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Changes in the Executive Body of the Municipality since the Electoral Term 2018–2023

Zmiany dotyczące organu wykonawczego w gminie od kadencji 2018–2023

SUMMARY

At the turn of November 2018, the next local elections were held in Poland. However, this time, along with the next term, a number of new legal arrangements and structures have been implemented as a result of the adoption of the Act of 11 January 2018 on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies. The legislature has set itself the objective of adopting solutions to enable and facilitate greater influence for members of local and regional communities, especially in legislative and executive bodies of local government units. Some of these changes affect the executive body in the municipality (local government commune), i.e. village mayor (town mayor or city president), affecting the change in its scope and powers.

Keywords: municipality; village mayor; report on the state of municipality; double term in office; vote of confidence

On 11 January 2018, the Sejm of the Republic of Poland of the 7th term adopted the Act on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies[1]. The assumption is that this law has two main objectives, firstly to increase the participation of citizens in the control and functioning of local authorities, secondly, to increase the role of local communities in the process of electing bodies elected in general elections, and to control the process and the bodies responsible for preparing and

[1] Journal of Laws 2018, item 130.

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holding elections. This Act significantly influenced changes in the provisions of local government laws, that is, the Act of 8 March 1990 on Municipal Self-Government[2], the Act of 5 June 1998 on District Self-Government[3] and the Act of 5 June 1998 on Voivodeship Self-Government[4].

Particularly important are the changes concerning the municipality's executive body, which entered into force with the current term of office 2018–2023, and these changes include: 1) the extension of the term of office of the executive body, while introducing the principle of limitation of holding the office by one person to two terms (the dual term principle); 2) the establishment of a committee of complaints, motions and petitions to participate in the procedure to process complaints against the actions of the village mayor (town mayor, city president) and municipal organizational units; 3) introducing the obligation to hold an annual debate on the state of the municipality combined with casting a vote of confidence to the executive body; 4) the extension of the ban on being a member of governing or auditing and revision authorities, or a representative of a commercial company with the participation of municipal legal entities to village mayors (town mayors, city presidents) and their spouses or cohabiting persons; 5) failure to grant a vote of confidence in the evaluation of the presented report on the state of the municipality, as a condition for holding a referendum on the dismissal of the village mayor (town mayor, city president).

The institution of executive body in the municipality, i.e. the village mayor (town mayor, city president) has a centuries-old tradition in Poland. The institution of village mayor has been evaluating for centuries, starting from the function closely related to land ownership rights, through judicial functions, to the model of a local government executive body[5]. The Polish term for "village mayor" (*wójt*) was borrowed from German – *vogt* meaning 'governor', 'superior', 'landlord'. In ld Polish, the term "fojt" was also used to denote the head of rural authorities and the head of the municipal administration in towns and cities established under German law since the 13th century[6].

The contemporary political position of the village mayor (town mayor, city president) is clearly associated with the function of the executive body in the municipality as the basic unit of local government, and is determined by the systemic regulations contained in the Act of 8 March 1990 on Municipal Self-Government.

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[2] Consolidated text Journal of Laws 2019, item 506, hereinafter: AMSG.

[3] Consolidated text Journal of Laws 2019, item 511.

[4] Consolidated text Journal of Laws 2019, item 512.

[5] M. Bąkiewicz, *Wójt (burmistrz, prezydent miasta)*, [in:] *Administracja publiczna*, vol. 3: *Ustrój administracji samorządowej. Komentarz*, eds. B. Szmulik, K. Miaskowska-Daszkiewicz, Warszawa 2012, p. 241.

[6] C. Burek, *Status prawny wójta w samorządzie gminy wiejskiej w II RP*, „Samorząd Terytorialny" 2008, no. 3, p. 47.

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In the initial period after the rebirth of local government at the municipal level, i.e. in the period of 1990 to 2002, the village mayor (town mayor, city president) was at the same time the chairman of the collegial executive body in the municipality, i.e. the board, elected by the councillors by a secret ballot vote[7]. A significant change took place in 2002 based on the provisions of the Act of 20 June 2002 on the direct election of the village mayor, town mayor and city president[8], since the previous capacity of the mayor as a chairman of the collegial executive body was transformed into a monocratic executive body in the municipality, elected by universal, direct, equal and secret ballot.

The change in the manner of creating the executive body in the municipality resulted in the necessity to redefine this body: its position, role, scope of responsibilities and legally defined powers. The village mayor (town mayor, city president) elected in general election became an executive body with strong social legitimacy to represent and manage the municipality, especially in terms of performing public tasks of local importance, striving to satisfy the basic, current needs of the local community. Under the legislation currently in force, pursuant to Article 11a AMSG, the rules and procedures for holding election to the municipal council and the election of a village mayor (town mayor, city president) are set forth in the Act of 5 January 2011 – Election Code[9], while with respect to the President of the Capital City of Warsaw and town mayors of individual districts of Warsaw, the provisions of the Act of 15 March 2002 on the System of the Capital City of Warsaw[10] are also applicable.

It is obvious that the functioning of the bodies of territorial government units is based on the principle of rotation in office, which applies to the same extent and scope to the legislative and audit bodies of municipalities, districts and regions, as well as the executive bodies of these units. As A. Wiktorowska notes, the rotation in office characteristic of local government units' bodies is an obvious consequence of their elective nature[11]. The Constitutional Tribunal in its judgement of 26 May 1998[12] ruled that the principle of rotation in office is a constitutional norm which means an order to grant power of attorney to bodies elected by universal suffrage for a definite time frame and to ensure that the time frame cannot exceed certain reasonable limits, and also an order to establish such legal regulations which ensure that newly elected bodies are constituted so that they can start performing their

[7] Z. Szmaj, *Funkcja burmistrza w świetle prawa i oczekiwań społecznych*, [in:] *Dylematy zarządzania w jednostkach samorządowych*, ed. Z. Blok, Kalisz 2003, p. 15 ff.

[8] Consolidated text Journal of Laws 2010, no. 176, item 1191 as amended.

[9] Consolidated text Journal of Laws 2019, item 684.

[10] Consolidated text Journal of Laws 2018, item 1817.

[11] A. Wiktorowska, *Samorząd terytorialny*, [in:] *Prawo administracyjne*, eds. J. Jagielski, M. Wierzbowski, Warszawa 2019, p. 276.

[12] K 17/98, OTK 1998, no. 4, item 48.

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functions without undue delay, after the end of the previous term. The principle of rotation in office requires the precise definition of maximum duration of the term of office of the legislative bodies constituting of local government and of village mayors, town mayors and city presidents, but this time limit should be defined before the election of these bodies and should not, in principle, be changed with regard to bodies already elected (i.e. during the term of office)[13].

Scholars in the field emphasize that the principle of rotation in office came into being as a desire to oppose absolute power with its heredity or the lifetime exercise of office. The principle of rotation in office was seen as an effective tool to limit the natural tendency to monopolise power by defining the duration of the exercise of a specific function, after which the "office holder" returns to the ranks of persons that are equal due to the legal position of members of a given community. It was also stressed that the idea of the rotation in office also includes the limitation of the scope of powers granted for its period[14]. Nowadays it is pointed out that the term of office is an indispensable element of a democratic state governed by the rule of, limits power in terms of time and gives it a reversible character[15].

In accordance with Article 26 (2) AMSG, the term of office of the village mayor (town mayor, city president) commences on the date of the start of the term of office of the municipal council or his/her election by the municipal council and expires on the expiry of the term of office of the municipal council. Until the entry into force of the Act of 11 January 2018 on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies, the term of office of the municipal council, thus the village mayor (town mayor, city president), as the executive body in the municipality was 4 years. As K. Wlaźlak rightly points out, this is not about the mere existence of a public body, since that body exists by virtue of law and operates on a continuous basis. Therefore, this is rather about the specific composition of that body[16]. A term of office within the meaning of Article 16 AMSG refers to the period of holding the office by a specific personal substrate of the municipal council, during which the council in that composition is legitimized for the exercise of its powers. The length of the terms of office of various bodies is not uniform, and the way in which the beginning and end of the term of office are to be determined can be defined differently. The legislature, by way of the provision of Article 1 point 3 of the Act on amending certain laws to increase the participation of citizens in the process of

[13] A. Wiktorowska, *op. cit.*, p. 276.

[14] J. Korczak, *Kadencyjność organów jednostek samorządu terytorialnego*, „Samorząd Terytorialny" 2014, no. 7–8, p. 42.

[15] Z. Czeszejko-Sochacki, *Polskie prawo państwowe*, Warszawa 1978, pp. 130–131.

[16] K. Wlaźlak, *Komentarz do art. 16 u.s.g.*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. P. Chmielnicki, Warszawa 2013, p. 347.

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electing, functioning and controlling certain public bodies has amended the content of Article 16 AMSG, ordering that the amendments be applied to the term of office of the authorities of local government units following the term of office during which the Act entered into force. Under the current legal situation, i.e. since the local elections held in October and November 2018, in accordance with Article 16 AMSG, the term of the municipal council is 5 years from the date of election[17], this also affects the change in the length of the term of office of the village mayor (town mayor, city mayor), which is also currently 5 years (2018–2023). In view of the 5-year term of the municipal council as defined in Article 16 AMSG, their another term of office may not be set in the statutes of the municipality[18]. However, the extension of the term of office was not the only change made by the legislature with regard to the executive body in the municipality. This is so because until now, since the introduction of direct elections for village mayors (town mayor, city mayor), the legislature has not provided any restrictions on the number of terms in office in the exercise of the functions of the executive body of the municipality[19]. This kind of situation in the political bodies has always arisen controversy, which is why the legislature has also made a change in this regard. The provision of Article 5 point 4 of the Act on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies has amended Article 11 of the Act – Electoral Code, by adding § 4 which reads as follows: "Deprived of the right of election as village mayor in a given municipality is a person who has previously been elected twice as village mayor in that municipality in elections for the post of village mayor held pursuant to Article 474 § 1". This means that since the formation of newly elected legislative and executive bodies in municipalities after the local government elections of 2018, people elected to the office of village mayor (town mayor, city president) will be allowed to serve for a maximum of two terms (2018–2023, 2023–2028). Previously, there were views that this restriction should have been extended even to those terms in office that had been closed, which was contrary to the *lex retro non agit* principle. After two terms of office, the person serving as village mayor (town mayor or city president) loses his eligibility to stand for election in this respect, which means that he can no longer stand as village mayor in the municipality in which he was twice elected to serve as an executive body.

[17] If the election was held on 21 October 2018, the term of office of municipal councils, district councils and voivodeship assemblies ends on 21 October 2023.

[18] Judgement of the Supreme Administrative Court of 4 March 1994, II SA 69/94, ONSA 1995, no. 2, item 68.

[19] The highest score in this regard belongs to the former Mayor of the Wręczyca Commune, who held the position for 40 years, first as the head of the commune, since 1990 being the Chair of the Municipal Board and from 2002 to 2014 by winning successive direct elections.

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Another change concerning the executive body in the municipality is related to the appointment, starting from the term of office 2018–2023, of a new permanent, obligatory committee for complaints, motions and petitions operating within the municipality council, in order to participate in the procedure of examining complaints about the actions of the village mayor (town mayor, city president) and municipal organizational units. The special nature of this committee is made up of three elements: the obligatory nature of its establishment, the statutorily defined composition and the statutorily defined scope of activity. Thus, the failure to appoint the committee for complaints, motions and petitions, similarly to the audit committee, constitutes a breach of law and the basis for undertaking supervisory activities, similarly to the audit committee[20]. As is clear from Article 18a (1) AMSG, the municipal council is not only a legislative body, but also an audit body, which is authorised to review the activities of the village mayor (town mayor, city president), municipal organizational units and municipal auxiliary units[21]. Until that moment, the audit function of the municipal council had been performed by the obligatorily appointed audit committee. However, by Article 1 point 5 of the Act on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies the legislature added to the provisions of the Act on Municipal Self-Government Article 18b, which states that currently the municipal council hears complaints against activities of the village mayor (town mayor, city president) and municipal organizational units, and also motions and petitions submitted by citizens with the help of the committee for complaints, motions and petitions. It is composed of councillors, representatives of all political fractions in the council, with the exception of councillors acting as council chairman and vice-chairman, while the rules and procedures of the committee for complaints, motions and petitions are laid down in the statutes (charter) of the municipality. The legislature has placed the obligation to establish the committee for complaints, motions and petitions directly after the provision concerning the audit committee. In this way, it clearly emphasized the extension of the audit powers on the part of the municipal council with respect to the village mayor (town mayor, city president) and municipal organizational units. The committee for complaints, motions and petitions was given the status of a mandatory and obligatorily appointed committee. Since the term of 2018–2023, the appointment of two committees as part of the municipal council, i.e. the audit committee (as it had been the case so far) and the committee for complaints, motions and petitions, has become mandatory, while

[20] B. Dolnicki, *Samorząd terytorialny*, Warszawa 2019, p. 104; judgement of the Voivodeship Administrative Court in Olsztyn of 30 June 2011, SA/Ol 296/11, LEX no. 1086423.

[21] Decision of the Voivodeship Administrative Court in Łódź of 10 July 2019, III SA/Łd 430/19, LEX no. 2694052.

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the appointment of other committees within the legislative body remains optional, as provided for in Article 21 AMSG.

It should be stated that the emergence of the committee for complaints, motions and petitions does not result in the emergence of a "new body" in the municipality. We still remain within the organizational arrangement of the two bodies in the municipality: the council as the legislative and audit body and the village mayor (town mayor, city president) as the executive body. Therefore, the committee for complaints, motions and petitions is, like any other committee, merely an internal body operating within the municipal council, being directly subordinate and without being equipped with any independent powers of a sovereign nature. The legislature left the audit powers for the handling of those complaints, motions and petitions to the legislative body, i.e. the municipal council, pursuant to Article 18b AMSG, and the notice on how the complaint was handled has the form of a resolution[22]. Therefore, the committee acts as an auxiliary entity with the participation and assistance of which the municipal council will exercise its audit powers. The municipal council cannot delegate its power to handle complaints, motions and petitions to that committee, and its actions may not in any way be independent as regards responding to complaints, motions or petitions submitted to the municipal council. Its activities are to be ancillary to those of the municipal council concerning the reception, examination and consequently the preparation of proposed response by to the council on the content of complaints, motions or petitions. The committee may not in any way impose or order the municipal council to reply in any manner to a complaint, motion or petition, but may merely submit proposals in this regard, since the final decision has been left to the municipal council[23]. Only municipal councillors may be members of the committee for complaints, motions and petitions, so the participation of individuals without the status of councillor or external entities is excluded. It is also clear that the composition of the committee cannot be the same as that of the entire municipal council[24]. The rationale behind the establishment of committees by the municipal council as specialised bodies of the council is a sort of division of labour and powers to speak on important matters for the local community. The rule that all council committees speak on all matters decided by the municipal council undermines the need for a council committee to operate[25]. If all the councillors make up a committee, such a division becomes illuso-

[22] Judgement of the Voivodeship Administrative Court in Gorzów Wielkopolski of 10 July 2019, II SA/Go 321/19, LEX no. 2697391.

[23] C. Martysz, *Komentarz do art. 18b u.s.g.*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. B. Dolnicki, Warszawa 2018, pp. 341–342.

[24] Judgement of the Voivodeship Administrative Court in Gliwice of 12 June 2019, III SA/Gl 449/19, LEX no. 2703442.

[25] Judgement of the Supreme Administrative Court of 15 November 2005, II OSK 235/05, LEX no. 196688.

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ry. When all the councillors belong to one (the same) or all the council committees, it undermines the need for such committees to operate: a committee meeting is in which case tantamount to a plenary council meeting[26]. The law excludes, as possible members of committees, those councillors, who act as chairman or vice-chairman of the municipal council. The law gives the right to determine the number of members of the committee for complaints, proposals and petitions to the municipal council, which number is to be reflected in the content of statutes (charter) of the municipality[27]. The legislature, in Article 18b (2) AMSG, used the phrase that the committee in question must include "representatives of all political fractions in the council". Such a statutory requirement is a mandatory rule, so a resolution of the municipal council which prevents the fraction of councillors from having its representative in the committee for complaints, motions and petitions will manifestly be contrary to Article 18b (2) AMSG and thus invalid. This is so because no legal provision, including Article 18b (2) AMSG, does not make the composition of the committee conditional on the assessment of the circumstances demonstrating the good or ill will of the legislative body[28]. The phrase "representatives of all the fractions in the council" should be deemed a form of precept[29], i.e. each fraction of councillors that was established must have its representative in the committee for complaints, motions and petitions. The committee for complaints, motions and petitions, being a collegiate body, decide by taking resolutions and under general principles, and thus by a simple majority with a quorum of at least half of the composition of the committee as specified in the provisions of the statutes (charter) of the municipality[30]. The feature of the committee for complaints, motions and petitions that makes it distinct from other committees is a clearly defined scope of its action strictly and directly related to the scope and content of complaints, motions and petitions to the municipal council, its scope of action will always depend on the actually submitted complaints, motions and petitions falling within the jurisdiction of the municipal council[31].

The legislature has not defined all issues related to the functioning of the committee for complaints, motions and petitions committee in the provisions of the Act on Municipal Self-Government, since the issues related to the internal structure of the committee, the procedure for submitting and subsequently selecting candidates

[26] Judgement of the Voivodeship Administrative Court in Gliwice of 12 June 2019, III SA/Gl 449/19, LEX no. 2703442.

[27] C. Martysz, *Komentarz do art. 18b u.s.g.*, p. 336.

[28] Judgement of the Voivodeship Administrative Court in Szczecin of 17 April 2019, II SA/Sz 232/19, LEX no. 2655827.

[29] Judgement of the Supreme Administrative Court of 14 December 2011, II OSK 2069/11, LEX no. 1108400.

[30] C. Martysz, *Komentarz do art. 18b u.s.g.*, p. 344.

[31] *Ibidem*, p. 342.

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for committee members, the rules of representation of individual political council fractions in the composition of the committee, the procedure for convening meetings and the rules for adopting resolutions, as well as other issues related to the rules and procedure of operation of the committee for complaints, motions and petitions are each time defined in the statutes (charter) of the municipality[32].

Another change concerning the executive body in the municipality, i.e. the village mayor (town mayor, city president) concerns the provision of Article 28aa AMSG added by Article 1 point 11 of the Act of 11 January 2018 on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies. The legislature has introduced the institution of the report on the state of the municipality starting from the term of office 2018–2023 and has linked evaluation of the presented report with or without a vote of confidence granted or not by the municipal council to the village mayor (town mayor, city president). The institution of the report on the state of the municipality, as assumed by the legislature, is an important form of audit by the municipal council in relation to the executive body. It is intended as a supplement to the regulations that have been in force so far, which, on the one hand, assigned this role to the audit committee, and on the other hand, found a proper manifestation of this review in the procedure of granting discharge to the municipal authorities[33]. Consideration of this report and the adoption of the resolution in question was considered by the legislature to be the exclusive power of the municipal council in the light of Article 18 (2) point 4 AMSG. Moreover, the legislature has decided that the preparation of the report on the state of the municipality is one of the basic duties of the head of the village mayor (town mayor, city president), and its presentation, as provided for in Article 28aa (1) AMSG, is to take place annually, by 31 May at the latest, and work on it should be undertaken immediately after the end of the given calendar year[34]. The legislature's failure to specify detailed criteria for the examination of the report, which would be applied in its assessment, therefore a space is created for the adoption of resolutions by the municipal council on whether or not to grant a vote of confidence with significant political elements[35]. The justification for adopting a resolution on whether or not to grant a vote of confidence to the village mayor cannot be the very course of the debate on the report on the state of the municipality, which has been recorded with the use of video and sound recording equipment, and documented in the minutes of the session of the

[32] B. Dolnicki, *op. cit.*, p. 107.

[33] M. Bokiej-Karciarz, M. Karciarz, *Raport o stanie gminy, powiatu, województwa*, Warszawa 2019, p. 12.

[34] Judgement of the Voivodeship Administrative Court in Kraków of 28 November 2019, III SA/Kr 1002/19, LEX no. 2752819.

[35] B. Dolnicki, *op. cit.*, p. 113.

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municipal council[36]. The solution adopted regarding the evaluation of the report on the state of the municipality is definitely different from the one applicable to the debate on the evaluation of the implementation of the municipal budget, which is based on objective, measurable criteria. When adopting the resolution, the municipal council states whether the budget was spent in accordance with the budget resolution and whether the implementation was reliable, purposeful and economically sound. The emphasis on the link between the discharge and the assessment of the implementation of the municipal budget is important here, because the institution of discharge cannot be combined with any assessment of the activity of the village mayor (town mayor, city president) other than that which is directly related to the implementation of the budget of the municipality[37]. The report on the state of the municipality includes a summary of activities of the village mayor (town mayor, city president) in the previous calendar year, in particular the implementation of policies, programmes, strategies, resolutions of the municipal council and the civic budget. There is no clear indication in the provisions of the Act on Municipal Self-Government what precisely should be presented in the content of such a report. There is a possibility of adopting a separate resolution by the municipal council to detail the requirements of the report, but it is only "optional", as it results from the provision of Article 28aa (3) AMSG, not a statutory obligation. Regulating this issue in the municipal statutes (charter) is also an inappropriate solution, because each modification regarding the requirements for the report would entail the need to amend the statutes, which would negatively affect the normative stability[38]. Consideration of the report on the state of the municipality was combined with the municipal council's resolution on granting or not granting discharge to the village mayor (town mayor, city president) on budget implementation, with the issue of the report being first to be processed. Adoption of such a solution by the legislature raises doubts, because the combination of these two matters in one session means that the debate on the report on the state of the municipality can affect the course of subsequent discussion on the implementation of the budget and vote on discharge and can transfer negative emotions from one debate to another[39]. The legislature introduced the obligation to hold a debate during which councillors are entitled to speak without time limits, according to Article 28aa (5) AMSG. Citizens with the right to speak are also participants in the debate. However, this right is conditional because, firstly, a municipal resident who would like to speak in a debate must

[36] Judgement of the Voivodeship Administrative Court in Olsztyn of 14 November 2019, II SA/Ol 785/19, LEX no. 2741804.

[37] C. Martysz, *Komentarz do art. 28aa u.s.g.*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. B. Dolnicki, pp. 536–537.

[38] *Ibidem*, p. 538.

[39] B. Dolnicki, *op. cit.*, p. 115.

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notify the chairman of the municipal council of this intention in writing, secondly, such notification must be supported by the signatures of at least 20 people in the municipality of up to 20,000 inhabitants, or at least 50 people in the municipality with more than 20,000 inhabitants (Article 28aa (7) AMSG). The notification shall be submitted no later than on the day preceding the day for which the session on the report on the municipality was convened, while the residents are allowed to speak in the order in which the chairman of the municipal council received the notification. The number of residents who can take the floor in the debate is 15 (Article 28aa (8) AMSG)[40]. The final result of the debate on the report on the state of the municipality is the voting by the councillors on granting a vote of confidence to the village mayor (town mayor, city president). The resolution shall be adopted by an absolute majority of the statutory composition of the municipal council. Where the resolution on the granting of a vote of confidence fails to win the required majority, this is tantamount to not granting such a vote of confidence. On the other hand, in the case of voting on not granting a vote of confidence, the absence of the required majority supporting the resolution is tantamount to granting a vote of confidence to the village mayor (town mayor, city president). The granting of a vote of confidence or lack thereof has far-reaching consequences, since in accordance with Article 28aa (10) AMSG, in the absence of a vote of confidence in two consecutive years, the municipal council may decide to hold a referendum on the dismissal of the village mayor (town mayor, city president). A single refusal to grant a vote of confidence does not yet give rise to a legal basis for the municipal council to initiate proceedings for the dismissal of the executive body in the municipality. It should be noted that the legislature does not require that two negative resolutions be adopted within the same term of office, so a situation is possible when the resolution is adopted in the last year of the "old" term of office and in the first year of the "new" term of office, of course it will apply each time to the same village mayor (town mayor, city president). However, even two refusal resolutions in the following years do not necessarily have to lead to the initiation of proceedings for the dismissal of the village mayor (town mayor, city president) because the legislature used the wording that the municipal council may or may not initiate proceedings in this case, so this remains within the discretion of the councillors[41].

Another amendment, very important in practice, was introduced by the legislature in the provision of Article 24f (2) AMSG containing the so-called anti-corruption laws. The ban on concurrent holding the positions of members of the management or review and audit authorities, or representatives of commercial com-

[40] P. Kłucińska, D. Sześciło, B. Wilk, *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018 r.*, „Samorząd Terytorialny" 2018, no. 10, p. 42.

[41] C. Martysz, *Komentarz do art. 28aa u.s.g.*, p. 540; B. Dolnicki, *op. cit.*, p. 117.

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panies involving municipal legal persons or undertakings, has been extended under Article 1 point 10 of the Act on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies not only to spouses or cohabiting persons of the individuals specified therein[42] including village mayors, but also to the village mayors themselves (town mayors, city presidents). This means that it becomes problematic for village mayors to be members of governing bodies or review and audit bodies of municipal companies[43].

The last change concerning the executive body in the municipality, which has been implemented since the current term of office 2018–2023 as a result of the entry into force of the Act on amending certain laws to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies, was included by the legislature in Article 28b AMSG. Until now, the provision in question was as follows: "The municipal council, after 9 months from the date of the election of the village mayor and no later than 9 months before the expiry of the term of office, may adopt a resolution to hold a referendum on the dismissal of the village mayor for a reason other than failure to grant a discharge to the village mayor only upon a motion of at least 1/4 of the statutory composition of the council". Under the current legislation, the above provision is amended: "The municipal council, after 9 months from the date of the election of the village mayor and no later than 9 months before the expiry of the term of office, may adopt a resolution to hold a referendum on the dismissal of the village mayor for a reason other than failure to grant a discharge to the village mayor or failure to grant him a vote of confidence only upon a motion of at least 1/4 of the statutory composition of the council". It follows that the content of the provision of Article 28b AMSG directly corresponds to the institution, introduced by the legislature in Article 28aa AMSG, of the vote of confidence for the village mayor (town mayor, city president) due to the acceptance by the municipal council of the presented report on the state of the municipality. Apart from the procedure of dismissal of the executive body in a referendum connected with not granting the discharge, and now extended by not granting a vote of confidence, the legislature allows for the possibility of dismissing the village mayor (town mayor, city president) in a referendum also for any other reason during the term of office. However, this is done without specifying the reasons for his dismissal in this manner. This results in the possibility for the municipal council to apply various criteria for evaluating the work of the executive body, including criteria of a discretionary or political nature, which is also reflected in the case of evaluating the executive body's activity on the basis of the municipal status report. The substantive reason for the dismissal may be any reason other than

[42] B. Dolnicki, *op. cit.*, p. 345.

[43] B. Jaworska-Dębska, [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Warszawa 2019, pp. 461–462.

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failure to grant discharge or failure to grant a vote of confidence if, in the opinion of at least 1/4 of the statutory composition of the municipal council, such a reason and thus the submitted motion deserves to be considered. Such a motion should be made in writing and be substantiated, i.e. it should list the reason(s) which prompted the councillors to submit it, and it must be signed and submitted to the chairman of the council. The motion for dismissal is then forwarded to the audit committee for its opinion, although this opinion is not binding on the municipal council[44]. The legislature states in Article 67 (3) of the Act of 15 September 2000 on the Local Referendum[45] that if in a valid referendum on the dismissal of the village mayor (town mayor, city president), held at the request of the municipal council for a reason other than failure to grant discharge, more than half of the valid votes were cast against the dismissal of the village mayor (town mayor, city president), the activity of the municipal council is terminated by virtue of law. As noted by K. Podgórski, the above rule is regarded as a kind of repression against the municipal council due to a lost referendum, its effects being a particular strengthening of the position of the village mayor (town mayor, city president) towards the council, a significant weakening of the council's auditing abilities, and thus inhibiting its initiatives[46]. Each case of expiration of the mandate of the village mayor (town mayor, city president) entails the need to hold new elections. If the mandate of the village mayor expires before the end of the term, the function of the executive body in the municipality until the newly elected village mayor takes up his duties shall be performed by a person appointed by the President of the Council of Ministers[47].

It is difficult to unambiguously evaluate these changes concerning the executive body in the municipality. On the one hand, the extension of the ban on concurrent holding of positions in management or review and audit authorities or representatives of commercial companies with the participation of municipal legal persons or undertakings to village mayors (town mayors, city presidents), their spouses and cohabiting persons should be assessed positive. The extension of the term of office by one to five years, while restricting the possibility of holding office to only two terms of office, is difficult to be clearly evaluated as either positive or negative. Of course, the initial attempts to prohibit the re-election of those who completed their second or subsequent term of office in 2018 were absolutely unacceptable. The Constitutional Tribunal has repeatedly expressed its position and has unequivocally determined that any changes to the electoral law can only have effect for the

[44] C. Martysz, A. Wierzbica, *Komentarz do art. 28b u.s.g.*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. B. Dolnicki, pp. 541–542.

[45] Consolidated text Journal of Laws 2019, item 741.

[46] K. Podgórski, *Nowy kształt organów wykonawczych gmin*, „Samorząd Terytorialny" 2002, no. 10, p. 5.

[47] J. Zimmermann, *Prawo administracyjne*, Warszawa 2018, p. 295.

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future[48]. There are also views that the introduction of the limitation of the term of office in local government elections means depriving specific individuals of the right to stand for election guaranteed in Article 169 of the Polish Constitution, as well as depriving citizens of the right to democratic assessment of the previously elected village mayor (town mayor, city president), i.e. limitation of the scope of their rights to elect under Article 62 of the Polish Constitution.

The assessment of whether this solution is appropriate or not will probably be a matter of the future, but I believe that the possibility of running in the elections again "after a one-term break" should have been reserved. The most difficult thing is the assessment for the establishment of the committee for complaints, motions and petitions, whether in fact it will contribute to more effective implementation of the audit function of the municipal council in relation to the village mayor (town mayor, city president) and the report on the state of the municipality in connection with granting a vote of confidence, especially in the absence of any specifically statutory review criteria to be applied when evaluating the submitted report.

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[48] Judgement of the Constitutional Tribunal of 20 July 2011, K 9/11, OTK-A 2011, no. 6, item 61.

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STRESZCZENIE

Na przełomie października i listopada 2018 r. odbyły się w Polsce kolejne wybory samorządowe, jednakże tym razem wraz z kolejną kadencją władz samorządowych doszło do wdrożenia wielu nowych rozwiązań i konstrukcji prawnych będących efektem uchwalenia w dniu 11 stycznia 2018 r. ustawy o zmianie niektórych ustaw w celu zwiększenia udziału obywateli w procesie wybierania, funkcjonowania i kontrolowania niektórych organów publicznych. Ustawodawca postawił sobie za cel przyjęcie rozwiązań, które mają umożliwić i ułatwić członkom wspólnot samorządowych większy wpływ na funkcjonowanie tych wspólnot, w szczególności organów stanowiących i wykonawczych w jednostkach samorządu terytorialnego. Niektóre z tych zmian dotykają organu wykonawczego w gminie samorządowej, czyli wójta (burmistrza, prezydenta miasta), wpływając na zmianę zakresu jego działania i kompetencji.

Słowa kluczowe: gmina; wójt; raport o stanie gminy; dwukadencyjność; wotum zaufania

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