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Management of Municipal Waste during the Geopolitical Crisis from the Point of View of the Commune Budget in Poland

Gospodarowanie odpadami komunalnymi w czasie kryzysu geopolitycznego z punktu widzenia budżetu gminy

ABSTRACT

The article aims to present the problem of paying for municipal waste management in the face of the influx of refugees caused by the war in Ukraine. The number of people residing in Poland has significantly increased, and as a result more waste is generated. The authors analyse current legal regulations and judgments of administrative courts and the Constitutional Tribunal to determine who is obliged to pay the municipal waste management fee and what proper steps this entity should take. Due to the nature of the problem, the dogmatic-legal method was used to analyse the texts of legal acts, court decisions and available literature. The solution proposed by the authors can be used in practice by the bodies of local government units adjudicating the determination of the municipal waste management fee amount.

Keywords: municipal waste management; war in Ukraine; commune budget; legal regulations

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INTRODUCTION

The armed conflict caused by Russia's aggression against Ukraine resulted in the influx of millions of refugees to neighbouring countries, including Poland. Providing them with a dignified stay became a logistical challenge and involved high costs, including the budgets of local government units. One of the fundamental problems was to provide a place to live – and in this respect, apart from the support of Poles who provided rooms in their apartments, facilities that are classified as non-residential buildings were also used, such as common rooms, parish halls or rooms in service premises, adapted for temporary residence.

The municipal waste management system was affected by the aggression of the Russian Federation against Ukraine. The resulting influx of refugees caused a significant burden on the waste collection system due to the rapid increase in the number of people staying in Poland. According to the data of the Border Guard, from the beginning of the armed conflict until 23 June 2023, over 12.933 million people were cleared at the border crossings from Ukraine to Poland, and 11.076 million people in the opposite direction.[1] It is difficult to determine the number of people who stayed intending to stay longer – i.e. those for whom Poland was not only a transit country – but it is estimated that it is about three million people, including half who came to Poland during the armed conflict.[2]

Such a large influx of refugees challenged the education system, health care, social security and municipal waste management. Regardless of whether the citizens of Ukraine found shelter in public institutions, hotel facilities or private housing, they generated municipal waste during their stay. Bearing in mind the legal status presented above, the question should be asked whether the list of entities obliged to pay the fee for municipal waste management can be supplemented by a foreigner who owns the property based on an agreement concluded with its owner or who has it without a contract. Should the foreigner submit a declaration? Who can correct the declaration submitted by the foreigner when he/she does not do so, mainly when he/she leaves the property, as well as Poland? There also needed to be a solution regarding who and how to pay these fees if non-residential real estate was made available to foreigners for temporary residence. The answer to these questions will allow for an unambiguous decision on how the payment for municipal waste management should look during the current migration crisis.

[1] See Straż Graniczna, *W dn. 23.06 #funkcjonariuszeSG odprawili w przejściach granicznych…*, 24.6.2023, https://twitter.com/Straz_Graniczna/status/1672483927133499392 (access: 26.6.2023).

[2] See I. Kacprzak, *Rekordowa liczba cudzoziemców z polskim obywatelstwem. Najwięcej Ukraińców*, 25.4.2023, https://www.rp.pl/spoleczenstwo/art38386201-rekordowa-liczba-cudzoziemcow-z-polskim-obywatelstwem-najwiecej-ukraincow (access: 4.5.2024).

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In legal terms, this gave rise to doubts as to the method of incurring the fee for municipal waste management in the described situations. Interpretation difficulties relate primarily to the possibility of imposing a fee for inhabited real estate, which is formally considered non-residential and only temporarily used for the indicated purpose.

This issue is important from the point of view of municipal budgets because failure to report the number of inhabitants of a given property corresponding to the actual state – which is one of the possible methods of calculating the municipal waste management fee – may result in an increased amount of generated waste, which is not reflected in the number of payments made. This is all the more important in the face of changes in the income structure of local government units, which significantly reduced their income level.

Municipal waste management is an issue that has been discussed many times in Polish scientific journals, commentaries and foreign periodicals. The primary literature on the subject consists of commentaries on the Act of 13 September 1996 on maintaining cleanliness and order in communes[3] by M. Budziarek and A. Szymczak,[4] as well as W. Radecki[5] and collective works edited by M. Górski and K. Nowacki,[6] as well as J. Gliniecka, S. Obuchowski and T. Sowiński.[7] The topic is also explored in articles in local government magazines, such as "Finanse Komunalne" or "Przegląd Podatków Lokalnych i Finansów Samorządowych". The jurisprudence of the Constitutional Tribunal and administrative courts, showing the directions of interpretation and how to apply the law in practice, is also crucial.

The impact of refugees arriving in Poland due to the war in Ukraine on the municipal waste management system has yet to be studied in the literature. Therefore, it is a new issue on which scientific research has yet to be conducted. This confirms the timeliness of the considerations undertaken.

MATERIALS AND METHODS

In the article, the authors consider possible solutions to the described problem, including an analysis of the method of incurring fees for municipal waste management, which constitute municipalities' income. They also refer to the problem

[3] Consolidated text, Journal of Laws 2022, item 2519, as amended.

[4] M. Budziarek, A. Szymczak, *Utrzymanie czystości i porządku w gminach. Komentarz*, LEX/el. 2021.

[5] W. Radecki, *Utrzymanie czystości i porządku w gminach. Komentarz*, LEX/el. 2016.

[6] M. Górski, K. Nowacki (eds.), *Prawne i organizacyjne obowiązki gmin w zakresie postępowania z odpadami komunalnymi*, Wrocław 2012.

[7] J. Gliniecka, S. Obuchowski, T. Sowiński (eds.), *Wyzwania dla jednostek samorządu terytorialnego wynikające z nowelizacji ustaw o finansach publicznych i o utrzymaniu czystości i porządku w gminach*, Warszawa 2021.

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related to the influx of refugees and its consequences in the study area. The main research problems focus on the answers to the questions about who should be considered the property owner in the context of paying the municipal waste management fee and which properties should be classified as inhabited and uninhabited under the Act on maintaining cleanliness and order in communes.

The conducted research is of a legal nature. Therefore, the primary method adopted in this article is dogmatic and legal, consisting of analysing legal provisions and judicial decisions. Researching the article's subject was also accompanied by collecting and studying specialist literature on municipal waste management, reports, analyses and press articles.

A synthesis of the collected sources made it possible to formulate conclusions that could be used to solve the current practical problem related to the method of paying for municipal waste management in the face of the influx of refugees to Poland.

RESEARCH AND RESULTS

Maintaining cleanliness and order in communes is – according to Article 3 (1) of the Act on maintaining cleanliness and order in communes – the own obligatory task of the commune. As part of this task, the commune authorities are obliged to:

- adopt regulations for maintaining cleanliness and order in their area, in which the council defines the method of collecting and collecting waste by residents;
- charge residents a fee for municipal waste management;
- organize the collection of municipal waste from property owners where residents live;
- order – through tenders – entrepreneurs to collect and manage waste;
- organize the construction, maintenance and operation of municipal installations.[8]

The municipal waste management system in force in Poland is aimed at disseminating the principles of selective waste collection, its disposal, as well as the creation of proper installations for its recovery. The very concept of municipal waste is defined in Article 3 (1) (7) of the Act of 14 December 2012 on waste,[9] in which

[8] More broadly, see E. Popiół, *Gospodarowanie odpadami komunalnymi jako zadanie gminy. Wybrane zagadnienia*, "Młody Jurysta" 2022, no. 2, pp. 19–31; M. Kropiewnicka, *Zasady odbioru i gospodarowania odpadami komunalnymi na gruncie znowelizowanej ustawy o utrzymaniu czystości i porządku w gminach*, "Przegląd Prawa Ochrony Środowiska" 2012, no. 4, pp. 505–532.

[9] Consolidated text, Journal of Laws 2022, item 699, as amended.

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the legislator included waste generated in households and waste from other waste producers, which due to its nature and composition, is similar to household waste.[10]

The source of financing the expenses incurred by communes for managing municipal waste is to be, among others, fees, the payment imposed by law on owners of inhabited real estate located on its territory. This fee is a public levy of a local nature but obligatory and payable,[11] and its task is not only to supply the commune budget but also to perform tasks under the Act in order to meet the needs of the local community.[12] Communes to optimize costs may also carry out tasks related to municipal waste management with other communes under agreements concluded in this regard.[13]

For the municipal waste management fee, the term "property owners" has been extended to include co-owners, perpetual usufructuaries, organizational units, persons holding real estate under management or use, and other real estate entities. They may also be owners of premises in a multi-unit building in which separate ownership of premises has been established, persons with a legal title to premises in multi-unit buildings, persons residing or using these premises, or persons residing or using premises belonging to a housing cooperative. Owners of real estate where residents do not live may also be required to pay the fee if the commune council has passed such a resolution. Suppose the property is developed with a multi-unit building in which separate ownership of the premises has been established. In that case, the obligations of the common property and the owner of the premises shall be borne by the housing community or housing cooperative. Due to the nature of this fee, the property owner is not exempt from paying it even if the commune improperly organizes the collection of waste because the regulations do not make the obligation to pay the fee conditional on the performance, partial performance or non-performance of the obligation to collect waste from property owners.[14] Property owners were obliged to submit declarations on the municipal waste management fee amount to the commune head, mayor or city president. The declaration contains the data necessary to determine the amount of the fee for municipal waste management and the amount for municipal waste management.[15] In the case of real estate where

[10] More broadly, see A. Ciechelska, M. Kusterka-Jefmańska, S. Zaremba-Warnke, *Municipal Waste Management as a Polycentric System – the Example of Poland*, "Ekonomia i Środowisko" 2022, vol. 83(4), pp. 82–85.

[11] K. Renke, *Charakter prawny opłaty za gospodarowanie odpadami komunalnymi*, [in:] *Wyzwania dla jednostek samorządu terytorialnego…*, pp. 92–93.

[12] Judgment of the Constitutional Tribunal of 13 July 2011, K 10/09, LEX no. 963653; judgment of the Constitutional Tribunal of 28 November 2013, K 17/12, LEX no. 1413370.

[13] K. Sikora, *Local-government Arrangements with Participation of Local Government Units as Compared to Other Forms of Activity in the Sphere of Public Administration*, "Studia Iuridica Lublinensia" 2019, vol. 28(2), pp. 84–85.

[14] Judgment of the Voivodeship Administrative Court in Gdańsk of 18 January 2017, I SA/Gd 1427/16, LEX no. 2220967.

[15] W. Radecki, *op. cit*.

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residents do not live, the commune council may introduce the possibility of indicating in the declaration the frequency of collection of municipal waste of individual fractions; however, in the period from April to October, the frequency of collection of unsorted (mixed) municipal waste and bio-waste constituting municipal waste may not be less frequent than specified in the resolution of the commune council, and if it is not specified in the resolution – not less than once every two weeks.

In case of a change in the data being the basis for determining the amount of the municipal waste management fee due or the amount of municipal waste generated on a given property specified in the declaration, the property owner is obliged to submit a new declaration by the tenth day of the month following the month in which the change occurred. The fee for municipal waste management in the changed amount is paid for the month the change occurred. In the event of failure to submit a declaration on the amount of the municipal waste management fee or justified doubts as to the data contained in the declaration, the commune head, mayor or city president shall determine, by decision, the amount of the municipal waste management fee, taking into account the available data appropriate for the commune selected by the municipal council. Methods, and in the absence of such methods – reasonable estimates, including in the case of properties where residents do not live, the average amount of municipal waste generated on properties of a similar nature.

Fees for municipal waste management constitute the commune's income and are collected in a separate bank account. The commune council is obliged to determine – by way of a resolution – the rates of fees using units of measurement (volume, capacity). The maximum rate should be expressed in a specific, fixed amount and not change due to future events. The council's resolution requires a convincing and rational justification indicating which factors were considered in the fee calculation. The maximum fee rate should include all price-setting costs and may not be lower than the service price or exclude the VAT due. The fee rates established in this way are binding for property owners and all service providers operating in a given commune.[16] In matters relating to municipal waste management fees, the Tax Ordinance[17] provisions apply, except that the powers of the tax authorities are vested in the head of the commune, mayor or city president. The funds from the municipal waste management fee may not be used for purposes not related to covering the costs of the municipal waste management system. The commune uses the funds not used in the previous financial year to cover the costs of operating the municipal waste management system the following year. In return for the fee collected, the municipality provides property owners with all types of municipal waste disposal.

[16] M. Ofiarska, Z. Ofiarski, *Finansowe podstawy systemu gospodarowania odpadami komunalnymi*, [in:] *Prawne i organizacyjne obowiązki gmin…*, pp. 171–172.

[17] Act of 29 August 1997 – Tax Ordinance (consolidated text, Journal of Laws 2022, item 2651, as amended).

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By way of a resolution, the commune council may decide to cover part of the municipal waste management costs from its income other than the collected fee.

There are two statutory possibilities for municipal waste management. It is collected (1) from occupied properties, i.e. where residents live – in which case the municipality is obliged by law to organize a waste collection system (Article 6c (1) of the Act on maintaining cleanliness and order in communes), or (2) from the uninhabited real estate where municipal waste is generated (Article 6c (2) of the Act on maintaining cleanliness and order in communes) – and then the commune council may decide in a resolution to collect such waste from property owners obligatory, and in the absence of a resolution, the owner should conclude a waste collection contract with a selected company that provides such services.[18] However, the legislator did not define the indicated types of real estate. Hence their distinction is not clear.[19] On the one hand, it can be assumed that it will be crucial to understand the concept of residence contained in the Civil Code.[20] Then, non-residential real estate will be such real estate where the inhabitants do not reside or reside but do not intend to stay there permanently.[21] The view that in municipal waste management, using terms of civil law is unjustified seems more reasonable. Therefore, the real estate concept of where residents live should be associated with actual residence without referring to the narrow understanding of this term under the Civil Code.[22]

It also needs to be determined who should submit a declaration on municipal waste management and pay fees if refugees from Ukraine live in residential properties made available to them by the owners. On this basis, it is necessary to examine the scope of the concept of real estate owner based on the provisions of the Act on maintaining cleanliness and order in communes. The notion of the owner should be understood broadly and not limited to a civil-law approach. Within the meaning resulting from Article 2 (1) (4) of the Act on maintaining cleanliness and order in communes, it also covers the co-owner, perpetual usufructuaries, and organizational units and persons holding real estate under management or use, as well as other entities holding real estate. The owner should be considered any entity that controls the real estate, including the holders of subsidiaries.[23] The purpose of such formu-

[18] K. Gawrońska, *Nowelizacja przepisów dotyczących opłaty za gospodarowanie odpadami komunalnymi od właścicieli nieruchomości niezamieszkałych*, "Finanse Komunalne" 2022, no. 2, pp. 44–57. For more, see S. Dudzik, E. Rumak, *Odpady komunalne powstające na nieruchomościach niezamieszkałych. Problematyka prawna*, "Studia Prawnicze KUL" 2019, no. 3, pp. 69–86.

[19] M. Budziarek, A. Szymczak, *op. cit.*, commentary on Article 6c.

[20] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2022, item 1360, as amended).

[21] Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 12 September 2019, I SA/Go 281/19, LEX no. 2722855.

[22] Judgment of the Voivodeship Administrative Court in Kraków of 5 April 2018, I SA/Kr 122/18, LEX no. 2494915.

[23] M. Budziarek, A. Szymczak, *op. cit.*, commentary on Article 2.

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lation of the concept of ownership is to ensure, to the greatest extent possible, the performance of duties related to maintaining cleanliness and order in communes.[24] Based on the research question under consideration, a solution seems correct in that both the declaration and the fee for municipal waste management should be paid by owners accepting refugees in their properties – by calculating the amount of the fee adopted in a given commune. If it is related to the number of inhabitants, there is an obligation to submit an appropriate declaration by the property owner. Refugees do not own the property but only receive the right to reside in certain parts of it temporarily. The existence of this obligation on the part of property owners is confirmed by Article 13 of the Act on assistance to Ukrainian citizens,[25] granting to entities providing accommodation and meals at their own expense to Ukrainian citizens in the initial period of their stay in Poland a cash benefit. Undoubtedly, the accommodation cost should include a fee for municipal waste management, which confirms the thesis that this obligation rests with the property owners.

The situation in which non-residential real estate is adapted for temporary residence is still being determined. This applies, e.g., to public utility buildings, service buildings, parish halls, etc. In this case, premises formally intended for non-residential purposes are also used in whole or in part for a specific time to meet housing needs.[26]

The answer to the question about the nature of these properties is of crucial importance because it determines the method of calculating the fee – in particular, in a situation where the property owner did not report the change of facts himself. One of the possible interpretations is a decision based on the actual use of a given property at a specific time. The consequence of such a position is the obligation for the property owner to report the number of inhabitants – if it is a determinant of the fee in a given commune – and to pay the amount due to the competent authority until the property returns to its original function as non-residential. However, this position seems to be incorrect. It should be noted that the purpose of real estate is a relatively permanent element, specified in the land and building register, and should not be formally changed based on temporary, determined by an extraordinary situation, allocation of given premises for a different purpose – especially since, as a rule, the stay of refugees in such properties should be considered temporary, with no intention of permanent residence.

[24] Judgment of the Voivodeship Administrative Court in Gliwice of 25 March 2019, I SA/Gl 1202/18, LEX no. 2646180; judgment of the Voivodeship Administrative Court in Lublin of 19 August 2020, I SA/Lu 525/19, LEX no. 3055129.

[25] Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this state (consolidated text, Journal of Laws 2023, item 103, as amended).

[26] P. Szostak, *Wstąpienie i wystąpienie właściciela nieruchomości niezamieszkałej do zorganizowanego przez gminę systemu gospodarowania odpadami komunalnymi po 6 września 2019 r.*, "Przegląd Podatków Lokalnych i Finansów Samorządowych" 2021, no. 5, pp. 12–16.

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Therefore, non-residential properties where Ukrainian citizens stay temporarily should be recognized as non-residential properties on which municipal waste is generated. In this situation, either the regulation of the resolution of the commune council referred to in Article 6h (2) of the Act on maintaining cleanliness and order in municipalities will find an application – or in other cases, the property owner should conclude a waste collection contract with a selected company that provides such services.

Each time the property owner is responsible for paying the fees for municipal waste management. Particularly negative from the point of view of commune budgets is the situation in which, even though a more significant number of people inhabits a given apartment (e.g. since it is made available in whole or in part to refugees from Ukraine), this is not reported. Thus the fee is not paid appropriately, corresponding to the waste generated. Then the commune, and consequently its inhabitants, will be obliged to pay higher fees due to the greater amount of waste produced – while not reporting the correct number of people living in the real estate. This is a severe threat to local budgets as it increases spending, and at the same time there is a tendency to limit the amount of own income of local government units.

CONCLUSIONS

The study presents the authors' proposal for solving practical problems related to paying for managing municipal waste in the face of the influx of refugees. As of submitting the article, publications discussing the topic have yet to be made available. Due to the problem's timeliness, there is no established case law of administrative courts and no official data on the impact of the influx of refugees on the expenditure of communes related to municipal waste management. Research in this area should therefore be continued after the publication of a more significant number of judgments of administrative courts in cases concerning the determination of the amount of the fee for municipal waste management, as well as after obtaining statistical data of communes regarding changes in the amount of expenditure for municipal waste management.

To sum up, when considering cases concerning payment for the management of municipal waste, with particular emphasis on the crisis caused by the influx of refugees, it is first necessary to determine whether it should be carried out in the manner characteristic of inhabited or uninhabited real estate. On the one hand, it should take place through an analysis of the actual use of the real estate, and on the other hand, by verifying the way they are intended, indicated in official documents, including the land and building register.

The following essential step is to decide whether the entity obliged to remove municipal waste from a given property is the commune or whether the owner should provide it on his own, agreeing with a selected entrepreneur.

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Finally, if the commune is obliged to collect municipal waste, the fee for this will be borne by property owners, who should report the increase in the number of residents, including temporary refugees.

Adopting such a solution should prevent the commune budget from being burdened with increased municipal fees. It also indicates to property owners the actions they should take in the face of complex and ambiguous legal provisions in this area.

The article also solves a crucial theoretical problem appearing in the literature and jurisprudence concerning the method of distinguishing, based on the Act on maintaining cleanliness and order in communes, real estate inhabited from uninhabited, as well as the entity obliged to pay for municipal waste management in the case of renting or lending a flat free of charge or parts thereof.

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ABSTRAKT

Artykuł ma na celu przedstawienie problemu ponoszenia odpłatności za gospodarowanie odpadami komunalnymi w obliczu napływu uchodźców spowodowanego wojną w Ukrainie. Liczba osób zamieszkujących w Polsce znacząco wzrosła, a co za tym idzie zwiększyła się także ilość wytwarzanych odpadów komunalnych. Autorzy analizują aktualne regulacje prawne oraz orzecznictwo sądów administracyjnych i Trybunału Konstytucyjnego, aby ustalić, kto jest zobowiązany do uiszczenia opłaty za gospodarowanie odpadami komunalnymi i jakie kroki powinien podjąć ten podmiot. Ze względu na charakter problemu do analizy tekstów aktów prawnych, orzeczeń sądowych oraz do-

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stępnej literatury wykorzystano metodę dogmatycznoprawną. Zaproponowane przez autorów rozwiązanie może być stosowane w praktyce przez organy jednostek samorządu terytorialnego orzekające w sprawach dotyczących określenia wysokości opłaty za gospodarowanie odpadami komunalnymi.

Słowa kluczowe: gospodarowanie odpadami komunalnymi; wojna w Ukrainie; budżet gminy; regulacje prawne

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