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LOCAL GOVERNMENT IN THE LIGHT OF PREROGATIVES OF THE PRESIDENT OF THE COUNCIL OF MINISTERS

Abstract

The President of the Council of Ministers is one of the more important bodies of the system of the Republic of Poland. Its role stems from the provisions of the Constitution of Poland and special statutes and has not been limited to responsibilities and competences associated with central administration. The President of the Council of Ministers was given prerogatives towards local government units and their bodies. These prerogatives do not require countersign, but pertain to the content of statutes of local government units, to dismissing and suspending authorities and establishing receivership. The legal measures presented in this study are subject to a critical assessment. In the article uses an analytical and formal-dogmatic method and theoretical-legal method. The results of the analysis indicate significant similarities in the content of legal provisions at all levels of local government. Moreover, they show features of inconsistency with the provisions of the Constitution of the Republic of Poland, striking at the independence of local government units.

Keywords: *local government, President of the Council of Ministers, receivership, statute, prerogative*

Introductory notes

The President of the Council of Ministers plays a key role in the country and its administrative structures (Jagielski, 2019, p. 209). He is the head of the Council of Ministers and at the same time an independent body of state administration (Jagielski, 2019, p. 209; Sługocki, 2023, p. 108). However, his competences were not limited to central administration. Pursuant to the provisions of the Polish Constitution (Constitution of the Republic of Poland of 2.04.1997, Journal of Laws No. 78, item 483), this office is part of central administration, he is a member of the Council of Ministers and also carries out responsibilities and competences stipulated in the provisions of the Polish Constitution and special regulations. Pursuant to Article 148 of the Polish Constitution, competences of the President of the Council of Ministers include: representation of the Council of Ministers, managing its work, issuing regulations, ensuring the implementation of the policy adopted by the Council of Ministers and specifying how it must be implemented, coordination and control of the work of members of the Council of Ministers, exercising supervision

of local government and also competences of the official superior of employees of the government administration. The legislator, by means of provisions of local government laws, has granted the President of the Council of Ministers special competences and instruments that concern local government units, their tasks and bodies. With this in mind, he has competence not only pertaining to central administration, but also to the decentralized local government. The Polish Constitution grants local government units independence subject to judicial protection (more: Czesyk, 2023, p. 58-73; Ciapała, 2024, p. 27-29), whereas supervision over local government and supervisory measures, including personal measures, may be applied in strictly defined situations only. However, importantly, *Independence of a local government units is not an absolute value (…). Local government units are bodies of public authority and should be guided by law and public interest in exercising their public tasks. The public interest is expressed, i.a., in effective implementation of public tasks.(Judgment of the Supreme Administrative Court of 05 March 2013, II OSK 135/13, LEX no. 1340168)*

This publication intends to critical analyse legal measures – prerogatives of the President of the Council of Ministers that pertain to local government units.

Organization-related prerogatives

The legislator has stipulated the role of the President of the Council of Ministers in the organizational aspect of the local government units at the commune and voivodeship level and also at the level of the Capital City of Warsaw under the procedure of giving them statutes. Pursuant to Article 3 sec. 2 the Act of 8.03.1990 – Commune Self-Government Law (Journal of Laws 2024, item 1465 as amended, hereinafter: CSGL), the draft statute of a commune with more than 300,000 residents shall be subject to agreement with the President of the Council of Ministers upon request from the minister competent for matters of public administration. In turn, pursuant to Article 7 sec. 1 the Act of 5.06.1998 – Voivodeship Self-Government Law (Journal of Laws 2025, item 581), hereinafter: VSGL), the system of a self-governing voivodeship shall be specified by the statute of the voivodeship adopted in agreement with the President of the Council of Ministers.

What is important from the point of view of the system of law, provisions the Act of 6.06.1998 – Poviat Self-Government Law (Journal of Laws 2024, item 107), (hereinafter: PSGL) do not stipulate participation of the President of the Council of Ministers in providing a statute to a poviat-level unit. However, this participation was ensured under Article 4 sec. 2 of the Act of 15.03.2002 – on the organisational system of the Capital City of Warsaw (Journal of Laws 2018, item 1817) (hereinafter: Warsaw Act), pursuant to which the draft statute of the Capital City of Warsaw is subject to agreement with the President of the Council of Ministers. When compiling statutory solutions adopted under CSGL, VSGL and the Warsaw Act, it needs to be pointed out that there are differences in them for which it is no use looking for justification.

We must first point to the different regulation of disputed issues of the content of the draft statute that has taken place between the drafter and the opinion-giving body (Dolnicki, 2021, p. 359). When assessing the wording of Article 3 CSGL, the scholarly discourse signals that the arrangements should result in the achievement of mutual understanding. Wierzbicka points out that where consensus on the content of the draft cannot be reached, the commune council cannot adopt a statute with the content that has not been agreed on (Wierzbica, 2021, online). Where there is no consistent assessment, the measures applied are a covert means of preventive supervision, for which a commune is not given judicial protection (Niżnik-Dobosz, 2022, p. 135). Article 89 sec. 1 and sec. 3 CSGL pertains to these solutions as they stipulate that the law conditions the validity of a ruling of a commune authority on it being agreed with commune's other authority and this authority should provide their opinion no later than within 14 days from the date on which this ruling or its draft is served. If the President of the Council of Ministers fails to take a stance in the case, the ruling is considered accepted in the wording submitted by the commune upon the lapse of this time limit. The literature points out that as a result of application of Article 89 sec. 3, the silence of the President of the Council of Ministers with regard to a draft statute of a commune produces a legal effect (Niżnik-Dobosz, 2022, p.135). Moreover, Niżnik-Dobosz claims that *this time framework for substantive arrangements made by other means than the use of silence as a form of action of the President of the Council of Ministers puts his ratio legis into question. Therefore, the agreement*

with the President of the Council of Ministers seems substantively illusory and might carry a motive of a possible political correction of the draft statute, though the systemic interpretation of this provision seems to suggest that the arrangement concerns compliance with the law (Niżnik-Dobosz, 2022, p.135).

Pursuant to Article 3 sec. 3 CSGL, disputes regarding the proposed content of the statute of a commune are resolved by the Council of Ministers. It is worth pointing out here that under the provisions of the Polish Constitution and CSGL, it is impossible to see the justification for the role the Council of Ministers was given in this procedure. The Council of Ministers is not a supervisory authority over local government units or a superior authority for the President of the Council of Ministers. When it comes to legislative differences, it needs to be pointed out that in Article 7 VSGL the legislator does not stipulate the procedure for examining disputed issues in the draft statute and the opinion of the President of the Council of Ministers. Thus, the legislator fails to regulate this question in full. When it comes to the time limits for the President of the Council of Ministers to take a stance, Article 80a VSGL apply, which, similar to Article 89 sec. 3 CSGL stipulates application of a 14-day time limit for agreeing a position and should this time limit lapse, a tacit acceptance of the President of the Council of Ministers is assumed for the submitted draft voivodeship statute. In Article 4 sec. 3 and sec. 4 of the Warsaw Act, the legislator directly stipulates a 30-day time limit for the President of the Council of Ministers to take a stance on a draft statute of a city, after the lapse of which the statute is considered agreed by operation of law. Moreover, it is worth noting that provisions of the Warsaw Act introduce more rigorous solutions in the event of failure to reach an agreement on the wording of a statute. Pursuant to Article 4 sec. 5 of the Warsaw Act, the President of the Council of Ministers, should he notice some flaws, shall transfer the draft statute to be re-examined and specify the time limit for removing these flaws. The above point to the material prerogative of the President of the Council of Ministers and to the possibility of unilateral assessment of the draft statute, without allowing a polemic among the authorities of the Capital City of Warsaw.

From the point of view of the research goal and critical analysis, it needs to be said that statutes of a commune and a voivodeship, pursuant to Article 18 sec. 2 point 1 CSGL and Article 18 point 1 item a VSGL,

are established in the form of resolutions by commune's and voivodeship's law-giving bodies. Given the above, provisions of statutes are subject to a governor's supervisory examination – pursuant to Article 90 CSGL and Article 81 VSGL. Therefore, doubts arise around the need to consult the draft commune and voivodeship statute in the light of governor's obligatory supervision implemented in the form of a follow-up inspection. A question arises then about the nature of the supervisory inspection of the draft statute, either or not agreed with the President of the Council of Ministers. Therefore, is the assessment of the President of the Council of Ministers regarding the content of a statute binding on the governor? or is the supervision carried out by the governor independent of the decision of the President of the Council of Ministers? Thus, doubts arise as to the *ratio legis* of the participation of the supreme body of central administration in this procedure if its content is subject to the governor's follow-up inspection as part of supervision over given laws and as to arrangements with the President of the Council of Ministers that do not have a decision-giving force.

Appointment of a person who carries out tasks and competences of the commune head

The legislator granted the President of the Council of Ministers a broad scope of authority in personal aspects of solutions stipulated in CSGL. Pursuant to the provisions of the Act of 5.01.2011 – Electoral Code (consolidated text U. (Journal of Laws) of 2023 item 2408), the commune head holds a mandate that comes from general elections. Therefore, any interference must be justified and grounded in the regulations of the Polish Constitution that protect values other than democratically elected bodies. The legislator, by way of Article 28h CSGL, decided that in the event of a commune head's temporary arrest, serving a sentence for unintentional crimes, being placed in detention, inability to work due to sickness that lasts for longer than 30 days or suspension, his tasks and competences where no deputy or no first deputy is appointed, the tasks and competences of the commune head are taken over by a person designated by the President of the Council of Ministers. A similar mechanism

is applied in a situation where the passing obstacle in carrying out tasks and competences of a commune head caused by one of these circumstances occurs before the commune head takes his oath. Given the above, the President of the Council of Ministers has a prerogative to designate a person to carry out tasks and competences of the commune head, both where a deputy has been appointed in the commune (without nominating the first deputy) and also where the newly elected commune head has not managed to take over his duties yet under Article 29a sec. 1 CSGL. These solutions raise doubts from the point of view of the scope of the constitutional authority of the President of the Council of Ministers and the possibility to interfere in the systemic independence of communes. Under the provisions quoted, the President of the Council of Ministers, as a rule, takes supervisory actions *ex post*, not *ex ante*. It needs to be pointed out here that pursuant to Article 29 sec. 1 CSGL, after the term of office of a commune head expires, he holds this functions until the newly elected commune head takes over the responsibilities. The taking over of the responsibilities occurs upon the new commune head taking an oath before the commune council. In light of the above, stepping into the commune's independence where the new commune head has not yet made his oath or where the first deputy who is to carry out his tasks and competences has not been designated goes beyond the scope of said supervision. It needs to be stated that CSGL provisions that stipulate a date for the new commune head taking the office and also for his deputies carrying out tasks and competences guarantee continuity of the office without prejudice to the commune's own tasks and its citizens. When it comes to the application of the prerogative to designate a person who carries out tasks and competences of the commune head where the first deputy has not been designated, the scholarly discourse views it as going too far, or even as standing in opposition to the systemic interpretation of Article 28g CSGL (Martysz, 2021, p. 581). It seems appropriate that the commune council and the electoral commissioner be granted the decision-making competence. The commissioner would then appoint the deputy amongst persons who already hold this post.

The next prerogative granted to the President of the Council of Ministers relating to commune self-government is to appoint a person to hold the office of the commune head if the mandate of the commune head expires before the

terms of office finishes (Article 28f CSGL). The premises for the mandate's expiry have been stipulated by the legislator under Article 492 paragraph 1 of the Electoral Code and result from the following: refusal to take an oath, failure to submit a statement about their financial standing within the deadline stipulated in separate laws, written waiver of the mandate, loss of the right to be elected or not having this right on the date of election, taking the office of the President of the Republic of Poland, violation of statutory bans on combining the function of the commune head with carrying out of this function or carrying out of economic activity, specified in separate regulations, being elected as a deputy to the Sejm, senator or Member of the European Parliament, being certified unfit for work or unable to exist on one's own under the procedure specified in provisions on old age and disability pensions from the Social Insurance Fund for the period of at least until the end of the term of office, death, dismissal by referendum, dismissal under Article 96 sec. 2 CSGL or changes in territorial division. (Due to the article's content-related restrictions, the above stays outside the scope of this study) The presented prerogatives raise constitutional doubts because, as pointed out above, CSGL provisions guarantee continuity of implementation of the unit's tasks without interference from authorities that form part of central administration. The prerogative resulting from Article 28f CSGL steps with authority into the organizational structure of the body of a decentralized unit. Thus, in this case some thought should be given to a solution that involves the commune head's tasks and competences being carried out by one of his deputies until the newly elected commune head takes office. The above is all the more reasonable since pursuant to Article 29 sec. 2 CSGL after the expiration of the term of office of the commune head, the deputy carries out his duties until those duties are taken over by the newly elected commune head deputy. The above would also require the changing of measures stipulated in Article 28g sec. 6; however, it would then be grounded in constitutional values.

When comparing the wording of Article 28f and 28g, the different structure of both of these provisions seems quite puzzling. In Article 28f the legislator decided that the President of the Council of Ministers shall designate a person to hold the function of the commune head, whereas Article 28g stipulates designation of a persons who carries out his tasks and competences.

Assuming legislator's rationality, *ratio legis* of the said difference should be sought in the fact that in the case of expiry of a mandate during the term of office there is no person who is allowed to hold this mandate. This is why the legislator used the term *function*. In turn, in the event of a temporary obstacle, this mandate is still carried out by the commune head chosen in elections, but he is temporarily not allowed to carry out tasks and competences vested in him. Thus, the legislator deemed it necessary to use the term *carrying out tasks and competences*.

Designation of a person who carries out tasks and competences of poviat and voivodeship bodies as a result of failure to elect the executive board

The legislator granted the President of the Council of Ministers personal aspects-related prerogatives pertaining to LGUs of the poviat and voivodeship level. The former include prerogatives relating to the situation of failure of the constitutive body to appoint the executive authority within the required deadline. Pursuant to Article 27 sec. 1 PSGL and Article 32 sec. 1 VSGL, the poviat council/voivodeship assembly shall appoint the executive board of the poviat/voivodeship within 3 months from the date of announcing results of elections by a competent electoral authority. The legislator, by means of Article 29 sec. 1 PSGL and Article 33 sec. 1 VSGL, regulates certain sanctions for failure to elect the executive authority deciding that failure to appoint it within this deadline will result in the poviat council/voivodeship assembly being dissolved by operation of law. After a poviat council/voivodeship assembly is dissolved, pre-term elections are held. Dissolution of a constitutive body of a poviat or voivodeship due to failure to appoint a new executive board, pursuant to Article 29 sec. 3a PSGL and Article 33 sec. 4 VSGL, results in updating the prerogative of the President of the Council of Ministers and in the appointment, upon a request from the minister competent for public administration, of a person who holds the function of poviat/voivodeship bodies.

The measures stipulated in these provisions have been subject to uniform critique in the scholarly discourse. Szewc believes that the said regulation of

Article 33 sec. 5 (and, analogically, Article 29 sec. 4 PSGL) is illogical as it orders that the new executive board be elected while its functions are carried out by a person designated by the President of the Council of Ministers (Szewc, 2008, p. 360). Moreover, he points out that the legislator, deciding to dissolve bodies of the voivodeship-level local government unit, does not address the question of mandate of the marshal of this voivodeship who is the head of the voivodeship executive board (Szewc, 2008, p. 360). It must be pointed out here that the above must be considered an appropriate manoeuvre. Pursuant to the Polish Constitution and self-government systemic statutes, local government units act through their bodies – constitutive and executive. Both the poviat head and the voivodeship marshal are part of the executive body and carry out other, additional tasks and competences, though given the functional aspect of the executive body, their mandates are inextricably related with the essence of these bodies. Given the above, it needs to be undoubtedly assumed that dissolution of the executive board of a poviat/voivodeship entails dissolution of mandates. It is raised in the scholarly discourse that the solutions adopted by the legislator too go beyond the provision's *ratio legis* (Martysz, 2020, online; Martysz, 2023, p. 421). Where it is impossible to create a new executive board in local elections, it seems sufficient to accept the appointment of a person to carry out the function of the constitutive body, and until the new executive board is created by the new poviat council/voivodeship assembly, they would carry out the existing executive management of the poviat/voivodeship. The above stance deserves to be taken into consideration because pursuant to Article 28 PSGL and Article 42 VSGL, the poviat executive board and the voivodeship executive board carry out their tasks and competences until the new board is created. Appointment of both bodies by the President of the Council of Ministers must be considered justified only in the case of previous dismissal of the poviat/voivodeship executive board by the constitutive authority (Martysz, 2020, online; Martysz, 2023, p. 421).

Predicting a situation where the re-election of the poviat council/voivodeship assembly does not result in effective appointment of the executive board, the legislator decided that if the poviat council/voivodeship assembly elected by pre-term elections fails to appoint an executive board, they are dissolved by operation of law. Pursuant to Article 27 sec. 5 PSGL and Article 33 sec. 5 VSGL,

in the event of subsequent dissolution of the poviat council/voivodeship assembly, pre-term elections are not held and the tasks and competences of the council/assembly and the executive board are taken over by the government commissioner appointed by the President of the Council of Ministers upon a request from the minister competent for public administration matters until the date of elections to the poviat council/voivodeship assembly and to the executive board for the next term of office. In this case we need to point to the different solutions applied by the legislator. Granting the President of the Council of Ministers the prerogative of designating a governmental commissioner must be considered understandable, while in measures laid down in preceding paragraphs which are applied to situations that are identical from the legal point of view (failure to create an executive body) the legislator stipulates appointment of a person who carries out the function of these bodies, not a government commissioner.

Dissolution of bodies, dismissal of the executive body

Subsequent prerogatives granted to the President of the Council of Ministers were regulated in Article 96 sec. 1 CSGL, Article 83 sec. 1 PSGL and Article 84 sec. 1 VSGL and were classed as supervisory instruments. Pursuant to these provisions, in the event of recurring violation of the Constitution or statutes by the commune council, poviat council or voivodeship assembly, the Sejm, upon a request of the President of the Council of Ministers, may dissolve by way of a resolution constitutive bodies of local government units. Pursuant to provisions of the PSGL and VSGL, dissolution of constitutive bodies is equal to the dissolution of the executive bodies of these units. There are voices in the scholarly discourse that limitation of this instrument to the Constitution and statutes only, omitting acts of the rank of a regulation or international agreements, is not justified (Matan, 2021, p.983). The wording of these provisions does not allow an answer to the question of what body is to be first to assess multiple violations of provisions of the Constitution or statutes or whether this competence may be realized when executive regulations are violated.

In light of the subject matter of this article, it needs to be pointed out that the role of the President of the Council of Ministers is key. It is the President of the Council of Ministers who requests at the Sejm that a commune council be dismissed and thus formulates the request and states that relevant premises have surfaced. An issue that must be considered for such an essential instrument that interferes in the sphere of independence of a local government unit is the answer to the question of how many times the body may commit a violation of the law and how many times such action will not trigger interference of the President of the Council of Ministers (Matan, 2021, p. 1183). What is more, the legislator does not rule whether the basis of the request to dismiss these bodies lies only in significant violations of the law – similar to Article 91 sec. 1 CSGL, Article 79 sec. 1 PSGL and Article 82 sec. 1 VSGL. The wording of these provisions also testifies to the fact that the request of the President of the Council of Ministers, however correctly motivated, cannot be approved by way of a resolution of the Sejm. Thus, the wording of Article 91 sec. 1 CSGL, Article 83 sec. 1 PSGL and Article 84 sec. 1 VSGL points to the likely ineffectiveness of the request of the President of the Council of Ministers and his supervision.

In the event of a dissolution of the constitutive body of a commune, the legislator points out under Article 96 sec. 1 CSGL that the President of the Council of Ministers, upon a request from the minister competent for public administration, shall appoint a person who carries out its function until the commune council is elected. In turn, pursuant to Article 83 sec. 1 PSGL and Article 84 sec. 1 VSGL, the prerogative of the President of the Council of Ministers covers both bodies of the poviat and voivodeship, that is the constitutive body and the executive body. Dolnicki believes that *this person, during their carrying out of this function, will be considered a legal representative of all bodies of the poviat, with all legal effects* (Dolnicki, 2020, online). In this place it needs to be pointed out that in order to appoint a person who carries out the function of these bodies, it is necessary for the minister competent for public administration to file a request.

Another prerogative concerns the supervisory instrument that pertains to the mandate of the commune's executive body. Pursuant to Article 96 sec. 2 CSGL, the legislator decided that in the event of recurring violation of the Constitution or statutes by the commune head, the governor (head of voivodeship) shall call

on the commune head to cease the violations and if such a call is not effective – he files a request at the President of the Council of Ministers that the commune head be dismissed. A similar legal construction is found in Article 83 sec. 2 PSGL and Article 84 sec. 2 VSGL, pursuant to which if it is the poviat/voivodeship executive board that commits recurring violations of the Constitution or statutes, the governor calls on the poviat council/voivodeship assembly to apply necessary measures and if this call is ineffective, he files a request at the President of the Council of Ministers, through the minister competent for public administration, that the poviat executive board be dissolved. Therefore, in the case of executive authorities of poviat – and voivodeship-level units, the governor first requests at constitutive authorities that *disciplinary* actions be taken, whereas in the scope that refers to commune-level units he carries out this stage of the provision discussed himself. The established line of judicial decisions points out that *identification of a one-off violation of statutes or the Constitution, after the governor's call to cease violations, is not sufficient to apply legal sanctions stipulated in Article 96 sec. 2 of the Self-Government Law. Even though the Self-Government Law does not specify the number of said repetitions, when the commune's executive body is to be dismissed it should take place a few times* (Judgement of the Voivodeship Administrative Court in Warsaw of 10 November 2006, II SA/Wr 1260/06, LEX no. 214225), while the Supreme Administrative Court holds that *there must be at least two violations* (Judgement of the Supreme Administrative Court of 17 October 2007, II OSK/491/07, LEX no. 438637).

There are claims in the scholarly discourse that the wording of Article 96 sec. 2 CSGL is general, without regulations on time within which the commune head is to cease the violations or the time within which the effect of a call to cease violations of the law is to take place (Matan, 2021, p. 1186). This prerogative may be applied after employing the *sanction* procedure resulting from the call to cease violations. Only the ineffectiveness of the call updates the competence of the President of the Council of Ministers. Dismissal of a commune head without a prior call may evidence a flaw of this procedure and a resulting possible dismissal of an appeal by the voivodeship administrative court.

The very construction of dismissal of a commune head does not feature in any other part of provisions of self-government systemic statutes or in the provisions of the Electoral Code. The legislator largely uses the term *expiry*.

Given the above, the use of a nomenclature different to the one that is present in other parts of the act, albeit equal from the point of view legal effects concerning mandates and functions held, needs be treated with some doubt. The use of the term *dismissal* for the poviat executive board and the voivodeship executive board may be advocated by the fact that these bodies do not come from the will of general elections, but their appointment is made by way of a decision of constitutive authorities. On the other hand, the use of the term *dismissal* for a commune head, for whom provisions of the Electoral Code stipulate expiry of the mandate, raises doubt.

It needs to be noted too that the current wording of Article 96 sec. 2 CSGL, Article 83 sec. 2 PSGL and Article 84 sec. 2 VSGL does not allow an answer to the question whether the President of the Council of Ministers is bound by the request of the governor when it comes to dismissal of executive authorities of local government units. Given the governor's position in the structure of central administration and the fact that the President of the Council of Ministers is his superior, the second variant should be opted for. The legislator reserves this competence for the President of the Council of Ministers and it is this body that is authorised to make decisions regarding such a request. However, it is not clear what should be done where there are prerequisites to dismiss executive bodies of local government units but the governor does not file such a request. Admittedly, it needs to be assumed that the President of the Council of Ministers should not resort to this prerogative granted to him, but he could request that the governor submit the said request to use this supervisory instrument.

The consequence of dismissal of a commune head, poviat executive board and voivodeship executive board involves the President of the Council of Ministers appointing a person who will temporarily carry out the function of the executive body of a given self-government unit. It needs to be pointed out here that the legislator provides in Article 96 sec. 2 CSGL that the appointment of a person who carries out the function of the commune head proceeds upon a request of the minister competent for public administration matters. When it comes to Article 96 sec. 2 CSGL, it needs to be assumed that the request of the minister is not binding on the President of the Council of Ministers but is only a proposal. From the point of view of the research subject

matter, the legislator does not stipulate such a request in Article 83 sec. 2 PSGL or Article 84 sec. 2 VSGL. It is impossible to state and explain why the legislator applied a solution here that departs from the one used in CSGL. All the more so since the governor's request is required under procedures regulated in Article 84 PSGL and Article 85 VSGL. A crucial fact is, the Voivodship Administrative Court in Gdańsk held that only the dismissal of the commune head becoming final allows the person designated to carry out his function to take up effective action (Judgement of the Voivodeship Administrative Court in Gdańsk of 5 March 2007, I SA/Gd 24/07, LEX no. 297017). The designation of a person who is to carry out the function of the commune head proceeds from the date on which the commune head elected in pre-term elections assumes his obligations, and if this date falls within 12 months from the expiry of the term of office of the commune head, from the date on which the commune head elected in nation-wide elections assumes his obligations. On the other hand, when it comes to the poviat executive board and the voivodeship executive board, the person designated to carry out the function of the executive board shall carry it out until the new executive authority is elected. Also in this respect there are doubts as to the time frame within which the poviat council and the voivodeship assembly are obliged to elect new executive boards. The legislator only stipulates (in PSGL and VSGL) the deadline for choosing the executive board in the event of holding elections to the constitutive authority and has decided that the council (assembly) are obliged to elect the executive board within three months from announcing the results of the elections (Article 27 sec. 1 PSGL, Article 32 sec. 1 VSGL). Therefore, it seems reasonable to adopt a three-month time limit counting from the date of dismissal of the executive board, that is from the date on which the executive board that is being dismissed ceases to carry out their function. The next question pertains to the situation where the constitutive authority does not chose the executive board within the said three-month period.

Suspension of bodies and establishing receivership

Other prerogatives that are accommodated under the scope of the executive activity of the President of the Council of Ministers result from Article 97 sec. 1 CSGL, Article 84 sec. 1 PSGL and Article 85 sec. 1 VSGL. Pursuant to these provisions, in the event of failure of bodies of a commune, poviat or voivodeship – prolonged and that does not promise any hope for improvement – to effectively carry out public tasks, the President of the Council of Ministers, upon a request from the minister competent for public administration matters may suspend bodies of a commune, poviat or voivodeship and establish receivership for the period of two years, though not longer than until the council/assembly and the commune head are elected for the next term of office. Establishment of receivership may proceed after presenting charges to bodies of local government units and calling on them to submit, immediately, a program for improving the situation in the commune/poviat/voivodeship. Pursuant to sec. 3, the government commissioner is appointed by the President of the Council of Ministers upon a request from the governor, filed through the minister competent for public administration matters. This prerogative of the President of the Council of Ministers is rather vague. One must first point to the premise of *failure (…) – prolonged and that does not promise any hope for improvement – to effectively carry out public tasks*. From the lexical point of view, *promise hope* means *anticipate something, expect a certain course of events*(Sobol, 2003, p. 848). Therefore, something that does not promise any hope for improvement must be interpreted as likely not to change any time soon. By using the connective *and*, the legislator applies conjunction of premises linking the above with prolonged lack of effectiveness in carrying out public tasks. Effectiveness as a criterion of assessment is not objective, but, quite the contrary – subjective (Matan, 2021, p. 988). Assessment of effectiveness of bodies should be subject to assessment of voters during the act of voting, not an assessment of the supervisory authority as part of application of a very severe means of supervision, i.e. suspension of commune bodies. Chmielnicki believes that the provision discussed is not grounded in Article 171 sec. 1 of the Polish Constitution and should

not be applied (Chmielnicki, 2022, p. 1183). It needs to be pointed out here that judicial decisions of administrative courts point out, to be true, that the institution of suspension of bodies of a commune refers to purposeful aspects and is strictly connected with the criterion of legality in the aspect of carrying out public tasks. The Supreme Administrative Court in its judgment of 24 November 2009 points out: *Interpretation of Article 7 CSGL that in essence leads to rejection of the criterion of legality when applying this supervisory measure must be considered unlawful. Irrespective of the doubts raised among legal scholars and commentators, 'the prolonged lack of effectiveness in carrying out public task's, though requiring assessment in terms of purpose, in reality means a violation of provisions of many statutes by commune bodies (which follows clearly from the explanatory memorandum to the supervisory ruling and cassation complaint) and thus the need to also (or rather most of all) apply the criterion of legality (Judgement of the Supreme Administrative Court of 24 November 2009, II OSK/1786/09, LEX no. 589043)*. The Voivodship Administrative Court in Warsaw came to similar conclusions, pointing out that *the basic premise for issuing a supervisory ruling to suspend commune bodies and to establish receivership lies in the lack of effectiveness in carrying out public tasks , which is a consequence of the commune bodies' violating the law and the obligations that follow from it* (Judgement of the Voivodeship Administrative Court in Warsaw of 10 October 2012, II SA/Wr 1329/12, LEX no. 1258346). When analysing the premises that determine the possibility to apply the prerogative of suspension of commune bodies, the President of the Council of Ministers must take into account threats to the operation of this local government unit and thus whether the evidence collected for a given period proves that it may not carry out its tasks in the near future and whether a given team of persons who manage a given local government unit is able to remove the visible threats (Judgement of the Voivodeship Administrative Court in Warsaw of 20 June 2007, II SA/Wa 693/07, LEX no. 341085).

Dolnicki believes that the measures adopted by the legislator deserve critique (Dolnicki, 2023, p. 643). The literature points out that the prerogative discussed has a three-stage structure. First of all, commune bodies must be presented with charges and a call to submit a programme to improve the situation. However, the legislator fails to point out the time limit for it and the

form in which these charges must be presented to commune bodies (Matan, 2023, p. 110). There is a view in the judicature that where the supervisory authority notices *violations of the law and other circumstances that confirm 'prolonged ineffectiveness in carrying out public tasks that does not promise hope for quick improvement', it should take action to secure implementation of public tasks* (Judgement of the Supreme Administrative Court of 5 March 2013, II OSK 135/13, LEX no. 1340168). In turn, *assessment of the ineffectiveness covers all actions of commune bodies* (Judgement of the Supreme Administrative Court of 5 March 2013, II OSK 135/13, LEX no. 1340168). Moreover, *it is possible to distinguish a situation where the commune council operates and carries out its tasks effectively but at the same time takes up activities that are not its tasks and competences or in forms not stipulated by the law, it violates the Constitution and statutes and a situation where it simply does not carry out its statutory tasks or carries them out ineffectively and such a state of affairs is prolonged thus violates the Constitution and statutes. The basic premise for issuing a supervisory ruling to suspend commune bodies and to establish receivership lies in the lack of effectiveness in carrying out public tasks, which is a consequence of the commune bodies' violating the law and the obligations that follow from it* (Judgement of the Supreme Administrative Court of 24 November 2009, II OSK 1786/09, LEX no. 589043). Therefore, if such premises are confirmed to have occured, the President of the Council of Ministers, upon a request filed by the minister competent for public administration matters, may suspend commune bodies which in consequence will lead to the establishment of receivership (Matan, 2021, p. 990). Therefore, the above lends itself to a conclusion that suspension of commune bodies and establishment of receivership is only possible upon a request of the minister, while on the other hand, filing such a request does not mean that the bodies will in fact be suspended (Matan, 2023, p. 112). Suspension of commune bodies is strictly associated with the establishment of receivership. However, the legislator does not stipulate whether both these activities must be implemented by way of one act or whether each of them is carried out separately. The literature points out that it would be inadmissible to suspend bodies of local government units whose effect materializes on the date of service of the suspension without the simultaneous establishment of receivership (Matan, 2023, p. 113). Pursuant to the wording of

Article 97 sec. 1 CSGL, Article 84 sec. 1 PSGL and Article 85 sec. 1 VSGL, suspension of LGU bodies and establishment of receivership may be done for the period of up to two years. Thus, this period may be shorter. What is crucial here, the statutory measures do not define what this period is determined by and what such an assessment must be based on. The above points out at the same time that is after the lapse of the said period the term of office is still running, then the bodies elected in elections and chosen continue their term of office according to the result of the elections. However, the literature highlights groundlessness of the measures applied, because suspension of bodies for failing to carry out public tasks effectively is not a premise that justifies a belief that their effectiveness will be greater after the period of suspension (Szewc, 2008, p. 583 and literature quoted there). The last stage of the President of the Council of Ministers' prerogative described is designation of the government commissioner. While establishment of receivership was abstract, designating a commissioner is a concrete act (Matan, 2023, p. 114). Pursuant to sec. 4, the government commissioner takes over the implementation of tasks and competences of a local government unit. The nomenclature used by the legislator departs from the terminology used in other instruments. However, it needs to be assumed that while the government commissioner does not replace bodies as such, by carrying out their tasks and competences it is a body in a functional approach (Matan, 2023, p. 114). The literature points to the differences in the legal position of a government commissioner appointed under the procedure stipulated in Article 85 sec. 1 VSGL, who is appointed to heal the situation of ineffectiveness of the voivodeship executive board, while the person designated to carry out the function of voivodeship bodies, pursuant to Article 33 sec. 4 VSGL, replaces the bodies dissolved by operation of law to maintain continuity in carrying out the functions of a self-governing voivodeship (Boć, 2001, p. 373).

Referring to the prerogative described above, the legislator, in Article 240a sec. 11 the Act of 27.08.2009 – Public Finances Act (Dz. U. (Journal of Laws) of 2024 item 1530 as amended), stipulates another premise that justifies its application: where the legislator fails to work out a repair procedure programme or where there is no positive opinion from the Regional Chamber of Audit on this programme, the local government unit's bodies may be suspended and

receivership may be established according to terms and procedure specified in CSGL, PSGL or VSGL, with the exception of calling on the bodies of this unit to immediately submit a recovery programme. Therefore, the above shows that the legislator omits the stage of calling for repairs, automatically moving to suspension of bodies and establishing receivership by the President of the Council of Ministers. In consequence, the above leads to appointing a government commissioner to carry out the functions of the suspended LGU bodies.

When it comes to the personal prerogative, there is some certain legal lacunae in all local government organisational statutes. It involves absence of legal solutions that specify formal requirements that must be met by a person designated to carry out the function of bodies of local government units and to exercise their competences and a person designated to carry out the function of the government commissioner. While the legislator does formulate formal requirements for councillors, commune head, members of poviat executive boards and voivodeship executive boards, such requirements are not specified for persons who carry out their tasks in the interim period. The above is essential as the legislator sees in the described prerogatives the need to ensure continuity of operations of the LGU, and thus the competences of the person who carries out tasks and competences of bodies of local government units are of utmost importance.

Conclusions

The analysis of provisions of local government systemic statutes and the Act on the organizational structure of the Capital City of Warsaw leads to a conclusion that the President of the Council of Ministers has been granted prerogatives that are crucial for the operation of local government units. The competences of the President of the Council of Ministers extend over organizational aspects – statutes, systemic aspects – bodies and material aspects – tasks. The research shows that statutory measures formulate doubts as to the correctness of legislative solutions in terms of cohesion of the legal system or compliance with Constitutional regulations on the independence of local government units. Self-government, under the Constitution of the Republic of Poland, is a directive based on which the government administration

co-governs with local government units (Bałaban, 2024, p. 16). A *de lege ferenda* conclusion is to adopt an assumption that the role of the President of the Council of Ministers in the context of operation of local government units should be restricted to to prerogative with unambiguous premises that ensure a clear, leaving no doubt, supervision over local government, leaving to local government units independence resulting from the value of decentralization of public authority. In particular, it is necessary to postulate the repeal of the competences of the Prime Minister related to the agreement on the content of the statutes of local government units and the Capital City of Warsaw. At the same time, in the light of the provisions of the Constitution of the Republic of Poland, it is necessary to repeal or amend the legal solutions concerning the suspension of local government bodies in the context of the lack of provisions justifying the assessment of the acquisition by the suspended bodies of effectiveness in the implementation of public tasks.

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