

LEGAL ACTS CHANGEOVERS AS THE REALIZATION OF SUSTAINABLE DEVELOPMENT CONCEPTION. THE CASUAL ANALYSIS

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Abstract: Subject of the article is showing the problem of legal changeovers connected to the necessity of implementation Community legal acts into national legal systems of member states from one side and its connection to development policy an development concepts from other side. Analysis of the case was undertaken at the base of Polish act from 1st July 2011 about changing the act about maintenance of clearness and order in commune and changing some other legal acts as well as at the base of sustainable development conception.

Present article is the casual analysis and can be the contribution to further discussions and research at legal changeovers and their influence at development of enterprises as well as at local and/or regional development.

Keywords: commune, commune's own tasks, maintenance of clearness and order, sustainable development

1. Introduction

The duty to care of environment and ecological safety has got its legal and social dimension. Subjects of public authorities and citizens are obligated to taking up the actions having on their aim environmental protection. Efficiency of this protection depends on implementation of following conditions – firstly the position and range of competence of public authorities responsible for environment condition must be adequate to the real or potential ecological threats, secondly - effect of undertaken protective operations should be the amount of coordinated action in this domain on all levels of responsibility, with particular taking into consideration the local level at which organs of local self-governments perform the public authority¹.

Commune is the basic unit of local government² and the self-governed community being the basic unit of territorial dividing of the state³. Satisfying of collective community's requirements belongs to its own tasks. Especially those tasks include cases of spatial order, estate economy, environmental protection as well as nature and water economy. Also belong to them cases from the range of commune roads, provision to water and sewerage, deletion and clean-up of municipal effluents, maintenance of clearness, order and sanitary fix-ups, litters dumping grounds and neutralizing of municipal wastes or cases related with public health. Among commune's own tasks are also matters concerning order public and citizens' safety and supporting and spreading of self-governed ideas as well as cooperation with local, regional and state communities from other states⁴.

Commune management is a continuous process of order creation in unit of territorial dividing at the range of norms, plans, instruction and other documents. From its definition these should be the coordination instruments in reaching and functioning of objective and personal components of commune's activities. It is also possible to treat commune management as the factor stimulating process of economic growth.⁵

2. Sustainable development

Among concepts of development at particular note deserves the sustainable development conception. The main aims and conditions of the sustainable development were considered: rejection of poverty, change of consumption and production

patterns and the protection and management of natural resources in the socioeconomic development processes⁶. Should be pointed that sustainable development is the process having on its aim alleviating of development aspirations of present generation on purpose which could manner realization of the same aspirations to next generations⁷. So understood aim has to be achieved by integration in three main domains:

- economic growth and even distribution of benefits,
- natural goods and environment protection,
- social development.

In literature overview „sustainable development” is understood as a philosophy of socio-economic development harmonized with respecting the nature. It is a philosophy as a common meaning of the word, not as a specific philosophical system⁸. It is also such way of economic activity leading, forming and using of environment potential and such an organization of social life which can provide: dynamic development of qualitatively new productive process, systems of managements, constancy of use of natural goods, powers, values and natural processes as well as correction and, further, behavior of high quality of life of people – persons, families and societies⁹. Sustainable development is a contested concept, with theories shaped by people's and organizations' different worldviews, which in turn influence how issues are formulated and actions proposed. It is usually presented as the intersection between environment, society and economy, which are conceived of as separate although connected entities¹⁰.

Sustainable development defines the process of change of conditions of dynamic balance between regional economic, social and ecologically-spatial development. Final aim of this process is correction - with taking into consideration the respect of natural goods - widely understood quality of life¹¹.

It is possible to notice the correspondence of so defined and understood sustainable development with the purpose of regional policy of European Union which is stimulation and achievement of economic and social cohesion in regions. It is considered that inherent element of accustoming of sustainable development is the ability of evaluating if development at different spatial and decision-making levels is characterized with the feature of constancy or not¹².

Therefore person as a being is based on constancy as a unit: social group, nation and whole mankind. Providing so called continuity requires the evolution of economic and social sphere and maintenance of behavioral bases of human being, possibly most approximated to those which have been formed in process of evolution. Human being is the element of ecosystem so one of the condition of its development is the presence of other parts of nature – animate and inanimate¹³.

Still changing conditions of enterprises' and local self-government units' functioning, particularly communes, causes that more important becomes one of sustainable development's rules – the rule of prevention. In accordance to the rule it belongs

⁶ Johannesburg Declaration of 4 September 2002.

⁷ Raport Światowej Komisji ds. Środowiska i Rozwoju ONZ *Nasza wspólna przyszłość*, PWE, Warszawa 1991.

⁸ A. Papuziński, *Filozoficzne aspekty zrównoważonego rozwoju - wprowadzenie*, „Problemy Ekorozwoju”, 2006, vol. 1 No 2, p. 26.

⁹ B. Poskrobko, T. Poskrobko, *Zarządzanie środowiskiem w Polsce*, PWE, Warszawa 2012, p. 17.

¹⁰ B. Giddings, B. Hopwood, G. O'Brien, *Environment, economy and society: fitting them together into sustainable development*, „Sustainable Development”, 2002, Volume 10, Issue 4, pp. 187-196.

¹¹ K. Malik, *Rozwój zrównoważony i trwały jako koncepcja foresightu regionalnego*, [w:] Województwo opolskie regionem zrównoważonego rozwoju – foresight regionalny do roku 2020. Metody badawcze i najlepsze praktyki, Wydawnictwo Instytut Śląski Sp. z o.o., Opole 2008, p. 49.

¹² C. George, *Testing for sustainable development though environmental assessment*, „Environmental Impact Assessment Review” 1999, No 19, pp. 175-200.

¹³ B. Poskrobko, T. Poskrobko, *op. cit.*, p. 18 and next.

¹ L. Gardjan-Kawa, *Administrowanie zasobami środowiska po reformie ustrojowej*, Wydawnictwa Prawnicze, Warszawa 2000, s. 64.

² Art. 164 ust. 1 Konstytucji Rzeczypospolitej Polskiej, Dz. U. z 1997r., Nr 78, poz. 483.

³ Art. 1 i 2 act from 8th March 1990 y. about commune self-government, Dz. U. z 2001 r., Nr 142, poz. 1591 with later changes.

⁴ Art. 7 pkt 1 act from 8th March 1990 r. . . .

⁵ H. Sasinowski, *Zarządzanie regionalne jako czynnik aktywizacji obszarów*, Zeszyty Naukowe Politechniki Białostockiej, Ekonomia i Zarządzanie – Zeszyt nr 3/1998, s. 53.

to tend to prevent of ecological damage instead of liquidating their results¹⁴.

The act from 1st July 2011 about changing the act about maintenance of clearness and order in commune and changing some other legal acts¹⁵ imposes duties not only at basic unit of regional self-government which is the commune. In accordance to sustainable development conception also real estate owners, so physical persons, being also commune inhabitants and entrepreneurs leading their economic activity the territory of commune are obligated to definite actions and behaviors.

3. Communes tasks at the field of wastes management

In accordance to regulations of analyzed act being the consequence of implementation European Union law into Polish national legal order¹⁶, there were introduced changes in so far obligatory legal act in range of commune tasks and tasks for owners of real estates placed at the commune's territory concerning clearness and order maintenance¹⁷. At this legal base commune self-governments have been obligated for organization of receipt of municipal wastes from owners of estate placed at the commune's territory in which their owners live. Commune's council can also decide about getting back municipal wastes from owners of estate from the commune area in which their owners do not live but in which municipal wastes emerge¹⁸ – estate assigned to leading economic activity.

For particular communes' tasks in range of maintenance of clearness and order at their area belong:

- creation of conditions for practice the works related with maintenance of clearness and order at the commune's area or providing of execution of these works by creation of proper organizational units,
- providing of structure, maintenance and exploitation of own or common with other communes:
 - regional installation for processing of municipal wastes,
 - drainage area stations, in case when connection of all estate to sewerage network is impossible or it causes excessive costs,
 - installation and fix-ups for collection, transport and neutralizing of animal bodies or their parts,
 - public toilets,
- accession of all owners of estate in the commune's area to system of municipal wastes farming,
- - leading oversight of farming municipal wastes, including realization of tasks entrusted to subjects collecting wastes from estate owners,
- accustoming of selective collection of municipal wastes including minimum following fractions of wastes: paper, metal, artificial materials, glass and multimaterial wraps and municipal wastes undergoing biodegradation - including packages wastes (especially packages wastes undergoing biodegradation),
- creation of points of selective collection of municipal wastes in a way assuring easy access to these points to all commune's inhabitants, especially by pointing places in which wasted electric and electronic equipment from households can be collected,

- providing achievement of proper levels of recycling, preparation for underutilizing and recycling with using other methods and limitations of masses of municipal wastes undergoing biodegradation which are transferred to storage,
- prevention of pollution of roads, squares and opened areas, particularly by collection and disposing slush, snow, ice and other wastes from footpaths by owners of estate as well as wastes stored in assigned to this containers placed at the pavements,
- maintenance of clearness and order on communication stays being the commune estate of being under commune's management placed at the commune area at public roads without meaning of these roads category¹⁹.

Tasks entrusted to commune can be also made by intercommunal associations, for example in the case of voting local legal acts proper will be organs of this association. Control at observance and using in practise the act regulating commune's own tasks is exercised by commune administrator, mayor or president of city by using proper detailed regulations²⁰.

Mentioned control body is also obligated for composing an annual report from realization of the tasks from range of municipal wastes management.

In case of regulations apply regarding procedure with municipal wastes in unsettled range in discussed act could be taken into consideration regulations concerning wastes²¹.

By the reason of tasks put before commune self-government this self-government has been obligated to preparing annual analysis of the condition of municipal wastes economy for verification of technical and organizational capabilities of commune in range of municipal wastes management.

Particularly the subject of analysis should be:

- capabilities of processing of assorted municipal wastes, green wastes and residues from classification of municipal wastes assigned for storage,
- investment requirements related with municipal wastes management,
- costs incurred by reason of getting back, recycling and neutralizing of municipal wastes,
- number of commune's inhabitants,
- number of estate owners, who did not assigned the agreement at getting back their wastes and commune should come into effect who names to get back their wastes,
- amounts of municipal wastes made at the commune area,
- amounts of assorted municipal wastes, green wastes and residues from classification of municipal wastes intended for storage gotten back from commune's area²².

For control of discharging of owners of estate and entrepreneurs' their legally binding duties commune self-governments are obligated to monitoring and keeping records of outflow-less containers²³, home sewage treatment plants²⁴ and of agreements entered into for getting back the municipal wastes from estate owners.

Along with the amendment of the discussed act commune self-governments were also obligated for conducting information and educational actions in the correct management of municipal wastes, in particular in selective collecting the municipal wastes as well as opening the commune office on the website to

¹⁴ R. Miłaszewski (red.), *Nowoczesne metody i techniki zarządzania trwałym i zrównoważonym rozwojem gminy*, Wydawnictwo Politechniki Białostockiej, Białystok 2001, s. 8.

¹⁵ Dz. U. z dnia 25 lipca 2011 r., Nr 152, poz. 897.

¹⁶ Dyrektywy 91/271/EWG z dnia 21 maja 1991 r. dotyczącej oczyszczania ścieków komunalnych, Dz. Urz. WE L 135 z 30.05.1991, str. 40, z późn. zm., Dz. Urz. UE Polskie wydanie specjalne, rozdz. 15, t. 2, str. 26; Dyrektywy Rady 1999/31/WE z dnia 26 kwietnia 1999 r. w sprawie składowania odpadów, Dz. Urz. WE L 182 z 16.07.1999, str. 1, z późn. zm., Dz. Urz. UE Polskie wydanie specjalne, rozdz. 15, t. 4, str. 228; Dyrektywy 2008/98/WE z dnia 19 listopada 2008 r. w sprawie odpadów oraz uchylająca niektóre dyrektywy, Dz. Urz. L 312 z 22.11.2008, str. 3–30.

¹⁷ Ustawa z dnia 13 września 1996 r. o utrzymaniu czystości i porządku w gminach, Dz. U. z 2005 r. Nr 236, poz. 2008, z późn. zm.

¹⁸ Art. 6c ust 2. ustawy z dnia 1 lipca 2011 r. o zmianie...

¹⁹ Art. 3 ust 2 ustawy z dnia 1 lipca 2011 r. o zmianie...

²⁰ art. 379 i art. 380 ustawy z dnia 27 kwietnia 2001 r. - *Prawo ochrony środowiska*, Dz. U. z 2008 r. Nr 25, poz. 150, z późn. zm.

²¹ Ustawa z dnia 27 kwietnia 2001 r. o odpadach, Dz. U. z 2010 r. Nr 185, poz. 1243 z późn. zm.

²² Art. 3 ust. 2, pkt 10 act from 1th July 2011 y. about the change...

²³ in the audit purpose of the frequency of emptying and in order to update the development plan of a sewer system.

²⁴ in the audit purpose of the frequency and the way of getting rid of municipal sewage deposits and in order to update the development plan of a sewer system.

information - especially the commune has a duty of passing to public information concerning:

- data of entities getting back the municipal wastes from estate owners at the area of commune containing the name, marking the registered office and the address or name, surname and address of the entity getting the municipal wastes back from estate owners,
- places of developing by entities getting the municipal wastes back from estate owners from the commune area, the mixt municipal wastes, green wastes and remains from the sorting of the municipal wastes intended to store,
- required levels reached by the commune and entities getting the municipal wastes back from estate owners in the given calendar year of the recycling, the preparation for the reuse and the recycling with other methods and of limiting mass of the biodegradable municipal wastes sent to the storage,
- points of selective collecting the municipal waste,
- entities collecting the consumed brown goods (electric and electronic equipment) coming from households^{25,26}.

Apart from tasks and the manner of their realization and the manner of their monitoring the legislator also put on communes levels of the recycling²⁷ which their are obligated to reach till 31st December 2020 year:

- level of the recycling and preparing for the reuse the following factions of the municipal waste: paper, metals, plastics and glass in the height at least 50% in terms of weight,
- level of the recycling, the preparation for the reuse and the recycling with other methods other than dangerous of building and demolition wastes in the height at least 70% in terms of weight.
- Moreover the act is imposing an obligation to limit the biodegradable municipal wastes intended to the storage on communes²⁸:
- to 16th July 2013 - up to no more than a 50% in terms of weight of total mass of the biodegradable municipal waste intended to the storage,
- to 16th July 2020 - up to no more than a 35% in terms of weight of total mass of the biodegradable municipal waste intended to the storage,
- towards mass of this wastes produced in year 1995.

4. Duties of property owners in assuring of the cleanness and order

The act is imposing an obligation to ensure the cleanness and order on estate owners through:

- equipping the real estate with containers being used to collect the municipal wastes and holding these devices in the right sanitary, ordinal and technical state,
- connecting the real estate to existing sewer network or, in the event that the structure of a sewer system is technically or economically unjustified, equipping the real estate into outflow-less container of liquid impurities or into the home sewage treatment plant welfare, fulfilling requirements determined in distinct regulations²⁹,
- collecting incurred on the area of the real estate municipal wastes in accordance with the requirements determined in regulations,
- accumulation of liquid impurities in outflow-less containers,

- getting rid of collected on the area of estate municipal wastes and liquid impurities into the way in accordance with provisions of the act and distinct regulations,
- removing mud, snow, ice and other pollutants from pavements laid along the estates³⁰,
- completion of other duties determined in regulations of the maintenance of the order and the cleanness in the commune.

Property owners are obligated to incur for the commune, on the area which their estates are located, for payment for the management of the municipal wastes. The commune council determines minimum rates of the payment³¹ for the management of the municipal wastes if the municipal wastes are collected and picked up in the selective way.

In case that the commune isn't fulfilling the legal binding duty of getting back the municipal wastes from property owners, the property owner is obliged for handing the municipal wastes, at the commune's expense, to the entity getting waste back form estates owners which is registered in the register of governed activity.

Not-complementing by the property owner the duty in selective collecting the municipal wastes the entity getting the municipal wastes back is accepting them as the mixt municipal wastes and is notifying the commune of it.

For estate owners not-ensuing from their duties in the maintenance of the order and the cleanness or fulfilling this obligations in the wrong way, criminal sanctions are determined by the act.

5. Summary

Implementing the new system will allow for making accurate measurements of quantities of wastes made by property owners - talk through residential, of multi-occupied buildings or objects belonging to entrepreneurs and the cost control of their transport, recycling or storage.

The commune as the owner of wastes will be indicating places of neutralizing and storage the wastes what should influence for ceasing applying practices of taking wastes away into places different from municipal stockpiles.

However it shold be noticed that the way of implementation of the municipal waste management will be a new system undertaking for many Polish communes - to a considerable degree unknown and unpredictable. Amongst unquestionable benefits of implementing the new system can also appear threats to his practical realization. There are necessary economic and organizational and, perhaps, social decisions associated with not-fulfilling duties imposed by the act on them by the part of property owners - whether these are through not entering into agreements or through the non-payment payments arising from acts of the local law. Danger of giving a lift to wastes to the area of other, neighbouring communes by residents of adjacent communes should be taken into consideration too. A risk appears from making a note of the increased quantity of wastes in the first year of functioning of the system - the part of residents of communes can get rid in frames of the new system and limits it being entitled in of wastes collected for many years in basements, cells or garages.

For the part of Polish communes a lack is a problem own, apart from the stockpile, of installation for rendering waste harmless. Such a state causes, that these communes have a limited impact at present for the forming of costs of the wastes treatment.

Choice of transit companies through the commune by tender can also raise doubts of property owners – they can sense that they

²⁵ At the base of the Act from 29th July 2005 y. about used electric and electronic equipment, Dz. U. Nr 180, poz. 1495, z późn. zm.

²⁶ Art. 3 ust. 2 pkt 8 i 9 act from 1th July 2011 y. about the change...

²⁷ Regulation of the Environment Minister from 29th May 2012 on levels of the recycling, the preparation for the reuse and the recycling with other methods of some factions of the municipal wastes, Dz. U. z 2012r., poz. 645.

²⁸ Regulation of the Environment Minister from 25th May 2012 on biodegradable levels of limiting mass of the municipal waste handed over to the storage and the way of calculating the level of limiting mass of this wastes, Dz. U. z 2012r., poz. 676.

²⁹ Connecting the real estate to a sewer system isn't compulsory if the real estate is equipped with the home sewage treatment plant meeting requirements determined in separate regulations.

³⁰ an allocation of the public road serving for the pedestrian traffic is being regarded as the pavement put directly close to the border real estates; the property owner isn't obliged for tidying up the pavement, on which he is passed the paid stop or parking motor vehicles.

³¹ Detailed aspects of setting payments are being regulated in art. 6 act from 1th July 2011y. about the change ...

were deprived of the right for independent, competitive appointing companies serving them.

Undoubtedly leading and supporting the system requires the entitlement based on the change and will require information and educational action as well as financial under the angle of both the functionality and constant improving the system.

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