

Participatory commons management as a form of socialising the performance of public tasks in the field of municipal economy

Summary of the doctoral dissertation

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Kamil Olzacki, MA

Supervisors: Piotr Uziębło, dr hab., Professor of the University of Gdańsk,

Jakub H. Szlachetko, dr hab., Professor of the University of Gdańsk

Introduction

Both in scholarly and journalistic literature, as well as in the political practice of many European states, one may observe a growing interest in a new vision of public administration, situated within the paradigm of public governance inspired by communitarian thought and placing significant emphasis on the so-called service-providing administration. Standing in opposition to the conservative vision of the “minimal state” and requiring a contestation of the bureaucratic model of managing public institutions through hierarchical leadership, this approach takes as its point of reference the need to efficiently satisfy the collective needs of the community in the spirit of social solidarity, participatory democracy and the marketisation of administration. At the local-government level, it also corresponds to the idea of the right to the city, formulated by the French philosopher and sociologist Henri Lefebvre – *Le droit à la ville*.

This issue cannot be interpreted in isolation from its legal context. Even the most significant social, political or cultural ideas, if they are to move beyond the purely postulational sphere and acquire a clearly practical dimension, require an appropriate normative “framework” enabling their effective implementation. For this reason, the author of this dissertation, taking the conceptual category of commons (also called “common-pool resources”), as the foundation of his analysis, treated the above-described current of new thinking about public administration as the principal frame of reference for his research. Within this framework, the dissertation presents a new normative model for the management of certain resources forming part of local-government property.

By commons, the author understands both tangible and intangible objects or goods, in particular movable or immovable property, used by members of a given local community, for example a

local-government community, in processes connected with satisfying their collective needs, which are nevertheless exposed to the risk of degradation, destruction or depletion as a result of exploitation characterised in particular by excessiveness, lack of coordination with the exploitation of the given resource by other users, or by exploitation which violates previously established rules governing the proper use of the resource.

A substantial part of such resources – as demonstrated in detail in the dissertation – consists of land and buildings forming part of local-government property, which leads to the identification of a separate conceptual category of local-government commons. The role of commons understood in this way in the shaping and performance of public tasks, and in particular tasks in the field of municipal economy, should not be reduced solely to the category of urban space. Their significance lies in the fact that they may function as *sui generis* institutions used by local government units in the performance of public tasks, especially where the performance of such tasks requires cooperation between public administration, members of the local-government community and other non-public actors.

The model presented in the dissertation constitutes an attempt to depart from a hierarchical, authoritative and unilateral mode of administration in favour of a solution based on social participation, deliberation, cooperation and social co-responsibility. Among the various forms of performing municipal economy tasks available to local government units, the author regards the model of participatory management of commons presented in the dissertation as a particularly significant instrument for their implementation.

Research Problem, Objectives and Research Hypothesis

The research problem addressed in the dissertation concerns the legal possibility of socialising the performance of municipal economy tasks by local government units through undertakings implemented in accordance with the model of participatory management of commons prototyped in the dissertation. By the socialisation of the performance of the above-mentioned tasks, the author understands a process in which public tasks – statutorily assigned to local government units – are performed by a private entity while retaining their public character. Unlike classically understood privatisation (or outsourcing), however, in the process of socialisation such tasks are performed by organisations and groups operating under non-profit or, alternatively, not-for-profit conditions, forming the broadly understood “third sector”.

At the same time, the research problem was deliberately limited to those public tasks which fall within the scope of municipal economy within the meaning of the Act of 20 December 1996 on Municipal Economy. Given that the assumptions of the analysed model, oriented towards the bottom-up, ongoing and uninterrupted satisfaction of the collective needs of the local-government community, correspond most strongly with the performance of those public tasks which fall within the sphere of public utility, it is precisely these tasks on which the author focused in his research. The praxeological component of the model, expressed in the postulate of improving, also in economic terms, the performance of public tasks, also justifies the inclusion in the analysis of those economic forms of local-government activity which remain outside the sphere of public utility. At the same time, in the author's view, making the entirety of public tasks the subject of the dissertation would have led to an excessive broadening of the research problem and, consequently, to a weakening of the coherence and usefulness of the conclusions reached in the dissertation.

The principal objective of the dissertation was to determine whether undertakings based on the model of participatory management of commons may constitute a legally admissible, as well as axiologically and functionally justified, form of socialising the performance of municipal economy tasks. The author decided to supplement this principal objective with specific objectives, including:

1. enriching the conceptual and terminological apparatus of the science of substantive administrative law with the notion of commons, derived from the English terms "commons" and "common-pool resources", referring to a specific category, defined more broadly later in the dissertation, of tangible objects and, in certain cases, intangible goods, together with the formulation of its scholarly and legal definition;
2. conducting a study of selected cases of socialising the performance of tasks aimed at satisfying the collective needs of local-government communities in different states through the use of commons, and subsequently deriving, as a result of the analysis conducted, the key constitutive elements common to them, enabling the prototyping of the assumptions of the model of participatory management of commons;
3. situating the concept described in the dissertation against the background of selected principles of the constitutional order of the Republic of Poland and general principles

of administrative law, with a view to identifying the axiological justification for the considerations undertaken in the dissertation;

4. prototyping a normative model of participatory management of commons, proceeding from specific determinants of the model derived from the study, conducted as part of the research, of implemented undertakings;

5. identifying the existing normative solutions that enable or facilitate the application of the model of participatory management of commons as a form of socialising the performance of municipal economy tasks in the domestic legal order, culminating in the formulation of *de lege ferenda* proposals where the full use of the model's potential would justify legislative intervention.

On the basis of the assumptions so defined, the author formulated the research hypothesis according to which the use of undertakings based on the model of participatory management of commons constitutes a legally admissible and, at the same time, axiologically justified form of socialising the performance of municipal economy tasks by local government units, while also contributing to their more efficient performance. At the same time, the author assumed that realising the full potential of the model described may require targeted, sectoral legislative intervention aimed at removing normative barriers limiting the scope of its application.

The structure of the dissertation was subordinated to the logic of the argument thus outlined. The first chapter is organisational in character and is devoted to terminological findings necessary for the further conduct of the analysis. In the second chapter, the author presents and analyses case studies which make it possible to capture the practical dimension of the issues under consideration. In the third chapter, the author presents a range of arguments justifying the socialisation of the performance of municipal economy tasks through the use of the model of participatory management of commons, taking as the point of departure norms having the character of principles of the constitutional order of the Republic of Poland and general principles of administrative law. The fourth chapter identifies the key determinants of the model described, whereas the fifth chapter is devoted to an analysis of its normative foundations. The dissertation concludes with specific *de lege ferenda* proposals aimed at creating a more adequate legal framework for the socialisation of the performance of municipal economy tasks.

Conclusions

The research conducted in the course of preparing the doctoral dissertation demonstrated that the use of undertakings based on the model of participatory management of commons constitutes a legally admissible and, at the same time, axiologically justified form of socialising the performance of municipal economy tasks by local government units, while also contributing to their more efficient performance.

At the same time, it should be stated that the socialisation of the performance of municipal economy tasks through the use of the model of participatory management of commons may be implemented on the basis of already existing legal grounds, provided that they are appropriately selected and properly applied. In the author's assessment, the primary barrier to the application of the model is therefore not the inadmissibility of the solutions described *per se*, but rather the dispersion and sectoral character of the regulations through which the model may be implemented.

For the above reasons, the dissertation formulates a number of *de lege ferenda* proposals assuming a specific legislative intervention, while at the same time limited to the necessary minimum, aimed at ordering the above-mentioned modes of cooperation in such a way as to make them more "legible" – and therefore more effective – for both parties involved in the process of socialising the performance of municipal economy tasks through the use of the model described in the dissertation.