

Культура взаємодопомоги є основою для розвитку соціально згуртованих громад. Вона сприяє формуванню довіри, підтримує взаєморозуміння між різними соціальними групами та створює можливості для співпраці.

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Phd in law Damian Wąsik

Wyższa Szkoła Kształcenia Zawodowego we Wrocławiu, Poland

MUNICIPALITY OBLIGATIONS IN THE FIELD OF MONUMENT

PROTECTION – GENERAL ASSUMPTIONS

ЗОБОВ'ЯЗАННЯ МУНІЦИПАЛІТЕТУ У СФЕРІ ОХОРОНИ ПАМ'ЯТОК – ЗАГАЛЬНІ ПРИПУЩЕННЯ

The independence of local government units is considered to be a fundamental, inherent feature of this self-government and generally applies to both the public and private spheres of its activity. It is also one of the foundations of the territorial system of each country. The public and private independence of a commune means that it is a decentralized entity of public authority, operating on the basis of and within the limits resulting from the provisions of applicable law. Within these limits, the commune undertakes legal and factual actions, guided exclusively by the provisions of the law

and its own will expressed in statutory form by its elected bodies or the will of the members of the commune community expressed, for example, in the form of a local referendum. This independence may be subject to supervision by state bodies from the point of view of legality and in the forms provided for by law. Thus, the tasks of the commune are most often the tasks of a decentralized local government unit, which is part of the state administration apparatus. These tasks are carried out in order to meet the collective needs of the community.

The public aspect of the legal personality of a commune is most often expressed in the performance of public tasks, in the performance of which the local government unit uses administrative authority. The private aspect of the legal personality of a commune means that the commune is also a subject of private law, and as a result, it can own property, manage and dispose of it independently, incur liabilities, etc. It follows from this that the protection of monuments and the care of monuments constitute the commune's own task, performed by this local government unit, acting as one of the elements of the state. When performing public tasks, which include the protection of monuments and the care of monuments, the commune does not act as a subject of private law, namely as a legal person exercising its rights and obligations as an owner. In this case, it is not an administered entity [1].

The commune's obligations and the resulting rights in the area of monument protection are sometimes the subject of discussion and criticism, as interfering with the property rights of residents. Meanwhile, in many countries, property may be limited by law and to the extent that it does not violate the essence of the property right. Ownership is therefore not an absolute right and may be subject to restrictions resulting from, for example, the need to protect monuments. Restrictions on property rights are mainly justified by a public purpose, and one of these is the care of real estate that is a monument.

The municipal monument protection program does not constitute a legal form of monument protection, but its provisions may be included, for example, in the local spatial development plan. The provisions of the municipal monument protection program should be included in the study of the conditions and directions of spatial

development of the municipality or in the local spatial development plan. It is in them that, depending on the needs, conservation protection zones are established, covering areas where restrictions, prohibitions and orders specified in the plan apply, aimed at protecting monuments located in this area. Offices serving local government bodies, having staff educated in the field of art history and architecture, are able to objectively assess - based on the evidence collected - what changes will be caused by, for example, the division of an immovable monument entered in the register. The register of monuments kept by the executive bodies of the commune may constitute binding information regarding the designation of real estates for which decisions are issued on determining the location of a public purpose investment, decisions on development conditions, decisions on permitting the implementation of a road investment, decisions on determining the location of a railway line, or decisions on permitting the implementation of an investment in the scope of a public use airport. Among other things, the commune is obliged to determine whether specific works may threaten the values of the monument, which in the case of a protected urban development requires an analysis taking into account, for example, the impact of these works on maintaining the dimensions of the development and the basic proportions shaping the complex. In carrying out its tasks, the body should ensure that in the event of a threat to the monument, works are carried out to maintain the historic substance and other works consisting in the reconstruction, assembly, renovation or demolition of the building, the performance of which it considers necessary for the protection of the monument against destruction or significant damage. A historic building cannot be demolished until it reaches a certain level of destruction when it can be deemed that it no longer represents any historical, artistic or scientific value and cannot be preserved.

It should be noted that the role of the monument protection authorities is to exercise care over them, i.e. supervision in a broad sense, in order to ensure the permanent preservation of the monument for future generations. Monument protection should lead to the sustainable development of local development (balanced interpenetration of contemporary and historic space), assuming that the value of

historic objects is primarily determined by the fact that they are transmissions of specific meanings (testimony). The point is to perpetuate and pass on the memory of people, processes, events or ideas represented by these objects in various ways. Thus, depending on the specificity of the monument and the meanings assigned to it, it will require either its preservation in an intact state or partial or even complete transformation [2]. If the situation requires it, municipal authorities should also be involved in the process of restoring the monument to its previous condition [3].

In summary, the implementation of the commune's tasks in the area of monument protection should be based primarily on one of the most important elements influencing protection, namely its inventory. It is impossible to effectively protect any object of historical value without having unambiguous, systematically updated and professionally prepared documentation containing, in particular, the location of the monument as well as a detailed description of the state of preservation of all parts of such a monument. The value of historic objects is determined primarily by the fact that they are evidence of specific meanings, past years, history. Although one of the forms of monument protection are the principles of protection of cultural heritage and monuments, it should be emphasized that such protection implemented by local government must be consistent with statutory regulations, and should also be justified in the provisions authorizing it to undertake specific activities. The scope of authorization should always be determined through the prism of the principles of a democratic rule of law, acting within the limits and on the basis of the law and other regulations regulating a given field.

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3. judgment of the Supreme Administrative Court of 13 November 2020, reference number II OSK 1684/18, LEX No. 3097885.