

CASE STUDIES

Subject of waste management fee in Poland

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Abstract: The study is dealing with selected matters of waste management regulation, especially with the applicational issues and praxis of municipalities in Poland and makes an effort to present the most neuralgic points of the normative regulation and practical experiences as well.

Keywords: local self governments; waste management; waste management fee

A new regulation on the collection of municipal solid waste in Poland came into force on 1st July 2013. The purpose of its implementation was Directive 2008/98/EC of the European Parliament and of the Council of 19th November 2008 on waste and repealing certain Directives¹. According to the new wording of the Law on Preserving Cleanliness and Order in Municipalities (from 3rd September 1996²) municipalities are obliged to collect waste instead of the previous practice of commercial relations between real estate owners and recycling companies. A very important element of the new system is the waste management fee (literally: a fee for the management of municipal waste) which is a public burden collected by the municipal tax administration. Fee revenues should cover the costs of collection and recycling of waste by the municipality, its special units or outsourced subjects.

The legal construction of waste management fee includes, of course, many elements and details. Among them, the subject of the fee seems to be the most controversial thus many disputes and legal proceedings have arisen with regard to this subject.

The law from 3rd September 1996 (art. 6h) states that the owners of properties should carry the burden of the fee. 'Owners' also means organizational units and persons possessing such immovable property in management or usufruct (art. 2 sec. 1 p. 4 of the same Act). Moreover, when single apartments in the building are notarially certified as separate real estate, such a role comes to persons (units) managing the common property (art. 2 sec. 3 of the Law).

This last case is mostly doubtful because of the different meanings of 'management' in Polish regulations concerning immovable properties. Another act, the Law on the Ownership of Apartments (from 24th September 1994³) in art. 20 orders the managing board to be called when the number of apartments in the building exceeds 7 (it is optional in smaller houses). The next possibility, one of the most frequent and important in Poland, is the functioning of traditional, special structures called housing cooperatives. They are owners or managers of thousands of houses with dwelling and commercial spaces accessible in different legal ways. According to art. 27, sec. 2 of the Law on Housing Cooperatives (from 15th December 2000⁴), management of common properties is held by the cooperative 'like' entrusted management ordered in the Law from 24th September 1994.

The question is whether it is the managers or the owners who are the subjects obliged to pay the waste fee in these cases. It is obvious that the economic charge of the fee must be the burden of the owners, however, this can be realized directly by owners or by managers paying or transferring collected quotes. It causes legal responsibility (for delayed or ignored payment) held by one of these subjects.

The situation in bigger houses (exceeding 7 apartments) is most characteristic. The owners of flats may manage the common property in two ways: they can elect a manager or management board among themselves (which may be called a 'non-professional manager') or employ an external person or company as a professional manager and representative. Another possibility, very common for the management board of the owners, is to negotiate the role of management (as maintenance of the common space, in a technical sense only) with such external subjects.

Professional management companies were the first to explain their legal position in reference to the fee. It was made by suing acts of the municipality law which obliged managers to submit tax (fee) returns with a calculation of the fee. This effectively means that managers are responsible subjects of the fee. Another way was initiating procedures of advance rulings with the suggestion that managers cannot be treated as such subjects. Applicants argued that they have no possibility either calculating precisely or levying the exact amount of fee duties. Their activity concerns common space such as staircases and courtyards and they have neither access to apartments nor information about them. When the quote of the fee depends on the apartment's size, the number of persons living in the flat and the capacity of garbage from commercial activity, they cannot verify all these data and have no legal instruments to force the owners to give such

information. When paying, due to legal responsibility, the manager may encounter financial problems if it is not feasible to collect payment from the owners. Similar reasons were submitted by housing cooperatives in their cases.

The final solutions were disadvantageous for all of them. Administrative courts of voivodships⁵, as well as the Supreme Administrative Court⁶ confirmed direct wording of laws and stressed that all managing subjects have ample opportunities to get back quotes of fee from the owners. Only once did the court decide to link the manager's obligations and responsibility only with common property and not apartments⁷, however, this view wasn't approved by the Supreme Court.

As an aside, in Wrocław, where controversies and cases between managers and the city administration were extremely frequent, another authority suggested practical compromise. According to the verdict of the self-governing Appeal Judging Board in Wrocław (the second instance for judgment of self-governing decisions⁸), the subject of the fee should only be managers elected by owners to represent their community (instead of the management board of the owners). This excludes managers hired only for maintaining common spaces – which happens in the distinct majority of managing relationships – from the circle of responsibility.

In the intervening period, the law of 24th September 1994 was changed in January 2015. Nowadays, the regulation referring to multi-apartment buildings (art. 2, sec. 3) indicates, as the payers of the fee, only the owners' communities and housing cooperatives. They may all request necessary information from owners of apartments (art. 6m, sec. 1c); this competence is fairly new in the law. This way all kinds of managers are exempt from the charge.

The amendment of the law evidently seems to be a consequence of previous disputes. The present situation is relatively clear. The only doubt can be the possible responsibility of some owners – members of the owners' community – for the fee not paid by others.

Of course, proceedings concerning the period between July 2013 and January 2015 still persist and there are some questions to be answered ultimately.

Also there are no examples of claiming a refund for the fee paid by managers. Though the waste management fee is certainly a public burden, treated in Polish law like taxes, clearing of the accounts between the fee subjects and owners will be settled through civil proceedings.

Additional troubles may arise from inconsequent practice. For example, in Wrocław tax returns with a declared waste management fee were always accepted from the owners of apartments in all houses (also managed by professional companies) therefore their payments were undoubtedly accepted as well. The position of owners of flats in city buildings managed by the organizational units of the municipality is unclear.

However, it is only a short and incomplete report of the most evident controversies, some remarks and conclusions can be drawn (still mostly referring to the legal status before January 2015).

The main paradox is that almost all arguments presented by all sides of the dispute (first of all managers and municipal tax authorities) are generally right. There are serious reasons to accept the opinions of both the fee subjects (about calculation and collection problems) and of the tax authorities and courts (about the direct interpretation and meaning of the text of the law).

The final ground of all these problems is the low quality of legislation. Regulations concerning the waste management fee were introduced hurriedly, without sufficient care with regard to their context and consequences. In the sphere of the subject of the fee, the main mistake is defining it through various legal expressions between different provisions of the same, or even alternative acts. This must not happen in tax law, especially in the regulation of such a universal burden.

References

¹ Official Journal L from 22. 11. 2008, No 312, p. 3.

² Ustawa z dnia 3 września 1996 r. o utrzymaniu czystości i porządku w gminach (Dz. U. z 2013 r., poz. 199).

³ Ustawa z 24 września 1994 r. o własności lokali (Dz. U. z 2015 r., poz. 1892).

⁴ Ustawa z dnia 15 grudnia 2000 r. o spółdzielniach mieszkaniowych (Dz. U. z 2013 r., poz. 1222).

⁵ See for example judgments: from 2nd February, 2013 (I SA/Bd 72/13, from 21st November 2013 (I SA/OI 586/13), from 7th February 2014 (I SA/Bk 526/13), from 15th May 2014 (I SA/OI 285/14), from 5th December 2014 (IV SA/Po 868/13); all verdicts of administrative courts are available at <http://orzeczenia.nsa.gov.pl/cbo/query>.

⁶ See for example judgment from 26th April 2016 (II FSK 1621/15).

⁷ Judgment from 31st March 2014 (I SA/Wr 67/14).

[8](#) From 17th December 2015 (SKO 4138/43/15).