practice.

The passing of the new Constitution [1997] and forming a three level system of local government are only two of the many fundamental reasons that led to the bill on execution procedures in administration to be amended. This was done in an amendment on 6th September 2001 that was put into effect on 30th November 2001 [Dziennik Ustaw, 2001a]. It is worth mentioning significant changes in the role and powers of local government units in this field. This was mainly caused by the decentralization of the public authorities and the subsequent handing over of assignments to municipalities, districts and provinces (such as own or directed assignments). It was thus necessary for these bodies to have such powers at their disposal that would allow them to execute duties from obliged individuals. Local government units are guaranteed by law the possibility of constraining the obliged subjects to acting or breaking off a contract, so as to put into effect their own autonomous solutions. In this way acts of local government units are supported by formalized execution procedures, which they carry out when the obliged does not want to or is delaying carrying out his duty.

Article 2 of the bill of execution procedures in administration, shows the wide range of the scope of its application, stating that the following are subject to administrative execution:

- Taxes, payments and other dues to which the rules of Chapter III of the bill from 29th August 1997 on Tax Ordinance apply.
- Fines and pecuniary penalties are adjudged by bodies of public administration.
- Other pecuniary dues to public administration.
- Pecuniary dues transferred to administrative execution on the basis of other bills.
- Dues of a non-pecuniary nature to administrative bodies of governmental administration and local government or transferred to administrative execution on the basis of a particular rule.
- others.

Based on such a wide scope, local government units may in three different roles during execution procedures. Firstly as creditors, secondly as an execution body, finally as a creditor and execution body simultaneously. The rights and duties of local government in execution procedures depends on the nature of the role it takes.

The most recent amendment of this bill introduced a legal definition of the notion of creditor, who is entitled to demand the execution of a duty or its enforcement by administrative execution or legal procedures. On the basis of the bill on executing dues in administration bodies of local government units were provided with a number of powers that characterize the position of a creditor. The role of a local government unit – as a creditor in administration execution – does not give it the chance of conducting execution, *i.e.* autonomous decisions regarding the means of conducting the execution. The role of a creditor, who is not an execution body at the same time, in execution procedures in administration, consists basically, although not only, in initiating procedures by administering a warning and then issuing rights of proxy. The powers of local government units as creditors are not limited to this initial role. They have in addition a whole range of further powers of a supervisory and monitoring character with reference to actions taken by both the execution body and the obliged. It is worth mentioning that local government units have the right of bringing a complaint about decisions made in the course of execution procedures by the execution body. From the point of view of a creditor as a subject entirely interested in the proper outcome of procedures, *i.e.* the execution of a due, this is the main means of controlling these procedures. Another significant power of a local government unit as a creditor is the right of complaint regarding the delaying of execution procedures, if as a result its legal and financial interests are

violated. These two basic powers best present the role of control that a creditor – local government unit – has in execution procedures. Other powers connected with this position are worth mentioning too. On the basis of the most recent amendment to the bill on execution procedures in administration, the creditor may express his standpoint with reference to the debtor's obligations, which the execution body has to consider before settling the matter. This change is undoubtedly aimed at strengthening the role of creditors at this stage of the procedures, so they can influence its course and direction in a more effective way. Another power of a creditor is the right of indicating the means of execution in the rights of proxy. If the execution concerns non-pecuniary duties, then it is even his duty. Placing local government units as execution creditors in execution procedures in administration, apart from giving them powers, imposes a number of duties on them. The terms regarding the particular actions are especially binding on creditors. Non performance may cause negative consequences. Secondly, a creditor has to take an active part at all stages of the execution procedures, so as to not only control the execution body, but most of all to secure his interests properly. Thirdly, a creditor is obliged to take appropriate steps, *i.e.* he has the duty to implement execution in the case of situations covered in the bill. In the case of his inactivity, a subject whose financial or legal interest is endangered may lodge a complaint to a superior ranking body.

It is worth mentioning that in its present form the bill on execution procedures describes the role of a creditor in the execution procedures in administration in such a way that his role becomes more important. Therefore, he has a real chance to shape these procedures. Thus, in this way even the compulsory performance of a duty is in accordance with the contents of the rights of proxy issued. In consequence, the number of duties placed on a creditor within the framework of administrative execution increase.

The role of an execution body is another very important role that local government units may play in executive procedures in administration. It has to be said that according to Polish legislation a local government unit may simultaneously act as a creditor and an execution body. In such a case the powers and duties of the unit are accumulated. Since a creditor's role was discussed above, I shall confine myself to pointing out the main features that influence the position and the role of an execution body in execution procedures in administration.

With reference to the execution of dues of a non-financial character, the legislator introduced a new solution in a new amendment. He namely allowed that the execution body only represents an appropriate body of local government unit in the scope of its own or directed assign-

ments and those from the scope of the state administration, as well as the possibility of acting as execution body of province heads and district guards, services and inspections with reference to the duties arising from their decisions and provisions.

As a result of such a specified scope, the role of local government units, as well as the execution body, becomes stronger in comparison with the role of the creditor. According to the provisions of the bill, it is the execution body who 'manages' the whole procedure, its role is of a 'host'. Such a term is accurate because it is the execution body which after receiving rights of proxy decides about the demands included in it. The execution body decides, among other things, if the execution procedure is acceptable, if it is appropriate for a specific case, or if it is a debt that is liable to administrative execution. Therefore, it is a body which in the preliminary stage of procedures determines what may be initiated and conducted and directs the rights of proxy towards execution and giving appropriate clause and also appointing the means of execution that will be applied in a specific case. Moreover, at the stage of procedural action the duty of conducting the execution procedures in accordance with the provisions of the bill is to be fulfilled by the execution body. The execution body is therefore obliged not only to follow the basic principles of execution procedures, but most of all to settle any incidents that influence or may influence the course of the procedures. The execution body decides about the steps taken in order to conduct the execution, some of the execution actions, to suspend or even extinguish the procedure. Finally, employees of the execution body conduct the execution by the application of the means of execution provided by the bill, and may use subcontractors. With reference to participants of an execution procedure, the execution body may impose a pecuniary penalty.

Also with reference to the execution body, at present the bill includes a legal definition, which indicates that the execution body is a body entitled to applying in part or in full, any means specified leading to the execution of pecuniary or non-pecuniary dues by the obliged. Such a general definition connected with the position and authority of an execution body is modified to a certain extent if this role is performed by a local government unit. The legislator indicated that the appropriate execution body in this case is the head of a municipality, mayor, president of a city, head of a district, and governor of a province, accordingly. At the same time the legislator clearly regulated that only the appropriate body of a municipality with the status of a city or municipality that is a part of the Warsaw district can be an execution body entitled to apply means of execution in cases of the execution of dues of a pecuniary nature for which such a body is appropriate, with the exception of execution regarding property. There

are three limitations that emerge from such regulations. Firstly, the legislator determined that not all local government units may conduct the execution of financial dues, but only municipalities with the status of a city or which are included in the Warsaw district. This means that not only district authorities, but also province authorities, in accordance with the regulation cannot perform the role of an execution body in executions of a pecuniary nature. They can only perform the role of a creditor, if certain requirements stated in the bill are met. Secondly, it is clear from the bill's record that in the scope of execution of pecuniary dues local government units cannot apply any means of execution regarding property no matter what its status is. Thirdly, local government units, even if they fulfil the conditions to act as execution bodies, they only have this status only as far as pecuniary execution is concerned.

Due to its wide range of competencies, an execution body is undoubtedly the participant of execution procedures whose actions and effectiveness define the final outcome. Therefore, there is a necessity to control and supervise the actions and decisions taken by an execution body in the course of execution procedures. In the case of an execution body, these actions occur at three levels. Firstly, supervision and control actions with reference to the actions of execution body are performed by the remaining participants of the procedure in the form of complaints or possibly, after complying with all the conditions specified in the bill, by lodging a complaint to NSA [Dziennik Ustaw, 1995]. Another level of control is control performed in the scope of supervisory powers by bodies superior in rank over the execution bodies. It is worth mentioning that with reference to local government units as pecuniary type execution bodies, supervision is carried out by Samorządowe Kolegium Odwoławcze (Self-governing Appeal Court), which is to some extent a departure from the general rule that the controlling body is a body superior in rank. The third level of control over an execution body is on the basis of the right of the obliged to claim compensation on the basis of the provisions of the civil code to recompense any damage resulting from any inappropriate execution or execution not conforming with the provisions of the bills. Such far-reaching control with reference to the actions of the execution body is provoked by care for quick and effective execution, but most of all by a will to guarantee all participants their rights and privileges that are specified in the bill.

This article includes observations and remarks on the role that local government units may, or rather should, perform in execution procedures in administration leading to a few closing remarks:

– Local government units in execution procedures are to principally act in two roles: as creditor and execution body.

- The role of an executive creditor is significant for a local government unit, because of the scope of powers that it has and the possibility of influencing the course of these procedures.

- A local government unit acting as an execution body has in comparison to a creditor a far more autonomous role in conducting the entire execution procedures, and with this a greater responsibility and control of the steps taken.

- Independently of the role that local government units perform in execution procedures in administration, the present legal solutions give a guarantee of stronger control and efficiency in conducting execution procedures. Therefore, local government units must have appropriate legal, organizational, personal and financial apparatus.

- It has to be mentioned that the tendency towards handing over duties by bills of proxy, new dues should continue. Therefore, the scope of engagement of local government units in such procedures will also increase.

Literature

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