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Legal and Financial Aspects of Housing Resources Management by Local Governments

Samorządowe aspekty prawno-finansowe gospodarki zasobami mieszkaniowymi

ABSTRACT

The article attempts to indicate the operational principles of local government units in connection with a public task related to housing resources. The assumption of the analysis was to narrow down the issues to only two aspects: legal and financial. First, issues related to the legal grounds of the so-called housing management at the local government level were discussed, and then, the methods of financing tasks in this field by local government units. It should be emphasized that, despite an attempt to refer to local government units operating at various levels, a special place for the discussion was given to the municipality, for which the legislator has reserved the greatest number of housing management tasks. In connection with the functioning of this local government level, the principles of financing the housing management were discussed, taking into account organizational and legal forms and their relationship with municipal budget funds as well as the possibilities of obtaining extra-budgetary funds.

Keywords: housing resources management; municipality; public tasks; budgetary resolution

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INTRODUCTION

One of the most important aspects of the state functioning is carrying out activities in the field of housing resources management (hereinafter referred to also as the housing development[1]) significant from the viewpoint of the socio-economic development realized by virtue of the binding legal regulations, mainly by local government bodies. *De facto*, the widely conceived management of housing resources means in a narrow sense the necessity to facilitate citizens access to having their own dwelling places, so important from the viewpoint of satisfying human needs in the context of the harmonious development of society.[2]

The essence of this issue requires the discussion of two aspects: legal and financial, with regard to the level of local government in terms of both public tasks related to the management of housing resources implemented by the local government, and of identifying the ways of financing them. It is worth noting that a special place in implementation of tasks related to the management of housing resources has a municipality (Pol. *gmina*), for which the legislator has reserved most of the tasks of housing management. Therefore, in relation to this level of local government, the principles of financing the housing management are discussed, taking into account organizational and legal forms and their relationship with municipal budgetary funds, as well as indicating certain tasks in this area also in terms of other local government units.

THE IMPORTANCE OF THE CONCEPT OF HOUSING RESOURCES MANAGEMENT

The object of housing management is a housing resource.[3] Pursuant to Article 2 (10) of the Act of 21 June 2001 on the protection of tenants' rights, the municipality's housing resource and amending the Civil Code,[4] the term "municipal housing resource" should be understood as places serving to satisfy housing needs, owned by the municipality or single-member municipal companies, to which the municipality has entrusted implementation of the own task in terms of meeting housing

[1] During the Polish People's Republic, the housing development meant the number of flats built in the period of the Communist Poland. For more on this subject, see, i.a., K. Madej, *Spółdzielczość mieszkaniowa. Władze PRL wobec niezależnej inicjatywy społecznej (1961–1965)*, Warszawa 2003, p. 13 ff.

[2] For more on this topic, see E. Bończak-Kucharska, *Zarządzanie nieruchomościami mieszkalnymi. Aspekty prawne i organizacyjne*, Warszawa 2014, p. 17.

[3] Pursuant to the judgement of the Voivodeship Administrative Court in Poznań of 23 September 2015, I SA/Po 791/11, LEX no. 1948247.

[4] Consolidated text, Journal of Laws 2020, item 611, as amended.

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needs of the local government community, with the exception of social housing associations and dwelling places owned by these entities independently.

Local government units, and in particular the municipality, implementing the basic tasks for the benefit of the local community should collect their own housing resources, which they will manage, satisfying the local needs of their residents. On the other hand, the municipal authorities are obliged to establish criteria for selecting tenants who will be provided with dwelling places. The aim of housing management is current and continued meeting of the housing needs of the local government community through an appropriate housing policy (the policy aimed at meeting the demand for dwelling places).[5]

LEGAL GROUNDS FOR CARRYING OUT ACTIVITIES BY LOCAL GOVERNMENT UNITS IN THE FIELD OF HOUSING RESOURCES MANAGEMENT

The grounds for the indicated obligation should be seen in the regulations of the Constitution of the Republic of Poland,[6] which stipulates in Article 75 (1) the need to pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.

The title activities of local government units are part of the area of constitutionally guaranteed obligations of the state within the framework of the decentralization of public authority denoting the need for their participation in the implementation of a substantial part of public tasks, including those related to the housing resources management. As the development of the referred provisions contained in the Polish Constitution one should consider the regulations resulting from Article 7 (1) (7) of the Act of 8 March 1990 on municipal self-government,[7] providing that satisfying the collective needs of a local government community in the field of municipal housing construction is one of the municipality's own tasks, also implemented, to some extent, by other units of local government[8] in the shape of various organiza-

[5] E. Kosiński, *Gospodarka mieszkaniowa gminy. Formy współdziałania gminy z podmiotami prywatnymi*, "Przegląd Prawa i Administracji" 2014, vol. 98, pp. 159–160.

[6] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended), hereinafter: the Polish Constitution. English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.09.2021].

[7] Consolidated text, Journal of Laws 2021, item 1372, hereinafter: AMSG.

[8] The reference is made to Act of 5 June 1998 on district self-government (consolidated text, Journal of Laws 2020, item 920, as amended), and to the Act of 5 June 1998 on voivodeship self-government (consolidated text, Journal of Laws 2020, item 1668), hereinafter respectively: ADSG and AVSG.

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tional and legal forms implemented by them within the service-providing activities of administration.[9]

On the other hand, when considering the right of citizens to have their own home, which is to be provided by a local government unit, one should also refer to the provisions of Article 25 of the Universal Declaration of Human Rights, which indicates that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security[10] in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.[11]

DEFINING THE IMPORTANCE AND STATUS OF INDIVIDUAL LOCAL GOVERNMENT UNITS IN THE SCOPE OF THE IMPLEMENTATION OF OWN AND COMMISSIONED TASKS, WITH A PARTICULAR EMPHASIS ON HOUSING MANAGEMENT

As mentioned above, the municipality has become the local government unit which should ensure the implementation of all local government tasks,[12] including those related to housing management. Pursuant to the wording of Article 7 AMSG, "Satisfying the collective needs of the community belongs to the municipality's own tasks". In particular, these tasks include the matters concerning, i.a., spatial order (e.g., in the field of spatial planning), real estate management (e.g., in the field of merging and dividing real estate), social assistance (e.g., in the field of providing social assistance), local collective transport (e.g., in the field of organizing public collective transport), culture (e.g., in the field of organizing cultural activities), and municipal housing construction, which is so important from the viewpoint of the discussed issues.

Considering the individual levels of local government, one should point out that, in turn, the District Self-Government Act specifying the scope of activities and tasks of the district (Pol. *powiat*), following consistently the Polish Constitution, assumes in Article 4 (1) that the district performs public tasks, but of a supra-mu-

[9] E. Knosala, *Zadania współczesnej administracji publicznej*, [in:] *Ustrojowo-prawne instrumenty polityki społecznej*, ed. M. Baron-Wiaterek, Gliwice 2005, pp. 31–52.

[10] More broadly, see E. Feret, *Legal Security and Financial Security of Local Communities. Selected Issues*, "Studia Iuridica Lublinensia" 2020, vol. 29(1), p. 86.

[11] General Assembly Resolution 217 D (III), adopted and proclaimed 10 December 1948.

[12] The reference literature treats this competence of a municipality as an extension of the principle of the presumed public tasks in favour of local government and the principle of subsidiarity. See P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 328.

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nicipal nature. A district, being a regional unit of local government, intermediate between a municipality and a self-governing voivodeship (Pol. *województwo*), is a unit of the basic territorial division of the state and a unit of the local government territorial division.[13] Together with the municipality, it ensures implementation of all public tasks of a local nature in the local government structures, including those related to housing management, and more public tasks.[14]

This unit acts as a supplementary and equalizing one in relation to the municipality in real estate management.[15] With this type of tasks, set out in a very general way, one should link issues related to housing management. Such a conclusion results from the fact that the object of the regulations of the District Self-Government Act are, i.a., issues related to: management of real estate owned by the State Treasury and owned by local government units; division of real estate; real estate consolidation and division; real estate pre-emption; expropriation. These regulations also apply in connection with the activities of housing cooperatives, which is discussed further below.

In order to define fully the concept of public tasks conducted by local government units related to housing management, one should refer to the provisions defining the types of own tasks reserved for the voivodeship. At this point, it is worth emphasizing that the structure of local government at the voivodeship level is different from the structure at the municipal and district levels in that there is a second division of local administration in the voivodeship – government administration. There is no such dualism at the municipal and district levels, and the functions of government administration are performed by executive organs of government administration.

Unlike in the case of the district, the operation of the voivodeship should also be associated with a regional, not local extent. Its regional location means that the tasks assigned to it, also in the field of housing management, are focused on functions of regional importance.[16] Constructing the voivodeship development strategy,[17] and pursuing the development policy, the voivodeships have been obliged to shape and maintain the spatial order.[18] In this definition, one should see a possibility of

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[13] Z. Leoński, *Samorząd terytorialny w RP*, Warszawa 1999, p. 123.

[14] More broadly, see T. Brzezicki, P. Rączka, J. Wantoch-Rekowski, *Legal Aspects of the Imposition and Enforcement of an Administrative Penalty for Failure to Register a Vehicle Imported from the Territory of a European Union Member State*, "Studia Iuridica Lublinensia" 2021, vol. 30(2), p. 33.

[15] For more, see the regulations resulting from the provisions of the Act of 21 August 1997 on real estate management (consolidated text, Journal of Laws 2020, item 1990, as amended). Cf. J. Czerw, P. Świerczyński, *Change of Composition of Voivodeship Board as a Result of Changing Its Statute in the Context of Keeping Principles of Polish Structural Administrative Law*, "Studia Iuridica Lublinensia" 2020, vol. 29(5), pp. 41–43.

[16] E. Ura, E. Ura, *Prawo finansowe*, Warszawa 1999, p. 162.

[17] Pursuant to Article 11 (2) (5) AVSG.

[18] For more, see Article 11 (2) AVSG.

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acting also in terms of the subject-matter housing management. Acting in this area should be associated with the possibility of influencing the development of the entire voivodeship also by creating construction infrastructure, including that related to the narrowly understood housing management.

As an example of commissioned tasks carried out by municipalities in the field of housing management, we can mention, i.a, implementation of projects in the area of: social rental housing and cooperative tenant housing by granting preferential loans for social housing associations and housing cooperatives; creating technical infrastructure by municipalities accompanying housing construction with the use of preferential loans for this purpose; satisfying housing needs of families by purchasing an apartment or building a single-family house with the use of preferential housing loans – assistance in the form of subsidies to the interest on a housing loan, or creation of social housing, sheltered housing, night shelters and houses for the homeless by municipalities.

On the other hand, the tasks entrusted to districts and voivodeship local governments are related, in particular, to geodesy and cartography, where the Surveying and Cartographic Service has been established under the applicable regulations.[19] It consists of: 1) surveying and cartographic supervision authorities: a) the Chief National Surveyor, b) the voivodeship governor (Pol. *wojewoda*) performing the tasks with the help of the voivodeship surveying and cartographic supervision inspector as the head of the surveying and cartographic inspection, which is part of the combined government administration in the voivodeship, and 2) bodies of surveying and cartographic administration: a) the voivodeship marshal performing tasks with the help of the voivodeship surveyor who is part of the voivodeship marshal's office, b) the district head (Pol. *starosta*) performing the tasks with the help of the district surveyor included in the district office. As it is clear from the content of Article 6a (3) of the Surveying and Cartographic Law,[20] the tasks performed by the marshal and the district head are government administration tasks.

In addition to this type of assigned tasks, it is worth, in connection with the discussed housing management, to turn attention also to tasks conducted by means of contracts. A municipality may perform tasks within the district competences and tasks within the voivodeship competences on the basis of contracts with these local government units.[21] Similarly, the district may conclude contracts on entrusting

[19] Pursuant to Article 6a (1) of the Annex to the Announcement of the Marshal of the Sejm of the Republic of Poland of 24 November 2005 on the publication of the consolidated text of the Act – Surveying and Cartographic Law (Journal of Laws 2005, no. 240, item 2027).

[20] See Act of 17 May 1989 – Surveying and Cartographic Law (consolidated text, Journal of Laws 2020, item 2052, as amended).

[21] Pursuant to Article 8 (2a) AMSG. In practice, the basis that is used the most frequently for joint implementation of tasks is a contract concluded between municipalities and districts. See, e.g., resolution no. IX/17/2011 of the Commune Council in B. of 31 March 2011 on the conclusion of

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carrying out public tasks together with regional local government units, as well as with the voivodeship on whose territory the district is located.[22] Such a right has also been provided for the voivodeship, which may conclude contracts with other voivodeships and regional local government units from the area of the voivodeship on entrusting performance of public tasks.[23]

As it results from the above, cooperation of entities (contractors) may take place, as it is written in the reference literature, in various configurations: the basic one resulting from the nature of the assigned tasks, and the additional one. In the basic configuration, in order to conclude a contract, there must be cooperation between a local government entity and a central government entity, and in the additional configuration – between a local government entity and another local government entity. At the same time, it is important that in both configurations the entities are to act equally,[24] and in implementing the contract they may not exceed their powers.[25] Moreover, it is important that the entities participating in the contract are public entities and not private ones, which makes the contract a public-law relationship.

The basis for the conclusion of the contract by its participants is a submission of a declaration of will by each entity wishing to participate in the contract on the intention to perform a public task. Declaring by the participants of the readiness to implement jointly the task is the foundation for the preparation of the content of the contract, on the basis of which the purpose of concluding the contract (the type of the public task) will be precisely defined, as well as, i.a., the entities participating in the contract, the method of achieving the goal, indicating individual activities performed by the participants, the rules of covering the costs of performing the taken-over task, and the rules of terminating the contract.

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a contract and acceptance for the implementation of supra-communal tasks. Similarly resolution no. XXVIII/21/2012 of the Commune Council in B. of 29 February 2012, and resolution no. XXXVII/337/10 of the Commune Council in Ż. of 11 March 2010.

[22] Pursuant to Article 5 (2) ADSG.

[23] Pursuant to Article 8 (2) AVSG.

[24] A contract, under which a government administration body transfers specific tasks to a municipality, has the features of a bilateral act, falling within the scope of public administration activities. The parties to the contract are equal and independent entities, not related by organizational ties; in particular, none of them, especially the government administration body, has a dominant position (judgement of the Supreme Administrative Court of 5 December 1995, SA/Rz 1109/95, "Samorząd Terytorialny" 1995, no. 12, p. 116).

[25] Entrusting municipalities with tasks in the form of a contract with a government administration body includes neither issuing generally applicable regulations in these matters, nor it may extend the legislative powers of municipalities to the fields covered by such contracts. More broadly, see judgement of the Supreme Administrative Court of 13 February 1991, SA/Wr 7/91, ONSA 1991, no. 1; judgement of the Supreme Administrative Court of 14 October 1993, SA/Wr 1197/93, ONSA 1995, no. 1, p. 10; judgement of the Supreme Administrative Court of 27 September 1994, SA/Ł, ONSA 1995, no. 4, p. 162.

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The above-mentioned regulations concerning the latter method of commissioning tasks prove that the contract should be treated as a very important platform for implementation of tasks by a local government unit, as an expression of respecting the autonomy of local government operation. The contract is one of the non-authoritative forms of the administration's operation, which has entered permanently the terminological dictionary of administrative law, and whose basic structural element is the permanent[26] cooperation of entities.

Concluding the above-mentioned contracts is also becoming the domain of proper housing management, considering the so-called green infrastructure. In practice, there are initiatives to conclude such contracts, e.g. between towns and cooperatives. Contracts of this type may include, in particular, construction of playgrounds and outdoor gyms, construction of new pavements, parking lots, inter-residential roads, dumpster boxes, sports fields, or development of green areas in housing estates. Thanks to the concluded contracts, formal and legal issues related to conversion of land may also be regulated. For example, in exchange for handing over plots of land for garages, the town may become the owner of some pavements in housing estates.[27] Another example is a contract stipulating that the cooperative will undertake to repair the bituminous (asphalt) surface, and the municipality will undertake to cover the costs of renovation works on the municipal road.[28]

THE ROLE OF THE MUNICIPALITY AS THE BASIC UNIT OF THE LOCAL GOVERNMENT LEVEL IN TERMS OF IMPLEMENTATION OF OWN TASKS RELATED TO HOUSING MANAGEMENT AND THE MUNICIPAL BUDGET AND THE ADDRESSEES OF THE PROVISIONS OF THE PUBLIC FINANCE ACT

As it has been confirmed in the conducted analysis, the municipality, among other local government units, plays a special role in the implementation of public tasks related to housing management. Its special position in this area results directly from its own tasks assigned to it by law. This is evidenced by the general formulation of the legislator, according to which municipalities have the task of meeting the collective needs of the community, and therefore also or primarily, in terms of housing needs. This type of municipalities' role is confirmed by specific

[26] The permanent feature of the contract was indicated by R. Malinowski (*Węzłowe problemy prawa administracyjnego w zarządzaniu gospodarką państwową*, Warszawa 1975, p. 221).

[27] On this subject, see, i.a., I. Połucha, *Projektowanie terenów szkolnych i placów zabaw jako zielonej infrastruktury*, "Problemy Ekologii Krajobrazu" 2013, vol. 36, pp. 61–71.

[28] *Kolejna wspólna inwestycja Gminy Nowogard i Spółdzielni „Gardno"*, 20.09.2015, www.nowogard.pl/18-aktualnosci/2630-kolejna-wspolna-inwestycja-gminy-nowogard-i-spoldzielni-gardno [access: 21.08.2021].

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tasks, which include: spatial order, real estate management, environmental and natural protection and water management; municipal roads, streets, bridges, squares and road traffic organization; waterworks and water supply, sewage, municipal wastewater disposal and treatment, maintenance of cleanliness and order and of sanitation, landfills and disposal of municipal waste, electricity, heat and gas supply and, above all, municipal housing construction.

To meet implementation of so many tasks pertaining to housing management it is necessary to support its activities with funding included in the budget of the municipality passed annually.[29] The budget resolution adopted by the municipal council constitutes the basis for the annual financial management, also in terms of the municipality's activity in relation to the implementation of tasks related to housing management.

In the case of a budget resolution, the legislator provides the *de facto* and *de iure* need to adopt the budget of a local government unit and some attachments to detail the individual amounts of financial resources generally expressed in the budget.

The need to use the above-mentioned provisions results from the principle that own tasks, including those related to housing management, are to be financed from public funds included in the local government budget. Such necessity is evidenced by the catalogue of addressees of the Public Finance Act provisions, indicating that they are (pursuant to Article 9 of this Act): 1) public authorities, including central government administration bodies, state control and law enforcement bodies as well as courts and tribunals; 2) local government units and their associations; 2a) metropolitan associations; 3) budgetary units; 4) local government budgetary establishments; 5) executive agencies; 6) budgetary economy institutions; 7) state special purpose funds; 8) the Social Insurance Institution and funds managed by it; 9) the National Fund; 10) independent public health care institutions; 11) public universities; 12) the Polish Academy of Sciences and organizational units established by it; 13) state and local government cultural institutions; 14) other state or local government legal entities established on the grounds of separate legal acts to perform public tasks, with the exception of enterprises, research institutes, research institutes operating within the Łukasiewicz Research Network, banks and commercial companies.

Within the catalogue defined in this way, it is possible to indicate those that are related to the local government level implementing the above-mentioned tasks in the field of housing management, i.e.: local government units and their associations, metropolitan associations; state and local government budget units; local government budgetary establishments and other local government legal entities.

[29] Pursuant to the regulations of Title V of the Act of 27 August 2009 on public finances (consolidated text, Journal of Laws 2021, item 305, as amended), and Chapter 6 AMSG.

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All of them, being units of the public finance sector, operate on the basis of public funds included in the above-mentioned budget.

A municipality, as the basic unit of local government, is to implement the described own tasks. As a rule, these tasks are performed in the form of budgetary units. Operating in the form of a budgetary unit means that an organizational unit of the public finance sector does not have a legal personality, and covers its expenses directly from the budget of the local government unit, and transfers the collected income to the budget account of the local government unit.[30] Therefore, it acts on behalf of and for the benefit of, respectively, a local government unit which is responsible for the implementation of local government public tasks.[31]

Local government budgetary units covering their expenses directly from the budget and paying the received income to the budget, do not determine profit or loss. They do not act for remunerative purposes nor for their own account. This activity is carried out on behalf of the local government units, which take over their revenues and cover their expenses.[32]

Municipalities (districts, voivodeship local governments), performing tasks also in the field of housing management, create organizational units that should be treated as budgetary units. They act within the income and expenditures fixed in the budget resolution, and the basis of financial management conducted by them is the plan of income and expenditures or the financial plan of the budgetary unit. This plan is to guarantee disbursement of the funds for the implementation of local government public tasks. It also ensures detailed recording and control of the public funds' management.[33] These organizational units may take various names, in the case of the City of Rzeszów it is the Department of Municipal Economy,[34] operating as a budgetary unit in Rzeszów. Financial resources, both on the side of income and expenses for its functioning, were indicated in the budget resolution – Section 700 Housing Management.

An alternative organizational and legal form under which local government entities of the public finance sector may perform public tasks are, pursuant to Articles 14 to 17 of the Public Finance Act, local government budgetary establishments.

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[30] This means that the income and expenses of this unit fit entirely in the budget. Cf. judgement of the Voivodeship Administrative Court of 13 November 1997, I SA/Po 889/97, "Wspólnota" 1998, no. 23, p. 26.

[31] E. Chojna-Duch, *Polskie prawo finansowe. Finanse publiczne*, Warszawa 2004, p. 109; Z. Ofiarski, *Prawo finansowe*, Warszawa 2007, pp. 44–45.

[32] Judgement of the Supreme Administrative Court of 21 September 1995, SA/Kr 2741/94, "Rzeczpospolita" 1999, no. 18, p. 19.

[33] A. Mikos-Sitek, *Budżet państwa i budżet jednostek samorządu terytorialnego*, [in:] *Finanse publiczne i prawo finansowe*, ed. A. Nowak-Far, Warszawa 2011, p. 255.

[34] Informacje Wydziału Gospodarki Komunalnej, https://bip.erzeszow.pl/279-wydzial-gospodarki-komunalnej/2118-informacje-wydzialu-gospodarki-komunalnej.html#tresc [access: 23.08.2021].

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They belong to those organizational and legal forms of the public finance sector whose financial relationship with the budget is different[35] in comparison to local government budget units. In place of a direct link of budgetary expenditure with implementation of specific public tasks, there is a shift of tasks and resources to local government budgetary establishments, which the reference literature describes as debudgetisation.[36]

The form of a local government budgetary establishment, although functioning on the basis of the political and organizational foundations introduced by the previous budget regulations, has been operating in a new form since 1 January 2011, pursuant to Article 97a of the Act of 27 August 2009 – Provisions introducing the Public Finance Act.[37] The new regulations provide for two key changes in relation to the previous functioning rules of these organizational and legal forms. The first one should be associated with the possibility of using it for the implementation of public tasks only by local government units,[38] and the second one – with a limited material scope of using this form.

According to Article 16 (1) of the Public Finance Act, the decision-making body of a local government unit has the right to decide on the formation of a local government budgetary establishment only when it comes to implementation of one of ten statutory tasks related to, in particular, housing management, water supply, maintenance of cleanliness, electricity supply, local transport (the full catalogue of tasks is included in Article 14 of the Public Finance Act). According to the literature, these tasks should be treated as strictly defined own tasks of local government units.[39]

A local government budgetary establishment having no legal personality but operating as a separate bank account,[40] performs its own statutory tasks against payment, covering the costs of its activity from its own revenues.[41] Such an activity is conducive to making decisions by local government units on the implementation of tasks in the form of local government budgetary establishments, especially in those areas where revenues from conducted activities cover to a large extent the costs of this activity. At the same time, they cannot be maximized, but supplemented

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[35] The reference is made to extra-budgetary (para-budgetary) management. As in P. Panfil, *Prawo budżetowe*, [in:] *Podstawy finansów i prawa finansowego*, ed. A. Drwiłło, Warszawa 2011, p. 337.

[36] J. Stankiewicz, *Debudżetyzacja finansów publicznych*, Białystok 2007, p. 26.

[37] Journal of Laws 2009, no. 157, item 1241.

[38] R. Drozdowski, M. Joźwiak, U. Wiktorowska, P. Walczak, *Nowa ustawa o finansach publicznych. Poradnik dla samorządowców*, Warszawa 2009, p. 46.

[39] P. Panfil, *op. cit.*, p. 338.

[40] As indicated by § 35 (1) of the Regulation of the Minister of Finance of 7 December 2010 on the manner of financial management of budgetary units and local government budgetary institutions (consolidated text, Journal of Laws 2019, item 1718) and Chapter 6 AMSG.

[41] C. Grzybowski, *Jednostki sektora finansów publicznych*, "Rzeczpospolita" 1999, no. 18, p. 19.

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with subsidies from the local government budget, for reasons of social usefulness, as it takes place, e.g., in the case of local public transport.[42]

In the context of the tasks carried out by the local government budgetary establishment, it is worth noting that a municipal budgetary establishment in legal transactions has the status of the so-called *statio municipii*, i.e. a municipal (district, voivodeship) organizational unit without legal personality, the head of which usually acts individually – on the basis of a power of attorney granted to him by the head of the municipality (mayor, city president, district head, marshal) – replacing the municipality, district, voivodeship within the powers of this unit. *Stationes municipii* operate in the civil law turnover and in legal proceedings as if "a substitute for a local government unit",[43] also in tax matters, e.g. concerning tax on goods and services.[44] In connection with the above, it is reasonable to say that although a local government budgetary establishment carries out economic performance as a separate organizational unit, in terms of legal personality and capacity, it is not characterized by autonomy, but it derives from the subjectivity of the parent legal entity, such as a municipality, district or voivodeship being at the same time its partial emanation. In other words, this unit (establishment), while representing itself (in a colloquial sense), at the same time represents a part of a local government unit as the parent legal person, within which the structure of a given establishment has been established. The activity of this unit in legal transactions is an expression of partial realization by it of the subjectivity of a local government unit. In this context, the statement that a budgetary establishment conducts economic performance on its own behalf is unfounded,[45] since the establishment, from the viewpoint of legal subjectivity, does not constitute a legal entity (person) separate from a local government unit, but it is contained within its structure.

According to Article 15 (2) of the Public Finance Act, the basis for the financial management of a local government budgetary establishment is the annual financial plan covering revenues, including subsidies from the budget of a local government unit, costs and other charges, the status of current assets, receivables and liabilities at the beginning and end of the period and settlements with the budget of the local

[42] Judgement of the Supreme Administrative Court of 22 December 2010, II GSK 1091/09, CBOSA; P. Zaborniak, *Glosa do wyroku NSA z dnia 22 grudnia 2010 r., II GSK 1091/09*, "Samorząd Terytorialny" 2012, no. 4, pp. 83–87.

[43] G. Bieniek, H. Pietrzkowski, *Reprezentacja Skarbu Państwa i jednostek samorządu terytorialnego*, Warszawa 2010, p. 186.

[44] E. Feret, *Zasady opodatkowania działalności prowadzonej przez samorządowe jednostki i zakłady budżetowe*, [in:] *Bariery, wyzwania i perspektywy przekształceń samorządu*, eds. S. Sagan, M. Sitek, Józefów 2016, pp. 181–198.

[45] Judgement of the Voivodeship Administrative Court in Poznań of 12 May 2011, IV SA/Po 246/11.

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government unit.[46] Subsidies obtained from the local government budget can be divided into: object subsidies; earmarked subsidies for financing or co-financing the costs of investment implementation; subject subsidies; for the first financing with current assets,[47] and at the same time, the sum of object and subject subsidies may not exceed 50% of operating costs, therefore, if a local government budgetary establishment loses a specified capacity for self-financing, it should be transformed into a local government budgetary unit after the prior liquidation.

From the viewpoint of the local government budget, implementation of local government public tasks in the form of a local government budget establishment should be assessed positively,[48] if only because of the necessity to make payments to the budget by them. When settling the result of their activity, unless the decision-making body decides otherwise, they pay the surplus of current assets to the budget of the local government unit, determined at the end of the reporting period,[49] which is one source of untaxed own income of a local government unit.

In addition to the above-mentioned organizational and legal forms of the public finance sector, it is also necessary to mention those with legal personality, which, as in the case of local government budgetary establishments, perform tasks against payment and cover the costs of their operations with obtained revenues with the possibility of getting funds from the state budget as part of co-financing and the need to pay to it, possibly, a "generated surplus".

In the case of the analysed housing management, an example may be the activity of the Housing Management Establishment (Pol. *Zakład Gospodarki Mieszkaniowej*) in Rabka-Zdrój,[50] the activity object of which is management and administration of buildings and areas adjacent to housing estates and houses, owned or jointly owned by the municipality, in accordance with the principles of proper management. The tasks of the Establishment also include accepting and transferring buildings to administration or management, accepting and transferring dwellings and premises to tenants, concluding and terminating tenancy contracts for dwellings and premises, etc.[51]

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[46] Judgement of the Voivodeship Administrative Court in Poznań of 15 February 2012, I SA/Po 791/11, LEX no. 1117977.

[47] E. Ruśkowski, J.M. Salachna, *Finanse publiczne. Komentarz praktyczny*, Gdańsk 2007, p. 141 ff.

[48] Although the reference literature also points to a negative functioning aspect of local government budgetary establishments, linking it with the difficult control of public funds administration. As in K. Sawicka, [in:] *Prawo finansowe sektora finansów publicznych*, ed. E. Ruśkowski, vol. 2, Warszawa 2010, p. 35 ff.; C. Kosikowski, *Formy prawne i zasady dokonywania wydatków publicznych*, [in:] *Finanse publiczne i prawo finansowe*, eds. C. Kosikowski, E. Ruśkowski, Warszawa 2003, p. 256.

[49] R. Trykozka, *Ustawa o finansach publicznych. Komentarz dla jednostek samorządu terytorialnego*, Warszawa 2007, notes 1 and 3 to Article 24 of the Public Finance Act.

[50] Biuletyn Informacji Publicznej, Zakład Gospodarki Mieszkaniowej w Rabce-Zdroju, https://bip.malopolska.pl/zgmwrabcezdroju [access: 10.08.2021].

[51] *Ibidem*.

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For a complete picture of housing management within budgetary establishments, reference should also be made to the possibility of municipalities operating under the Municipal Economy Act,[52] which also allows municipalities to perform their own tasks in the form of budgetary establishments. Moreover, it can function in the form of the so-called municipal companies, as it is in the case with popular Social Housing Associations.[53] In such cases, these are not units operating on the basis of funds from the municipal budget, but acting as capital companies, and they are classified as other local government legal persons (as mentioned above).

At this point, we should also mention the possibility of implementing tasks in the area of housing management by other local government legal entities, i.e., cooperatives. They are established respectively under Article 18 (2) (9) (f) AMSG, Article 12 (8) (f) ADSG, Article 18 (19) (e) AVSG, and Article 1 § 1 of the Cooperative Law.[54] According to the content of the latter, it is possible to establish a cooperative as a voluntary association of an unlimited number of people, including legal entities, also local government units. Upon entry into the National Court Register, it obtains legal personality, which entitles it to be considered a type of local government legal person.[55]

Finally, to complete the issues related to the local government legal and financial aspects of housing co-operatives, it is worth noting that some co-financing (and not financing) of activities in the area of housing resources management may also take place on the grounds of the regulation resulting from Article 221 of the Public Finance Act.[56] As it results from the content of the referred regulation, entities not included in the public finance sector and not operating in order to generate profit may receive special-purpose subsidies from the budget of a local government unit for public purposes related to the implementation of the tasks of this unit, as well as for financing investments related to implementation of these tasks, on the grounds of the regulations under the above-mentioned Public Benefit and Volunteer Work Act. Moreover, in the light of the applicable provisions of the Public Finance Act,[57] from the budget of a local government unit, targeted subsidies may be granted to co-finance investment costs related to the performance of public tasks of the

[52] Act of 20 December 1996 on municipal economy (consolidated text, Journal of Laws 2021, item 679).

[53] See, e.g., TBS Boguchwała, www.tbsboguchwala.pl [access: 10.08.2021]; TBS Mława, www.tbs-mlawa.pl [access: 15.08.2021].

[54] Act of 16 September 1982 – Cooperative Law (consolidated text, Journal of Laws 2021, item 648).

[55] Pursuant to Articles 7 and 11 of the Cooperative Law.

[56] Understood by the Public Finance Act as non-governmental organizations and entities listed in Article 3 (3) of the Act of 24 April 2003 on public benefit and volunteer work (consolidated text, Journal of Laws 2020, item 1057, as amended).

[57] Under the provisions of Article 221a of the Public Finance Act.

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unit under public-private partnership contracts, taking into account the provisions on public-private partnership.[58] To obtain a subsidy, it is necessary to conclude a public-private partnership contract, considering the provisions on proceedings in matters relating to state aid.[59]

CONCLUSIONS

As it results from the considerations, conducted only in a draft form, the applicable legal regulations, both Polish and foreign, create the foundations and outline the framework for two aspects of the so-called housing management. They are visible both on the part of the state and citizens. In the first case, the legal regulations create a guarantee for the accumulation and possession of housing resources under the obligations of the state and local government units. On the other hand, they provide citizens with the right to acquire and own homes, which seems that the legislator has satisfied fully the expectations of individual citizens and the society.

The municipality has been equipped with particularly important powers to secure social expectations. Therefore, the actions it undertakes must correspond strictly to the budget being passed. The annual budget resolution must therefore provide for financial resources, the spending of which is closely related to the municipality's housing resources. What is important, the implementation of tasks in this area may take place using various forms permitted by law. Apart from the most popular budget units, they can also be budgetary establishments or municipal companies.

In this regard, it is impossible to ignore other methods that may be applied to the management of housing resources, which currently used only to a small extent, may in the future ensure more effective operation of municipalities in collecting and managing housing resources. Hence, as *de lege ferenda* postulates, it is worth turning attention to the possibility of using public-private partnership, taking advantage of the Public Benefit and Volunteer Work Act, or the possibility of obtaining subsidies under public aid.

[58] Act of 19 December 2008 on public-private partnership (consolidated text, Journal of Laws 2020, item 711, as amended).

[59] Act of 30 April 2004 on proceedings in matters relating to state aid (consolidated text, Journal of Laws 2021, item 743).

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ABSTRAKT

W artykule podjęto próbę wskazania zasad funkcjonowania jednostek samorządu terytorialnego w powiązaniu z zadaniem publicznym związanym z zasobami mieszkaniowymi. Założeniem analizy było zawężenie problematyki wyłącznie do dwóch aspektów: prawnego i finansowego. W pierwszej kolejności omówiono kwestie związane z podstawami prawnymi tzw. gospodarki mieszkaniowej na szczeblu samorządowym, w drugiej zaś sposoby finansowania zadań z tego zakresu przez jednostki samorządu terytorialnego. Na podkreślenie zasługuje fakt, że mimo podjęcia próby odniesienia się do jednostek samorządowych działających na poszczególnych szczeblach szczególne miejsce na rozważania przypadło gminie, na rzecz której ustawodawca zastrzegł najwięcej zadań z zakresu gospodarki mieszkaniowej. W powiązaniu z funkcjonowaniem tego szczebla samorządowego omówiono zasady dotyczące finansowania gospodarki mieszkaniowej przy uwzględnieniu form organizacyjnoprawnych oraz ich powiązania z gminnymi środkami budżetowymi, a także możliwościami pozyskania środków pozabudżetowych.

Słowa kluczowe: gospodarka zasobami mieszkaniowymi; gmina; zadania publiczne; uchwała budżetowa