



URSZULA ANISIEWICZ

WSCE University of Applied Sciences
in Józefów, Poland

ORCID iD: orcid.org/0000-0003-1816-8410

ZBIGNIEW ORZEL

WSEI University in Lublin, Poland

ORCID iD: orcid.org/0000-0002-6356-1695

PAWEŁ POCHODYŁA

WSEI University in Lublin, Poland

ORCID iD: orcid.org/0000-0001-5751-7076

EWELINA JURCZAK

Graduate School of Business - National-
Louis University, Poland

ORCID iD: orcid.org/0000-0001-6610-429X

LEGAL AND ADMISNITRATIVE- MANAGEMENT CONDITIONS OF THE OPERATION OF POLISH SPA RESORTS

UWARUNKOWANIA PRAWNE I ADMISNITRACYJNO-ZARZĄDCZE FUNKCJONOWANIA POLSKICH UZDROWISK

ABSTRACT

The article shows that the spa, as a territorial part of the municipality, determines the status of the municipality, its leading spa function, to which most of the important matters are necessarily subordinated. This applies, for example, to land use plans, development plans, environmental protection, construction, business development of the entire municipality, not just the part on which the resort is located. The aim of the work is to try to answer the question of what legal, administrative and organizational solutions will stimulate the effective functioning and development of Polish spas, under conditions of strong competition in the European market for tourism and spa services. An additional objective of the study is to identify the factors stimulating competitiveness and quality of tourism and spa services of customers of Polish spas. The evaluation of laundry and economic-administrative solutions was limited to the assessment of economic instruments and legal regulations found in national and EU government documents, directives and legal acts. The evaluation of current and projected solutions and changes in legal regulations takes into account the short and long term.

STRESZCZENIE

Artykuł pokazuje, iż uzdrowisko, jako część terytorialna gminy stanowi o statusie gminy, o jej wiodącej funkcji uzdrowskiej, której większość istotnych spraw jest z konieczności podporządkowana. Dotyczy to np. planów zagospodarowania przestrzennego, planów rozwoju, ochrony środowiska, budownictwa, rozwoju działalności gospodarczej całej gminy, a nie tylko części na której mieści się uzdrowisko. Celem pracy jest próba udzielenie odpowiedzi na pytanie, jakie rozwiązania prawne, administracyjne i organizacyjne będą stymulowały efektywne funkcjonowanie i rozwój polskich uzdrowisk, w warunkach silnej konkurencji na europejskim rynku usług turystyczno-uzdrowskich. Dodatkowym celem pracy jest identyfikacja czynników stymulujących konkurencyjność i jakość usług turystyczno – uzdrowskich klientów polskich uzdrowisk. Ocena rozwiązań prawnych i ekonomiczno-administracyjnych została ograniczona do oceny instrumentów ekonomicznych i regulacji prawnych występujących w krajowych i unijnych dokumentach rządowych, dyrektywach i aktach prawnych. Ocena aktualnych i projektowych rozwiązań i zmian regulacji prawnych uwzględnia krótką i długą perspektywę czasową.

KEYWORDS: *act on spa municipalities, spa statute, administrative proceedings, spa protection zones, spa product management, spa management, spa resort municipality*

SŁOWA KLUCZOWE: *ustawa o gminach uzdrowskich, statut uzdrowska, postępowanie administracyjne, strefy ochrony uzdrowskiej, zarządzanie produktem uzdrowskim, zarządzanie uzdrowskiem, gmina uzdrowskowa*

INTRODUCTION

The industry of Polish health resorts are sanatoriums, health resort hospitals, holiday homes and guesthouses that use healing waters, gases, peleoids, a healing climate and a unique landscape for therapeutic purposes. Human interference with these resources must therefore be specific and subject to many limitations (Kaganek, Wołowiec, 2007). Spa municipalities are subject to far-reaching restrictions on their development, and the statutory freedom of doing business, guaranteed to all business entities, does not apply to spa municipalities. The work shows that certain restrictions or obligations are imposed by law on the spa area for municipalities and business entities consisting of, among other things (Wołowiec, 2007; 2008):

- restriction or complete prohibition of certain economic activities,
- the need to agree on the location of buildings in the resort (agreeing on the decision on development conditions with the Minister of Health in the absence of a current spatial development plan of the municipality and with the Mining Authority),
- prohibiting the implementation of certain investments,
- carrying out costly studies related to the requirements of the geological and mining law, green zones, environmental protection,
- incurring 100% higher fees for the removal of trees and shrubs in the resort, which usually makes unprofitable investments in the construction of ski trails and lifts.

REASERCH METHODOLOGY

Legal and administrative sciences, as well as management and quality sciences, use typical methods found in the social sciences and humanities, i.e.: the study of documents (legal acts and judgments of administrative courts), comparative methods (expert opinions, legal opinions, analyses resulting from linguistic, grammatical and historical interpretation) and case studies. As part of the analysis, an attempt was made to verify the following research hypothesis: there are effective economic instruments and legal regulations

stimulating the functioning and development of Polish health resorts in the conditions of strong competition on the European market of tourist and health resort services.

It was assumed that the verification of the established research hypothesis, which is a guess or a provisional assumption, determines the need to obtain answers to the following research questions (Wołowicz, Duszyński, 2003):

- a. how to implement various investment projects in health resorts in the field of ecological, municipal and health resort, recreational and sports infrastructure, constituting the basis for building a competitive market position and encouraging investors to locate investments in the field of tourism and health resort treatment in health resort communes,
- b. how to legally stabilize expenditure on spa treatment at the level of e.g. 2% of the budget of the National Health Fund in order to stop the decapitalization of spa assets,
- c. how business entities conducting spa treatment activities should be taxed, especially in terms of VAT,
- d. how, when creating a national communication system, to include access to health resorts in the designs of the road, railway and air networks. The current system completely ignores the existence of health resorts on the country's communication map.
- e. how to place spa treatment in the health care system and in the tourism promotion system (branded tourist product),
- f. how to take into account in the state tax system the fact that business entities operating in mountain health resorts incur higher operating costs (e.g. heating) and expenditure on infrastructure (roads, bridges, snow removal, etc.),
- g. how to shape regulations on the principles of conducting business activity in spa protection zones A, B and C,
- h. what factors influence the competitiveness and quality of tourist services in health resort communes,
- i. how to build cooperation between entities participating in shaping the tourism product.

LEGAL AND ADMINISTRATIVE CONDITIONS FOR THE OPERATION OF RESORT COMMUNITIES

At first glance, it would seem that the functioning of a spa commune is no different from most local governments in Poland that do not have spas in their area, and its activities can be subordinated to the market law of supply and demand. It would seem that spa communes are particularly privileged entities, endowed by nature with unique medicinal raw materials, a unique landscape, clean air and high forest cover, and, being the proverbial apple of the sovereign's (State's) eye, they have comprehensive development opportunities (Korczak, 2018). Nothing could be further from the truth – while one should agree with the first statement emphasizing the wonderful values of health resort communes, the second one should be strongly argued against. In order to better understand the differences in the political system and functioning of a spa commune, it is necessary to define key concepts (Wołowiec, Krupa, 2010).

A spa commune is a commune whose area or part thereof has been granted the status of a spa resort in the manner specified in the Act on spa treatment, spa resorts and spa protection areas and on spa communes of July 28, 2005. A health resort is an area where spa treatment is provided, designated for the purpose of using and protecting the natural medicinal raw materials located within it, and which has been granted the status of a health resort (Golba, 2020). The above definitions show that a health resort is a limited area of the commune's territory, conducting specific activities, such as health resort treatment. In order to protect national treasures, i.e. medicinal raw materials, three protection zones are designated in the spa commune. Protection zones are parts of the spa area or spa protection area, specified in the spa statute, designated to protect medicinal agents and natural medicinal raw materials, environmental values and spa facilities (Woźniak, 2019). They are usually created by biologically active areas in the form of protective forests, spa parks, landscape parks and natural greenery (Reśko, Wołowiec, 2012).

Pursuant to the applicable Act on Health Resorts, zone A covers the area where health resort treatment facilities and devices are located or planned, as well as other facilities serving health resort treatment or patient or tourist service, in particular: guesthouses, restaurants or cafes, for which the percentage

the share of green areas is not less than 75%. This zone is intended to protect valuable medicinal raw materials and provide optimal environmental conditions for treatment. Therefore, special management requirements apply in this zone, including (Wołowiec, 2004):

- prohibition on locating industrial plants that could have a destructive impact on natural medicinal raw materials and landscape values,
- prohibition on locating multi-family and single-family buildings (except for the modernization of existing buildings, but without the possibility of increasing their volume),
- ban on opening camping and camping sites, locating tourist and camping cottages,
- a ban on running markets, except for points of sale of souvenirs, folk products, regional products or goods of a similar nature, in forms and places designated by the commune,
- ban on keeping farm animals,
- ban on conducting agricultural activities,
- ban on organizing car rallies,
- prohibition on the location of gas stations, distribution points of petroleum products, artificial fertilizers, solid and liquid waste landfills,
- a ban on the location of parking lots in the number of parking spaces exceeding 10% of sanatorium spaces in the facility,
- ban on organizing mass events that disrupt the spa treatment process, etc.

Spa protection zones *B* and *C* are not intended for spa treatment, but constitute a buffer zone ensuring the possibility of spa treatment in spa protection zone *A*. Therefore, mass events, markets, parking lots with over 10 spaces (up to 50), commercial facilities up to 400 m², etc. may appear in zone *B*. Pursuant to the Act, these zones are designated for residential, service, tourist, recreational, sports and municipal and other environmentally harmless. Division into health resort protection zones is necessary and justified, as it enables the proper functioning of the health resort and solid protection of natural values (Golba, 2020).

STATUS AS A HEALTH RESORT MUNICIPALITY

It should be stated that the spa, as a territorial part of the municipality, determines the status of the municipality, its leading spa function, to which most of the important matters are necessarily subordinated. This applies, for example, to zoning plans, development plans, environmental protection, construction, business development of the entire municipality, not just the part on which the spa is located. The industry of Polish spas is sanatoriums, spa hospitals, holiday homes and guesthouses, using therapeutic waters, gases, peleoids, medicinal climate and unique landscape for therapeutic purposes. Human interference with these resources must therefore be a special interference, subject to many restrictions. Spa municipalities are subject to far-reaching restrictions on their development, and the statutory freedom of economic activity, guaranteed to all business entities, does not apply to spa municipalities. It should be emphasized that in the spa area, certain restrictions or obligations are imposed by law on municipalities and business entities consisting of, among other things (Wołowicz, 2003a):

- restriction or complete prohibition of certain economic activities,
- the need to agree on the location of buildings in the resort (agreeing on the decision on development conditions with the Minister of Health in the absence of a current spatial development plan of the municipality and with the Mining Authority),
- prohibiting the implementation of certain investments,
- carrying out costly studies related to the requirements of the geological and mining law, green zones, environmental protection,
- incurring 100% higher fees for the removal of trees and shrubs in the resort, which usually makes unprofitable investments in the construction of ski trails and lifts.

The consequence of these prohibitions and obligations is a significant restriction of the freedom of the municipality's residents. The preservation of therapeutic functions requires that resort communities carry out tasks unfamiliar to a local municipality. The key legal act from which certain rules for the operation of health resorts derive is the aforementioned Act of July 28, 2005 on spa

treatment, spas and areas of spa protection, and on spa municipalities. This act imposes three tasks on municipalities, which are as follows (Wołowiec, 2003b):

1. to protect the natural conditions of the spa or spa protection area and meet the requirements for permissible standards of air pollution, noise intensity;
2. to create conditions for the operation of spa treatment facilities and equipment and the development of municipal infrastructure to meet the needs of people staying in the municipality for spa treatment;
3. creation and improvement of municipal, technical infrastructure intended for spas or areas of spa protection, related to water supply and sewage disposal and disposal, solid waste disposal, also related to gas electricity supply and in the field of public transportation, etc.

The operation of a resort municipality is regulated by a number of additional legal acts, including the Law on Nature Protection, the Law on the Protection of the Environment, Agricultural and Forest Land, the Geological and Mining Law, the Law on Planning and Spatial Development, as well as such local laws as acts of local governments, the governor and the statute of the resort. For example, a spa town must take care to ensure conditions for the development of spa treatment especially in terms of environmental protection (securing protection zones, spa A,B,C, mining areas). This task stems from both the provisions of the 2005 Law on Spa Treatment, Spas and Areas of Spa Protection and Spa Municipalities, as well as from the spa statute, which is drawn up by the municipal authorities on the basis of this law. The establishment of protection zones also provides guidelines for the creation of local laws in the form of spatial development plans.

SPA ZONES. A LEGAL, ECONOMIC AND MANAGEMENT STUDY

Guided by the provisions of the Law on Spas, the competent local government in land use plans must not allocate areas in zones *B* and *C* for the construction of spa treatment facilities, so as not to weaken the areas of strict spa protection control and not to lead to disruption or discomfort of treatment. Exceptional natural resources, often therapeutic properties of the climate, magnificent landscape conditions are particularly vulnerable to destruction and degradation by mismanagement, technical progress and civilization. Management of green areas (forests, parks) in a non-resort municipality is fundamentally different from that in a resort municipality. There, more emphasis is placed on the protective function of forests (biodiversity protection, retention, animal protection) and their resort and tourist development, and less on the realization of economic functions. In a municipality without a resort status, forests usually have a minor protective function, while they carry out an economic function to a greater extent.

To sum up, having the status of a health resort is associated not only with the presence of unique natural resources, unique landscape qualities, clean air and other tourist attractions, such as magnificent spa architecture, pump rooms, graduation towers, but at the same time with the implementation of a long list of duties and tasks that a health resort municipality must fulfill in order to guarantee external conditions for the stay of visitors and patients. Ensuring optimal therapeutic conditions for visitors and tourists is the reason why resort municipalities must allocate additional funds in their budgets for resort activities unknown to other municipalities. These activities include (Koniuszewska, 2016):

- maintenance of spa parks, walking paths, squares, greens, boardwalks, recreational areas, and flowerbeds,
- maintenance of spa treatment facilities (pump rooms, graduation towers),
- maintenance of spa orchestras, musical ensembles, cultural centers, art, reading rooms for patients, etc.,

- implementation of pro-environmental investments (sewage treatment, landfills, collectors, gas heating) that meet the increased requirements for environmental pollution (spa standards), which are the most costly and burden the budget the most,
- maintenance of municipal infrastructure (sidewalks, roads street lighting, communications, etc.).

In addition, the municipal coffers receive significantly less funds than is the case in municipalities without resort status, due to, for example:

1. lower rates of mining fee and fee for economic use of the environment,
2. lower rates of real estate tax on facilities carrying out spa activities (sanatoriums, spa hospitals, spa treatment facilities). Their high concentration in the areas of resort municipalities makes this income one of the primary tax revenues of the municipality.

Until 2005, the resort municipality performed all tasks at the expense of the tasks of the local community, financing from its budget the maintenance of spa infrastructure and other activities related to the operation of the resort. The entry into force of the Act on Spa Treatment, Spas and Areas of Spa Protection and on Spa Communes on July 28, 2005 has somewhat changed the situation of the spa communes, which can now count on financial support from the state in the form of:

- obtaining compensated lost revenue from the reduction of property tax rates on facilities carrying out therapeutic activities,
- the possibility of collecting a resort fee for the implementation of resort tasks,
- obtaining a subsidy from the state budget for the implementation of specific resort tasks not found in other municipalities *in an amount equal to the revenues from the resort fee collected in the resort in the year preceding the base year* (Potycz, 2019).

It should be stressed that this is a significant support from the State, but certainly not compensating for all the expenses that the municipality must incur to meet the very onerous requirements for the operation of the resort.

It seems that the best solution would be to use the funds obtained from the privatization of the state-owned spa companies for investment in spa, tourism and recreation and sports infrastructure, and the funds obtained from the investor for upgrading the standard of the spa companies' facilities. If the funds obtained from privatization were allocated to the development of spa infrastructure, this would make Polish spas more competitive, and the investments carried out would create new jobs. Consequently, such a policy should generate new jobs both during and after the investment (Anisiewicz, Ahmed, 2023). Ultimately, this would provide an opportunity to build infrastructure in Polish spas to increase the spa and tourism offer, which is of fundamental importance in attracting visitors and tourists both in the country and abroad.

By building spa, tourism and sports infrastructure, we are creating multi-functional spas of high standard, capable of competing with foreign offerings, as well as being a good export product in the dynamically developing European tourism market. Privatization funds allocated for infrastructure development should be supported by government and aid funds, as well as funds from provincial contracts. The purpose and use of these funds should be precisely defined (Artyukhova, Tiutiunyk, Bogacki, Wołowiec, Dluhopolskyi, Kovalenko, 2022).

CONCLUSIONS

The first legal act regulating the operation of Polish spas was the 1922 Act, whose innovative provisions and system solutions continue to find practical application today. The 1922 Spa Act survived with minor amendments until 1966. The concept of *resort commune* was first formulated in the Act of March 23, 1933 on the partial change of the local government system (Journal of Laws No. 35 of 1933). In 1990, a provision appeared in Article 38 of the Law on Local Self-Government stating the systemic separateness of spa municipalities, but this remained an empty provision for many years, not filled with any statutory content. Incorporating health resorts into the unified system of state power and administration, the Act of June 17, 1966 on health resorts and spa treatment no longer included the concept of a health resort commune. The provisions contained in this act meant that the resort

communities had to coordinate every investment, renovation, construction work, etc. with the Minister of Health. The approval procedure sometimes took months, causing investors to become discouraged and often abandon their investment intentions. The Geological and Mining Law obliged resort municipalities to cover 50% of the cost of drawing up a zoning plan for the mining area of an entrepreneur who mines minerals, and the license is granted by the Minister of the Environment. A major shortcoming of the Law on Spas and Medical Treatment was the obsolescence of most of its provisions, and the lack of a coherent set of legal norms and economic instruments that would have prompted local communities in health resorts to take care of both the needs of the resorts and the diverse needs of patients. The existing legal solutions created the conviction that the organization and management of health resorts posed a problem for the overall economy of the municipality, since the existing restrictions on the maintenance and expansion of the resort infrastructure, as well as the costs of serving patients, were not adequately compensated. The current Law of June 17, 1966 on Spas and Spa Treatment not only failed to create a proper legal framework for the effective administration of the resort and management of the spa economy, but completely ignored the problem of the functioning of the spa, focusing solely on spa treatment. The law, enacted under conditions of a monopoly of state-owned organizational units on industrial exploitation of deposits of resort medicinal resources, their processing and commercial turnover, does not contain legal solutions for conducting such economic activities under free market conditions. Also, the law did not contain regulations to ensure the consistency of the system of spa treatment facilities with general medical treatment. It was not until July 2005 that the Sejm passed a new law on spa treatment, spas and areas of spa protection, as well as on spa municipalities. This means that as of January 1, 2006, after 15 years of work on this law, it was possible to introduce solutions assuming that:

- spa treatment has become an integral part of health care, which means that the issues of spas have a constitutional basis,
- the tasks of health resort communities have been selected, which will result in raising funds for their implementation,

- the possibility was created for localities that do not have the status of a health resort to obtain this status,
- health resort communes were given the right to collect a health resort fee, and not a local fee as before,
- for the realization of tasks related to the functioning of the health resort, and starting in 2006 the state budget is obliged to pay municipalities a subsidy in the amount of the local fee collected.

On the surface, it would seem that the functioning of a resort commune is no different from most local governments in Poland, which do not have spas in their area, and its activities can be subordinated to the market law of supply and demand. It would seem that it is the spa municipalities that are particularly privileged entities, endowed by nature with unique therapeutic resources, unique landscape, clean air and high forested areas, and being the proverbial apple of the sovereign's (the State's) eye, they have comprehensive development opportunities. Nothing could be further from the truth – while one should agree with the first statement emphasizing the magnificent qualities of the resort municipalities, one should strongly argue with the second.

REFERENCES

- Anisiewicz U., Ahmed M. (2023). Investment attractiveness from a multidisciplinary and inclusive perspective. W: *Przedsiębiorczość w XXI wieku* DOI: 10.51434/IP.35
- Artyukhova, N., Tiutiunyk, I., Bogacki, S., Wołowiec, T., Dluhopolskyi, O., Kovalenko, Y. (2022). Scenario Modeling of Energy Policies for Sustainable Development, *Energies*, no 5, 7711.
- Golba, J. (2020). Historyczne i prawne aspekty funkcjonowania uzdrowisk w Polsce, C.H.Beck, Warszawa.
- Koniuszewska, E. (2016). Pozycja ustrojowa i zadania komisji uzdrowiskowej [w:] *Szczególny status gminy uzdrowiskowej-z perspektywy 10 lat obowiązywania ustawy o lecznictwie uzdrowiskowym, uzdrowiskach i obszarach ochrony uzdrowiskowej oraz o gminach uzdrowiskowych*, red. E. Koniuszewska, Szczecin.
- Korczak, J. (2018). Gmina uzdrowiskowa w prawodawstwie polskim, *Opolskie Studia Administracyjno-Prawne*, nr XVI 1(1), 99-118.
- Krupa, J., Wołowiec, T. (2010). Uzdrowiska Polski Wschodniej wobec wyzwań rozwojowych-turystyka zrównoważona /in/ Krupa J. Hermaniuk J. (red.) *Współczesne trendy funkcjonowania uzdrowisk-klastering*, Wyższa Szkoła Informatyki i Zarządzania, Rzeszów, 7-35.
- Potycz, D. (2019). Gmina uzdrowiskowa jako przykład gminy o specjalnym statusie, *Przegląd Prawa Publicznego*, nr 11, 69-81.
- Reško, D., Wołowiec, T. (2012). Strategia rozwoju jako narzędzie zarządzania zmianą gospodarczą /in./ Stefański M. (red.) *Narzędzia sterowania rozwojem regionu*, Wyższa Szkoła Ekonomii i Innowacji w Lublinie, Lublin, 61-89.
- Wołowiec, T. (2022). Selected problems of supporting entrepreneurship by local government units taking into account financial strategies, *Innovatio Press*, Lublin 2022.
- Wołowiec, T., Kaganek, K. (2007). Administracyjno-prawne uwarunkowania funkcjonowania gmin uzdrowiskowych w Polsce i reaktywowania koncepcji uzdrowisk, *Folia Turistica*, nr 18, 109-120.
- Wołowiec, T. (2007). Wpływ ograniczeń administracyjno-prawnych na rozwój polskich gmin uzdrowiskowych, *Samorząd Terytorialny*, nr 1-2, 75-84.
- Wołowiec, T. (2008). Kontrowersje związane z opodatkowaniem podatkiem od nieruchomości sanatoriów i innych zakładów opieki zdrowotnej, *Finanse Komunalne*, nr 3, 32-37.
- Wołowiec, T. (2004). Metody stymulowania konkurencyjności gospodarczej polskich gmin uzdrowiskowych, *Samorząd Terytorialny*, nr 10, 55-62.
- Wołowiec, T. (2003). Bariery finansowe i legislacyjne rozwoju polskich gmin uzdrowiskowych w perspektywie integracji z Unią Europejskiej, *Studia Regionalne i Lokalne*, nr 3, 97-106.
- Wołowiec, T. (2003). Analiza aktualnej sytuacji prawno-ekonomicznej polskich gmin uzdrowiskowych, *Studia Prawno-Ekonomiczne*, Tom LXVIII, 83-96.

- Wołowicz, T., Duszyński, M. (2003). Development limitations of Polish spas (legal and financial barriers) /in// Kurek W. (red.) Issues of tourism and health resort management, Uniwersytet Jagielloński, Prace Geograficzne nr 111, 317-326.
- Woźniak, M. (2019). Odrębności ustrojowe gmin uzdrowiskowych, Ruch Prawniczy, Ekonomiczny i Społeczny, nr 4, 179-190.