

ANNA TRELA

Gloss to the judgment of the Supreme Administrative Court of January 31, 2023, file ref. act III OSK 1008/22 (purchasing on the principles of universal availability and the expiry of the mandate of a municipal councillor)

Summary

The gloss deals with an analysis of the provision of Art. 24f sec. 1 of the Act of 8 March 1990 on commune self-government (u.s.g.), from which it follows that councillors may not conduct business activity on their own account or jointly with other persons using the communal property of the municipality in which the councillor obtained the mandate, as well as managing such activity or be the representative or proxy in the conduct of such activities. Violation of this prohibition results in the loss of the ticket. The established anti-corruption provision still raises many doubts. As a rule, it is assumed that due to its purpose and the subject and scope of violations, this prohibition is not absolute. Particularly controversial is the use of municipal property by the councillor on the principles of its universal availability, consisting in making purchases in the councillor's shop, which do not require the use of public procurement. In order to clarify the essence of this case, the issues that do not raise doubts under Art. 24f sec. 1 u.s.g. and which entail the absolute necessity of terminating the mandate of the councillor are discussed first. Following this, judgments are presented in which administrative courts found that the use of property on the basis of general availability is allowed unless it privileges the position of the councillor and any purchases made in stores owned by the councillor do not result from prior arrangements or contracts. The development of this concept is dictated by the content of constitutional provisions and the ratio legis of Art. 24f sec. 1 u.s.g.

Keywords: councillor – expiration of the mandate – use of property on the basis of universal availability – municipal property – economic activity