

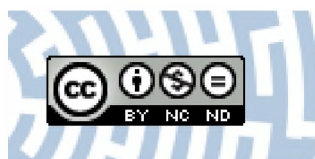


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**Author:** Jadwiga Glumińska-Pawlic, Tomasz Gwóźdź

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**Jadwiga Glumińska-Pawlic**

University of Silesia in Katowice, Poland

[jadwiga.gluminska-pawlic@us.edu.pl](mailto:jadwiga.gluminska-pawlic@us.edu.pl)

ORCID ID: <https://orcid.org/0000-0002-2256-455>

**Tomasz Gwóźdź**

University of Silesia in Katowice, Poland

[tomasz.gwozdz@us.edu.pl](mailto:tomasz.gwozdz@us.edu.pl)

ORCID ID: <https://orcid.org/0000-0002-1769-1210>

## **Special Legal Solutions Introduced in Regard to the Relationship with COVID-19 Affecting Municipal Budgets – Selected Issues**

**Abstract:** The article discusses the legal changes related to the finances of communes, introduced into the Polish legal order to counteract adverse social effects and the economic aspects of the SARS-CoV-2 epidemic. It indicates the impact of new regulations on the website revenue for the budgets of municipalities and the powers of municipal authorities concerning, first and foremost, budget control and implementation. The solutions that were presented in detail have the goal of helping entrepreneurs most economically affected by the pandemic – such as the possibility of exemption from real estate tax by resolution of the commune council for part of 2020 and selected months of 2021, an extension of instalment payment deadlines for real estate tax, or the failure to collect the market fee in 2021. Essentially, only some of these solutions provide for financial compensation from the commune budgets. The consequences for the budgets of communes related to the changes indicated, in the context of the need to perform their tasks.

**Keywords:** budget of commune, impact of COVID to local finances, public finances, real estate tax

## Introduction

The spread of SARS-CoV-2 virus infections made it necessary to introduce solutions that enable undertakings to minimize activities which are threats to public health, which would complement existing regulations, especially in the Act of 5 December 2008, on prevention and combating of human infectious diseases<sup>1</sup>. The new coronavirus was identified at the end of 2019 and was a strain previously unknown in humans. The economic impact of the spread of COVID-19 has occurred in a significant number of entrepreneurs whose plants have been closed due to cases of employee infection or placing them in quarantine, and the preventive measures taken affected consumer behavior in many industries (hotel industry, gastronomy, tourism, transport, entertainment, and cultural services, etc.).

It caused the overwhelming majority of entrepreneurs, especially from the small and medium-sized enterprise (SME) sector, to find themselves in a difficult situation. It became necessary to introduce instruments that would provide them with financial liquidity, enabling them to survive the most challenging period. The Health Minister's regulation from 20 March 2020,<sup>2</sup> until further notice was announced in the territory of the Republic of Poland, introducing an epidemic state in connection with SARS-COV-2 virus infections. Therefore, the resulting situation required the application of procedures that would provide support for entrepreneurs as quickly as possible. The first legal act was the Act of 2 March 2020 regarding special solutions related to the prevention, counteraction, and combating of COVID-19, other infectious diseases, and the situations that caused the crisis<sup>3</sup>. The purpose of the government's bill was to define the rules and procedures for prevention and fighting infection and take anti-epidemiological measures and preventive measures to neutralize the sources of infection<sup>4</sup>. In intention, this regulation was to define the rules and procedure for the intersection of the dissemination paths of disease, tasks of public administration bodies in the field of prevention and fighting this disease, rights and obligations of beneficiaries and service providers, and persons staying on the territory of the Republic of Poland in the field of preventing, and combating, it, as well as the principles of covering the costs of implementing related tasks with counteracting COVID-19, in particular the mode of financing healthcare services for people suspected of, or actually, being infected with this disease for providing these people with appropriate access to diagnostics and treatment<sup>5</sup>.

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1 Journal of Laws of 2020, item 1845 as amended.

2 Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland, Journal of Laws, item 491, as amended.

3 Journal of Laws from 2020, item 374 as amended, hereafter covid act.

4 9th term of office, Sejm print no.265, received by the Sejm on March 1, 2020.

5 See: Justification to the act, p. 1.

This article discusses the legal solutions introduced in connection with the epidemic of SARS-CoV-2 that affect the budgets of local government units. They have also been compared with the previous legal status. Due to the multiplicity of introduced legal changes, only some of them will be discussed which, in the authors' opinion, play the greatest role in practice. The aim of the study is to evaluate them from the point of view of the citizens' situation, as well as their impact on the financial situation of public entities.

## 1. Reliefs and Exemptions from Real Estate Tax

Bearing in mind the need to come to the aid of entrepreneurs, especially those who, due to the introduced lockdown, could not operate at all, art. 15p. the Act of 31 March 2020, amending the act on special solutions related to preventing, counteracting, and combating COVID-19 and other contagious diseases, and emerging crises, and specific other laws<sup>6</sup> municipal councils were authorized to grant them certain tax privileges. In particular, the councils may introduce, by means of resolutions, for part of 2020 and selected months of 2021, exemptions from real estate tax: land, buildings, and building structures related to running a business, to the indicated groups entrepreneurs whose financial liquidity has deteriorated due to incurring negative economic consequences due to COVID19. Moreover, under art. 15q., Municipal councils may extend, by resolution, the terms of payment of real estate tax instalments, payable in April, May, and June 2020, no longer than to 30 September 2020 and payable in selected months of 2021, no longer than until 31 December 2021.

It should be remembered, however, that tax reliefs and exemptions are an optional, but crucial element of the tax structure, and shape the actual tax and legal status, excluding certain entities from taxation or narrowing its scope subject. In the Constitution<sup>7</sup>, arts. 84 and 217 regulate the universality of the obligation to bear the tax burden, provided that it is introduced by the act, whose features (elements) are defined precisely by the Constitution. However, reliefs and exemptions are an exception to this rule and may be included in the regulations governing a specific tax – and then they are of a general nature or maybe discretionary, related usually with the existing, specific factual state, determined by the authority in tax proceedings. In normative terms, relief is understood as provided for in the tax law provisions: exemption, deduction, reduction, or reduction, and its application causes a reduction in the tax base or the amount of tax. According to art. 217 of the Constitution, relief, redemption, or dismissal of a nature subject matter may only be introduced by statute

6 Journal of Laws from 2020, item 568, as amended.

7 Constitution of the Republic of Poland of 2 April 1997, Journal Of Laws of 1997, No. 78, item 483 as amended, hereinafter Constitution.

and constitutes this element of the legal and tax structure, which co-decides about the content of the tax obligation. They are most often related to the personal and economic situation of the taxpayer, while exemptions, in turn, are an expression of specific economic preferences of the state or local government units.

Reliefs and exemptions are often treated as incentive tax advantages to engaging capital, regulating supply and demand, developing economically backward regions, promoting employment, and as an instrument for mitigating income disparities. Among the most frequently indicated functions, relief and dismissal are to fulfil taxation's economic and social functions, which can, among other things, include: supporting investment activities, supporting the desired business activity, adjusting the tax assessment due to circumstances that weaken the taxpayer's ability to pay the and the nature of the activity performed (economic functions), and supporting certain taxpayers due to the nature of their activity, running a pro-family policy, protection of the disabled, and increasing taxpayers professional qualifications (social functions).

An example of such discounts introduced in 2020 is the discussed art. 15p of the established act. It should be emphasized that according to art. 7 sec. 3 of the Act of 12 January 1991, on local taxes and fees,<sup>8</sup> the commune council may introduce by resolution only exemptions other than those provided for in the act, but only of material nature. Thus, art. 15p is a deviation from the adopted principle and allows for the possibility of introducing real estate tax exemptions of a subjective nature but limited to "specified groups of entrepreneurs." The purpose of this regulation, resulting from the justification of the draft act introducing the described provisions, is that it is possible for municipalities within their framework tax autonomy the use solutions aimed at helping entrepreneurs particularly affected by the SARS-CoV-2 pandemic. Their job was to positively impact the economic situation of taxpayers and contribute to their improved financial liquidity<sup>9</sup>. Notably, eligible persons are not required to apply the relief resulting. Moreover, there is not required a separate decision by the tax authority confirming the right to be applied to a given entrepreneur's discount<sup>10</sup>.

In resolutions of municipal councils, issued pursuant to art. 15p of the Covid Act, more detailed information related to the application of special discounts for entrepreneurs in connection with the spread of COVID-19 should be found. The

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8 Journal of Laws of 2019, item 1170 as amended, hereinafter u.p.o.l.

9 See: Justification to the governmental draft act amending the act on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and emergencies caused by them, and some other acts, Sejm print number 299, <http://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299> (24.01.2021)..

10 See: R. Dowgier, Weryfikacja prawa do zwolnienia oraz przedłużenia terminu płatności na podstawie uchwały rady gminy podjętej w związku z epidemią COVID-19, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2020, no. 7, pp. 6–11.

task of the individual local government is to include in the content of the resolution, above all, the following content:

- a specific definition of the groups of entities that are entitled to the described reliefs;
- clarification of the concept of deterioration in financial liquidity concerned with negative economic consequences of COVID-19;
- indication of the method of documenting the deterioration of financial liquidity;
- specification of the subject of taxation that is subject to real estate tax reliefs
  - because it can only be land, buildings, or structures related to specific economic activities and all land, buildings, or structures of specific groups of entrepreneurs.

It should also be clearly emphasized that the wording of the provisions authorizes only entrepreneurs to apply for tax credits in the real estate tax. It is impossible to apply the exemption to non-conducting entities' economic activity – including for landlords who lease their real estate to others for running a business.

From the point of view of municipal budgets and the fiscal policy conducted by local governments within their financial sovereignty, however, this is not beneficial. The Covid Act does not provide for compensation for the communes that decide to introduce by a resolution an optional exemption from real estate tax for certain groups of entrepreneurs<sup>11</sup>. In addition, due to the limitations of the ability to drive economic activity due to the epidemic threat by some entrepreneurs, the income of local government units from their participation in the income tax from natural and legal persons has undergone considerable reductions. The growing losses caused to local governments are also not without significant restrictions on the use of local public transport or other services offered by their subordinate units. It all causes

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11 The exception is the resources of the COVID-19 Countermeasure Fund, which, in accordance with § 2 point 5 of the Resolution No. 102 of the Council of Ministers of 23 July 2020 on support for the implementation of investment tasks by local government units, introduced by Resolution No. 6 of the Council of Ministers of 12 January 2021 amending the above-mentioned resolution, are directed to communes located in mountain areas, described in the list of communes covered by support, constituting Annex 7 to the resolution, in the total amount of PLN 1 000 000000. PLN, for investment purchases or investments in generally accessible tourist infrastructure and municipal infrastructure related to tourist services. It may amount to 40% of the amount of expenses incurred by the commune for the implementation of the investment, on average annually in 2016–2020, but not more than PLN 8 000 000, or 80% of the revenue lost by the commune due to the introduction, for selected or all months of the first quarter of 2021, based on art. 15p of the Covid Act, exemptions from real estate tax: land, buildings and structures related to running a business in the field of hotel services or services included in the Polish Classification of Activities in subclass 49.39.Z – operation of overground cable cars, T-bar lifts and ski lifts provided that they are not part of an urban or suburban transport system.

that – as follows from the research conducted – commune councils relatively rarely decided to undertake a resolution exempting certain groups of entrepreneurs from the real estate tax, about which is referred to in art. 15p of the Covid Act<sup>12</sup>.

However, this does not mean that in other communes, entities that bear negative financial consequences cannot apply for tax relief. The economic and social consequences of the SARS-CoV-2 pandemic may justify the direct application of art. 67a of the Act of 29 August 1997 Tax Ordinance<sup>13</sup>, allowing for the postponement of the tax payment deadline, distributing it in instalments, or cancelling tax arrears. This provision mentions two premises that may constitute the basis for granting the request – significant taxpayer interest, or public interest. It should be noted that they are independent of each other. These are general clauses, i.e., vague and undefined concepts which haven't been defined in the act. Thus, in practice, there are many problems related to assessing individual facts in terms of the occurrence of the premises as mentioned above. The tax authority has a certain discretion both in terms of interpretation concepts and assessing the taxpayer's position, ruling under administrative discretion. Importantly, these premises are not competing with each other, but because of the democratic rule of law, neither of them can by definition be considered more critical without examination of the specific case<sup>14</sup>. In the jurisprudence of tax authorities and administrative courts, it is assumed that the deterioration of the financial situation caused by the epidemic SARS-CoV-2 may constitute the basis for considering that there is an indication in a given case of substantial interest of the taxpayer, and even – e.g., in the case of entrepreneurs employing many employees – public interest. This is confirmed by the position of the Regional Chamber Of Auditors in Kielce, expressed in a letter of 17 April 2020, in which it was found that the tax authority may grant concessions at the request of the parties to the proceedings, justified by the deterioration of the financial condition in connection with the epidemic on under art. 67a of the O.p. and art. 67b of the O.p. It was emphasized that the related circumstances with the spread of COVID-19 could qualify as a natural disaster – which is defined in art. 3 sec. 1 point 1 of the Act of 18 April 2002 on the state of disaster<sup>15</sup> as a natural disaster or technical failure, the consequences of which are life-threatening or affect the health of a large number of people, property of great size, or large areas of the environment, and help and protection can only be effectively undertaken with extraordinary application measures in cooperation with various bodies and institutions, and specialized

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12 For example, in the Śląskie Voivodeship, as at the date of this article, only 53 out of 167 municipalities have decided to adopt at least one resolution temporarily exempting entrepreneurs from real estate tax for selected months of 2020 or 2021.

13 Journal of Laws of 2020, item 1325 as amended, hereinafter O.p.

14 See judgment of the Supreme Administrative Court of 31 October 2012, file ref. II FSK 510/11.

15 Journals of Laws of 2017, item 1897 as amended.

services and formations operating under uniform leadership. Although there is no state of emergency, which is the state introduced in Poland for natural disasters, the SARS-CoV-2 pandemic situation meets the criteria for recognition as a natural disaster. Moreover, the literature emphasizes that a natural disaster means abnormal phenomena that occur independently of human activity and result from the action of the forces of nature or a force higher than man's control. Consequently, this state may significantly reduce or deprive the taxpayer of property and income opportunities<sup>16</sup>.

What is important the concessions granted to entrepreneurs under the Covid Act should be recognized as state aid. According to art. 15zzzh of the covid act, support referred to, among other things, in its art. 15p, and also granted based on art. 67a § 1 point 1 and 2 of the act in connection with COVID-19 (for tax due after 31 December 2019 or in arrears after that date). This is the state aid which is granted in order to remedy a serious disturbance in the economy pursuant to art. 67b § 1 point 3 point b O.p.

## 2. The Exclusion of the Market Fee Collection in 2021

Another legal solution adopted in connection with the state of the epidemic SARSCoV-2, which affects the income side of municipalities' budgets, is an exclusion of collection of the market fee in 2021 referred to in art. 15 sec. 1 u.p.o.l. It was introduced in art. 31zzm of the Covid Act and added to it on 16 December 2020 under art. 1 clause 1 point 38 of the Act of 9 December 2020 amending this act.

For failure to collect the indicated fee, local government units are entitled to compensation from the COVID-19 Counteracting Fund. The basis for its calculations constitutes the income from the market fee for the year 2019 in the reports of local government units, the obligation of which is to prepare results from the provisions of the Act of 27 August 2009 on public finances<sup>17</sup> taking into account corrections of reports submitted to competent regional chambers of accounting records, by 30 June 2020.

However, it should be emphasized that the establishment of the market fee is optional; therefore, the described support in the form of compensation will apply only to those communes which, in 2019, obtained their revenues on this account. No toll collection market means that it is not due, no matter in what form this obligation would be fulfilled – and it concerns both natural persons, , persons legal entities, and organizational units without legal personality, selling at marketplaces<sup>18</sup>.

16 See: M. Kępa, A. Zając-Caboń, Skutki podatkowe klęski żywiołowej, „Radca Prawny” 2011, no. 7, pp. 710.

17 Journal of Laws of 2021, item 305 as amended, hereinafter u.f.p.

18 See: R. Dowgier, Zawieszenie poboru opłaty targowej w 2021 r., „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2021, no. 2, pp. 10–12.



### 3. Changes in the Principles of Budgetary Economy in Communes

The legislator also introduced significant changes in the field of individual local government finances. Art. 15zn of the Covid Act<sup>19</sup> authorized the authorities executive: commune head (mayor, city president), poviats board or board voivodeships to:

- 1) changes in the plan of income and expenditure of the budget of a local government unit, including transfers of expenditure between headings of budget classification;
- 2) activities referred to in article 1 paragraph. 1 point 2–4 of the u.f.p., i.e., activities to which – under this provision, the decision-making body may authorize the executive to the delegation of certain powers to carry out transfers of planned expenditure other organizational units of this unit; delegation of powers to other local government organizational units for contracting liabilities under contracts, the implementation of which in the financial year and subsequent years it is necessary to ensure the continuity of the entity's operations and from which payments arise that go beyond the financial year, and making changes to the revenue plan and expenses related to:
  - a) changing the amounts or obtaining payments from the budget of appropriations European countries, as long as these changes do not worsen the budget result,
  - b) changes in the implementation of the project financed with the participation of European Union funds or aid measures, as long as these changes do not worsen the resulting budget,
  - c) reimbursement of payments received from the budget of European funds – which means that if the council did not grant the authority to such authorization, it currently arises from the Act of 2 March 2020 on unique solutions related to preventing, counteracting, and combating COVID-19;
- 3) changes in the long-term financial forecast and in the local government entity's budget expenditure plan related to the introduction of new investments, or purchases, , by the entity, as long as the change does not worsen the budget result units;
- 4) changes in the purpose of the special-purpose reserve created in the local government unit's budget without obtaining the opinion of the committee responsible for the budget of the authority constituting this unit. In this case, the resulting limitation does not apply to art. 259 paragraph. 3 of the u.f.p. that expenses transferred from the general reserve may not be increased planned

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19 Art. 15zn added by art. 1 point 14 of Shield 1.0 amending this Act as of 31 March 2020.

expenses for salaries and remuneration from the employment relationship, if separate the regulations do not provide otherwise;

- 5) changes in the limit of liabilities, underdrawn credits, and loans and issued securities referred to in art. 89 sec. 1<sup>20</sup> and art. 90<sup>21</sup> of the u.f.p., consisting of increasing the limit of liabilities to cover a temporary deficit of the budget of a local government unit occurring during the year.

Moreover, according to art. 15zn point 5 of the Covid Act, the executive bodies may create a new special-purpose reserve without obtaining the opinion of the decision-making committee responsible for the budget of this unit, transferring the blocked amounts of expenditure to it pursuant to art. 260 sec. 1 of the u.f.p. The provision referred to provides that the executive body may decide to block planned budget expenditure in cases finding: mismanagement in specific units, delays in the performance of tasks, excess funds, violation of the principles of financial management.

Blocked expenses transferred to the new reserve may increase expenses planned for salaries and wages, as restrictions have been lifted provided for in art. 259 sec. 3 and art. 260 sec. 4 u.f.p. prohibiting increasing funds for this goal<sup>22</sup>.

In light of the above, a question arises as to the rationale of such a solution. On the one hand, granting these powers to executive bodies will accelerate the process; of course, deciding what, from the point of view of the efficiency of the institution's operation in the state epidemic, is of significant importance. On the other hand, it is impossible not to notice that this solution significantly limits the role of the legislative bodies.

Authorities constituting local government units – which are also inspection authorities – they are obliged to check and verify, under the applicable regulations, financial statements and, on this basis, to grant or refuse to grant discharge for the implementation of the budget. By local government system laws, councils (assemblies) control the activity of executive bodies, and for this purpose, they set up audit committees, which give an opinion on the implementation of the budget

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20 It should be remembered that a local government unit may take out credits and loans and issue securities for: covering the temporary budget deficit occurring during the year, financing the planned budget deficit, repaying previously incurred liabilities due to issuing securities and contracted loans and credits, ahead of financing activities financed with funds from the budget of the European Union.

21 This provision entitles local government units to contract loans in state special purpose funds and in state and local government legal entities included in the public finance sector, for the financing of investment expenditure and investment purchases, including those included in the projects provided for in the Long-Term Financial Forecast.

22 See: J. Glumińska-Pawlic, Komentarz do rozdziału 6 ustawy o samorządzie powiatowym. (in:) B. Dolnicki (ed.), Ustawa o samorządzie powiatowym. Komentarz, Warsaw 2020, pp. 808–809.

and submits a request to the council in the matter of discharge. Committees also perform other audit tasks commissioned by the boards, not violating the control powers of other committees appointed by the councils. Essential from the point of view of proper financial management, it is important to keep the deadlines related to ensuring the proper fulfilment of obligations in public finance, including in the field of keeping records and financial reporting. Noting the difficulties that may arise in connection with the announced state of the emergency epidemic and the state of the epidemic, the legislator – taking into account the necessity of ensuring the proper performance of these obligations, granted to the minister competent for public finance matters, the right to define other time limits by way of an ordinance fulfilling the obligations referred to in:

- the Act of 29 September 1994 on Accounting<sup>23</sup> and in the regulations issued based on this act;
- the Public Finance Act and executive acts were issued based on this act.

If a new approval deadline is specified in the regulatory financial statements of a local government unit, the decision-making body takes a resolution on discharge for the executive body, not by 30 June, but by on the date specified in that regulation. The audit committee presents to the authority, which is a local government unit, an application for discharge for the commune head (mayor, city president), poviát board, or voivodeship board instead of up to 15 June, it has 15 days before the date specified in the regulation, as provided for art. 15zzh (1) of the Covid Act. This solution should be assessed positively in terms of creating conditions for implementing the tasks of self-government bodies.

During the epidemic threat or epidemic state, the legislator introduced the possibility of collective bodies – legislative and executive units of local government, remotely. According to art. 15zzx of the covid act:

1) decision-making bodies of local government units,

2) collective bodies: executive bodies in local government units, in associations of local government units, in a metropolitan association, in regional accounting chambers, local government appeals boards, and in auxiliary bodies of local government units

– may convene and hold deliberations, sessions, meetings, assemblies, or other forms of actions appropriate for these authorities and take decisions, including resolutions, using means of distance communication or by correspondence (remote deliberation mode). Meeting in this mode is ordered by a person authorized to chair a given decision-making body of a local government unit and another body acting collegially. This also applies to collegial internal bodies, such as committees and

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23 Journal of Laws of 2019, item 351 as amended.

teams operating in decision-making bodies local government units. The adopted solution should be assessed positively; it states that it is an alternative form that allows councillors to implement the planned local government duties. The quoted provision may supplement the primary form of stationary organization of the work of decision-making bodies and conduct their deliberations<sup>24</sup>. The dominant view in the jurisprudence of administrative courts is that activities related to organizing the work of the commune council should include activities related to its proper functioning, “consisting in activities related to the preparation of the draft session, notification of councillors about the place and date of the session, and the agenda, preparation of relevant documents and other materials for them, receiving complaints, or motions addressed to the council”<sup>25</sup>. The counsellor should be able to properly perform duties by the oath taken<sup>26</sup>. He confirms also that art. 7 sec. 1 of the European Charter of Local Self-Government<sup>27</sup> states that the status representatives elected to local authorities should free in free carrying out their mandate. Thus, a councillor in a commune, county, or province also in the state the epidemic should have conditions for performing duties for the sake of the good the unit and its inhabitants. The form of remote conduct of council committee meetings and participation in them can also serve to fulfil the mandate of a councillor<sup>28</sup>, especially considering difficulties related to maintaining a direct, permanent relationship with the inhabitants of given communities that exist objectively in the state of epidemics. In this situation – in a persistent epidemic – it becomes imperative to exercise the mandate in this form. Then the limit is granted to the councillor based on, e.g., art. 24 sec. 2–7 of the Act of 8 March 1990 on Municipal Self-Government<sup>29</sup> (if it does not infringe the personal rights of other people) the right to:

- obtain information and materials;
- access to the premises where this information and materials are available;
- access to the activities of the commune office, as well as companies with the participation of the commune, companies trade with the participation of municipal legal entities, municipal legal entities and plants, enterprises, and

24 See: M. Augustyniak, B. Przywora, *Organizacja wewnętrzna rad gmin i powiatów oraz sejmików wojewódzkich*. Analiza prawna ze wzorami dokumentów, Warsaw 2020, p. 152.

25 See: judgment of the Provincial Administrative Court in Gliwice of 21 January 2020, file ref. no. III SA/GI 926/19.

26 See: B. Przywora, *Etyka radnych i innych wybieralnych funkcji w samorządzie terytorialnym*, (in:) R. Hauser, Z. Niewiadomski, A. Wróbel (eds.), *System Prawa Administracyjnego*, t. 13, *Etyka urzędnicza i etyka służby publicznej*, Warsaw 2016, p. 465.

27 The European Charter of Local Self-Government drawn up in Strasbourg on October 15, 1985 (Journal of Laws of 1994, No. 124, item 607 as amended).

28 See: B. Jaworska-Dębska, *Mandat radnego*, (in:) M. Stahl, B. Jaworska-Dębska (eds.), *Encyklopedia samorządu terytorialnego dla każdego*, Warsaw 2010, pp. 103–104.

29 Journal of Laws of 202, item 1372 as amended, hereinafter u.s.g.

other communal organizational units, subject to the provisions on legally protected secrecy (section 2).

A councillor exercising his mandate in an epidemic emergency or state of an epidemic can remotely submit complaints and motions of residents of the commune and present them to the council and the executive body. It can also inform citizens about the affairs of a given self-governing community and the activities of its organs (e.g., on bans and restrictions introduced in the state of an epidemic) undertaken to counteract the adverse effects of a pandemic and its negative economic consequences.

According to art. 15zzy of the Covid Act, in the event that during the period of validity, a state of epidemic threat or a state of an epidemic, the public administration office or other entity performing public tasks will become incapable of performing the tasks in whole or in part, the voivode may entrust performance by order the tasks of this office or entity, in whole or in part, within a specified period, to another a public administration office or an entity performing public tasks. The performance of these tasks may be entrusted to a group of the same offices' public administration or the same entities performing public tasks at the cost of the public administration office or other entity from which it took over these tasks to exercise.

However, this means a significant limitation of the independence of the activities of local government<sup>30</sup> units territorial and arbitrary decisions of the voivode who will alone decide by an administrative act whether an individual had become "incapable of performing tasks in whole or in part"<sup>31</sup>.

#### **4. Changes in the Possibility of Incurring Liabilities by Communes**

Pursuant to art. 15zo. Covid Act – during the period of the state of epidemic emergency or epidemic status, and the associated risk of a material breach of the terms and conditions for the implementation of the commune's tasks, the commune head (mayor, city president) may make changes and actions referred to in art. 15zn points 1 and 2, or the commune issuing the obligations referred to in art. 91 paragraph. 2 u.f.p. does not require obtaining the opinion of the regional accounting chamber on the possibility of repayment of liabilities, if these liabilities were provided for in the debt amount forecast and the commune obtained a positive result, the opinion of the regional audit office on this forecast – until the epidemic emergency or epidemic state is revoked.

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30 See: J. Glumińska-Pawlic, *Samodzielność finansowa jednostek samorządu terytorialnego w Polsce. Studium finansowoprprawne*, Katowice 2003, p. 216–271.

31 See: J. Glumińska-Pawlic, B. Przywora, *Realizacja uprawnień organu stanowiącego i kontrolnego jednostki samorządu terytorialnego w stanie epidemii*, „Samorząd Terytorialny” 2020, no. 7–8, pp. 129–138.

In turn, according to art. 15 paragraph. 1 of the Covid Act, in 2020, the commune will make budget changes that may exceed the ratio referred to in art. 242 ufp by the amount:

- planned, current expenses incurred in order to perform the tasks related to counteracting COVID-19 in the part in which they were financed by property incomes or revenues in question in art. 217 section 2 items 1–4 and 7 of the u.f.p.;
- the planned loss in income resulting from the occurrence of COVID-19.

The income loss from COVID-19 is reduction of income, calculated as the difference between the planned commune income in the changed budget and the planned income shown by the entity in the report for the first quarter of 2020. These revenues are the tax revenues referred to in art. 20 paragraph 3, art. 22 sec. 3 and art. 24 sec. 3 Act of 13 November 2003 on the income of local government units<sup>32</sup>.

In addition, at the end of the 2020 financial year, the assessment of compliance with the rule set out in art. 242 of the u.f.p. will take into account the current incurred expenses in order to perform tasks related to the prevention of COVID-19 and the loss in the income made resulting from the occurrence of COVID-19.

The limitations set out in art. 243 paragraph. 1 of the u.f.p. concerning the repayment of commune liabilities does not apply to redemptions of securities, repayment of credit and loan instalments, together with interest due and discount, respectively issued or incurred in 2020 up to the equivalent of the amount of the deficit in the performed income, resulting from the occurrence COVID-19. When establishing a relationship limiting the amount of the municipal debt repayment:

- for the years 2020–2025, the current expenditure of its budget is reduced of current expenditure on debt servicing; in this respect, art. 9 paragraph 3 of the Act of 14 December 2018 on the amendment of the u.f.p. and some others acts (Journal of Laws, item 2500);
- for the year 2021 and subsequent years, running expenses of the commune's budget are subject to less current expenses incurred in 2020 in order to perform the tasks related to counteracting COVID-19.

However, incurring liabilities may not threaten the performance of public tasks by the commune in the budget year and subsequent years. The Regional Audit Chamber, when issuing an opinion on the repayment of these liabilities, will assess in particular the impact of planned commitments for the implementation of public tasks.

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32 Journal of Laws of 2021, item 38, as amended.

According to art. 15, at the end of the fiscal year 2020, the total amount of the municipality's debt may not exceed 80% of the total revenue made for that financial year, and the total amount of debt at the end of the quarter may not exceed 80% of that planned in a given fiscal year of income. However, these relations may only be unsaved in the event that the commune complies with the limitation in the repayment of liabilities specified in art. 243 paragraph. 1 of the act, without applying the exemption specified in art. 15 paragraph 1 of the Covid Act<sup>33</sup>.

## Conclusions

There is no doubt that the challenges of fighting a coronavirus pandemic, and its negative economic effects, require far-reaching involvement of the legislator in creating new solutions that, on the one hand, their task would be to support entrepreneurs particularly affected by the restrictions introduced during an epidemic, and on the other hand, to maintain stable and safe state public finances – including municipal ones. This is especially true in the case of local government; hence many new regulations apply to this scope.

The primary task and purpose of self-government bodies is to serve the local community<sup>34</sup>. The servant role of local government is updated in a special way in an epidemic, becoming a challenge in implementing the law tasks. At the same time, however, financial difficulties may arise with the performance by self-government units wholly from the implementation of the tasks entrusted to them by law. This especially applies the basic tasks of the commune, serving the needs of the local community government (Article 166 of the Constitution). It should be emphasized that local government performs a significant part of public tasks assigned to it under statutes at its own risk. Failure to perform the assigned tasks is the basis for interference by supervisory authorities: the Prime Minister, voivodes, and for financial matters – regional accounting chambers. The legislator has granted many powers to those authorities, incl. the right to request information and data on their organization and operations necessary for performance of their supervisory powers (e.g., art. 88 of the act on u.s.g.) and in an emergency – the right to apply personnel supervisory measures (e.g., establishing a receivership pursuant to art. 97 on u.s.g.)<sup>35</sup>.

33 See: J. Glumińska-Pawlic, Komentarz do ustawy o samorządzie gminnym. Suplement do art. 51, (in:) B. Dolnicki (ed.), Ustawa o samorządzie gminnym. Komentarz, Warsaw 2021, pp. 842–845.

34 See: J. Regulski, Idea samorządności, rzeczywistość samorządności, wyzwania samorządności, „Samorząd Terytorialny” 2015, no. 1–2, pp. 7–10.

35 See: M. Masternak-Kubiak, Prezes Rady Ministrów jako organ nadzoru nad samorządem terytorialnym, (in:) Ratio est anima legis, Księga jubileuszowa ku czci profesora J. Trzczińskiego, Warsaw 2007, pp. 335–336; B. Dolnicki, Pojęcie, geneza i podstawy prawne nadzoru i kontroli nad działalnością samorządu terytorialnego, (in:) A. Wierzbicka (ed.), Nadzór i kontrola nad samorządem terytorialnym w Polsce i w Austrii, Warsaw 2019, pp. 16–17.

Accordingly, the solutions described in this article that have been introduced as part of the fight against the coronavirus pandemic, and which are related to the budgets of municipalities, should be assessed not only from the point of view of the interests of the entrepreneurs for whom the possibility of running a business has been limited, but also having regard to local government units which must meet the basic community needs and tasks. This is all the more important as it is during the ongoing state epidemic, the incomes of local government units have decreased, and the number of their tasks increased. Lack of proper legal mechanisms that will ensure sufficient amounts on the revenue side of municipal budgets may even limit the financial independence of local government units, which should be considered a serious threat to Poland's idea of local self-government.

#### REFERENCES

- Augustyniak M., Przywora B., *Organizacja wewnętrzna rad gmin i powiatów oraz sejmików wojewódzkich. Analiza prawna ze wzorami dokumentów*, Warsaw 2020.
- Dolnicki B., *Pojęcie, geneza i podstawy prawne nadzoru i kontroli nad działalnością samorządu terytorialnego*, (in:) A. Wierzbicka (ed.), *Nadzór i kontrola nad samorządem terytorialnym w Polsce i w Austrii*, Warsaw 2019.
- Dowgier R., *Weryfikacja prawa do zwolnienia oraz przedłużenia terminu płatności na podstawie uchwały rady gminy podjętej w związku z epidemią COVID-19*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2020, no. 7.
- Dowgier R., *Zawieszenie poboru opłaty targowej w 2021 r.*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2021, no. 2.
- Glumińska-Pawlic J., *Komentarz do rozdziału 6 ustawy o samorządzie powiatowym*, (in:) B. Dolnicki (ed.), *Ustawa o samorządzie powiatowym. Komentarz*, Warsaw 2020.
- Glumińska-Pawlic J., *Komentarz do ustawy o samorządzie gminnym. Supplement*, (in:) B. Dolnicki (ed.), *Ustawa o samorządzie gminnym. Komentarz*, Warsaw 2021.
- Glumińska-Pawlic J., *Samodzielność finansowa jednostek samorządu terytorialnego w Polsce. Studium finansowoprawne*, Katowice 2003.
- Glumińska-Pawlic J., Przywora B., *Realizacja uprawnień organu stanowiącego i kontrolnego jednostki samorządu terytorialnego w stanie epidemii*, „Samorząd Terytorialny” 2020, no. 7–8.
- Hauser R., Niewiadomski Z., Wróbel A. (eds.), *System Prawa Administracyjnego*, t. 13, *Etyka urzędnicza i etyka służby publicznej*, Warsaw 2016.
- Jaworska-Dębska B., *Mandat radnego*, (in:) M. Stahl, B. Jaworska-Dębska (eds.), *Encyklopedia samorządu terytorialnego dla każdego*, Warsaw 2010.
- Kępa M., Zając-Caboń A., *Skutki podatkowe klęski żywiołowej*, „Radca Prawny” 2011, no. 7.
- Masternak-Kubiak M., *Prezes Rady Ministrów jako organ nadzoru nad samorządem terytorialnym*, (in:) *Ratio est anima legis, Księga jubileuszowa ku czci profesora J. Trzczińskiego*, Warsaw 2007.



- Przywora B., Etyka radnych i innych wybieralnych funkcji w samorządzie terytorialnym, (in:) R. Hausner, Z. Niewiadomski, A. Wróbel (eds.), System Prawa Administracyjnego, t. 13, Etyka urzędnicza i etyka służby publicznej, Warsaw 2016.
- Regulski J., Idea samorządności, rzeczywistość samorządności, wyzwania samorządności, „Samorząd Terytorialny” 2015, no. 1–2.