

BOŻENA POPOWSKA

Contractual forms for the implementation of tasks by local government - theoretical and legal issues

Summary

The discussion in the article takes into account two aspects: the specific nature of contracts as legal forms of action of local government bodies, and the special relationship of two branches of law, i.e. administrative law and public economic law. Both directions of this discussion entail a civil law aspect with an extended theory on contracts and the freedom of contract.

The study assumes that the element linking the above threads is the principle of the social market economy as one of the foundations of the system of the Republic of Poland, which does not exclude state economic activity, subject to Article 1, Article 2 and Article 5 of the Constitution of the Republic of Poland. This field includes the regulations of the Law on Municipal Management, whose addressees are local government bodies. For the implementation of the tasks assigned to local government in the field of economy, local government bodies enter into contracts; this is one of the legal forms that allows them to take into account the complexity of administration-economy relations (relationships), and therefore third parties: entrepreneurs, contractors, competitors and consumers.

An area of study related to the issues stated in the title and which is significant for both theoretical and practical reasons is the regulation of Article 3 of the Law on Municipal Management. This provision provides a specific legal basis for concluding contracts "for the purpose of entrusting the performance of tasks" in the field of municipal management. The article points to the issue of the legal determination of contractual entrustment of such tasks, taking into account the constitutional principle of binding the administration to the law (Article 7 of the Constitution of the Republic of Poland) and the civil law principle of freedom of contract (Article 353¹ of the Civil Code). The scope of freedom enjoyed by local government units in the use of the form of contract in the doctrine is also considered as an element of "organizational independence" of these units, and whose theoretical expression is the constitutional principle of subsidiarity.

The article emphasizes the lack of a general and common statutory basis in the Polish legal order that would regulate the transfer of public tasks, as well as the lack of a statutory regulation providing a template(s) for the contract, which is most often referred to in the doctrine as a public-legal contract.

Keywords: legal forms of action of local government bodies – "organizational independence of local government units" – privatization of local government tasks – principle of freedom of contract – principle of subsidiarity