Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 1

sciendo

DOI: 10.15290/bsp.2024.29.01.07

Received: 30.06.2023
Accepted: 10.12.2023

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The Legal Construction of and Legislative Issues Concerning Tourist Taxes: A Comparative Law Case Study

Abstract: The purpose of this study is to describe the legal construction of and problems related to legislative issues concerning tourist taxes. It is based on analysis of the regulations contained in the conditions for the collection of local taxes, which result primarily from the provisions of the Polish Tax Code. These were compared with the laws of Slovakia and the Czech Republic. From a methodological point of view, we decided to focus on the regulations in force in one of the most famous tourist destinations in Poland, Zakopane, located near the border with Slovakia and the Czech Republic. The research shows that the legal solutions applied in Poland are flawed. In Poland, the tourist tax can as a rule only be levied in locations where certain levels of air pollution are not exceeded; however, this is not followed in practice. This leads to our claim that the legal solutions in this area should be changed. Maintaining the solutions currently in force in Poland leads to a situation in which legal fictions are

allowed. We suggest the introduction of solutions similar to those found in the Czech Republic and Slovakia, where the tourist tax is not dependent on air pollution. The characteristic feature of this tax should be that it is levied on all types of stays, regardless of the purpose of the stay, the type of contract between the guest and the accommodation provider or the place where the guest stays.
Keywords: Czech Republic, local fees, Poland, Slovakia, tax law, tourist tax

Introduction

Tourism is one of the most important industries and economic sectors of many countries (Radvan, 2020). The share of tourism GDP varies from country to country. There are those where tourism accounts for several percentage points of GDP (e.g. Portugal 14%, Spain and Croatia almost 12%), but there are also those where it accounts for only a few percentage points (e.g. Austria 6.5%, France 7.4%, Iceland 8.6%, Slovenia 5.3%, Sweden 7%, Morocco 6.9%, Czech Republic 2.9%) (Radvan, 2020). The tourism industry covers a wide range of economic activities, and there are many taxes relevant to the sector. Dwyer et al. (2010) define five broad areas of taxes on tourists: taxes on airlines and airports, on hotels and other accommodation, on road transport, on food and beverages, and on tourism service providers.

Radvan (2020) and the European Commission (2017) indicate that the most common local tourism tax is the 'occupancy tax', which is equivalent to a bed or tourist tax, one of the above-mentioned tourist-related taxes that will be subject to research in this study. It is usually charged per person per night (in Austria, Belgium, Bulgaria, Croatia, the Czech Republic, France, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain). There is no tourist tax in Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, Luxembourg, Sweden or the United Kingdom (Radvan, 2020).

In countries where local taxes are levied on tourists, the local self-government unit, i.e. municipallity and region, usually decide on the rates of these taxes. However, the structure of the tourist tax may vary (Próchniak et al., 2016). For example, it may be based on the number of days a tourist spends in accommodation in a given destination. Under this formula, the rates can of course vary, depending for example on the standard of the hotel. The average tourist tax in the European Union is between EUR 0.40 and EUR 2.50 per night (Radvan, 2020). In some countries, however, the rate of the tourist tax depends on the amount charged for an overnight stay in a hotel or another establishment (guest house, hostel, etc.). For example, in Romania, the tax base is 1% of the room price, and in Germany, the tax rate is 5%. In Cyprus, Denmark, Estonia, Finland, Ireland, Latvia, Luxembourg, Sweden and the United Kingdom, there is no tax on accommodation (European Commission, 2017).

It should be noted that there are countries where the tourist tax may depend on other factors. In the Polish legal system, the possibility of introducing a tourist (local and health resort) tax depends, among other things, on the cleanliness of the air. In

other words, it can only be introduced in places where the permissible level of certain substances in the air is not exceeded. The aim of this article is to describe the issues related to the collection of the local tax in Poland in places where these permissible levels of substances in the air are exceeded. This will be possible after presentation of the basic conditions of the Polish law which enables the collection of the local tax, resulting first of all from the provisions of the Tax Ordinance. These will then be compared with provisions in other countries. For this purpose, we decided to focus on the regulations in force in the city of Zakopane, Poland, one of the most famous tourist destinations in the country. It is also important to note that it is relatively close to the borders of Slovakia and the Czech Republic, whose legal systems regarding tourist taxes will also be analysed here. Another reason for including the regulations of these two countries in this study's analysis is the fact that there is a similar level of development of tourism in Poland and those countries close to it geographically.

To this end, it is important to clarify the following issues, which relate primarily to Polish law but also to some extent to Czech and Slovak law:

- the structure of the tourist tax levied on persons staying in the respective places for tourist, leisure or educational purposes,
- the conditions to be fulfilled by a town to be able to levy a local tax,
- the specific legal provisions setting the requirements for permissible levels of certain substances in the air (issues regulated by law in Poland).

1. The tourist tax in the Czech Republic and Slovakia

An analysis of the legislation in both the Czech Republic and Slovakia indicates that their tourism tax is in no way dependent on the level of air pollution in the places where the tax is to be charged (Radvan, 2020 Sábo, 2022; Simić, 2022; Štrkolec, 2019; Vartašová, 2022). However, we will start with a more detailed presentation of the tourism tax regime in the Czech Republic. Here, local self-government unit, within the framework of legal regulations (Act No. 565/1990 Coll. on Local Fees, as Amended), has the right to determine the rate of this levy. It may also introduce tax preferences, such as tax exemptions, although the literature indicates that the catalogue of exemptions is sufficient and there is no need to add additional exemptions (e.g. for pensioners) (Radvan, 2022). It is also stressed that all types of stays are subject to taxation, regardless of their purpose or the type of agreement between the guest and the entity providing the accommodation; the regulations concerning this charge also function correctly and do not generate major problems of interpretation, from the perspective of either the payer of the tax, the body which collects it from them, or the municipalities that are the beneficiaries (Radvan, 2022). The indirect nature of the levy is also positively assessed, which is related to the fact that the tourist, as a taxpayer, pays it along with the price of accommodation, and the levy is transferred to the tax author-

ity by the accommodation provider (the tax remitter) (Radvan, 2022). The system of this levy's operation favours municipalities for collecting revenue and controlling the obligations on tourists in their relatively simple payment of the levy, and on accommodation providers as it does not cause particularly serious problems in the collection of the levy (Radvan, 2022).

This is complemented by the obligation to keep registration books, which is an important tool that can be used by the tax authorities to control the accuracy of the fee collection (Popławski et al., 2023). In the context of problems related to the fee's functioning, we would point out that the fee is relatively low in the Czech Republic, compared to other EU countries, and thus does not generate the expected revenue for municipalities that it should generate (Radvan, 2022); however, the situation is similar in Slovakia and Poland (Vartašová & Červená, 2022). We suggest that the maximum rate should be paid, which currently amounts to CZK 50 (approx. EUR 2.20) per day (Radvan, 2022). On the other hand, it is argued that tourist fees should generally be reduced, as this will promote the competitiveness of tourism and support the local tourism sector (European Commission, 2017). The introduction of regulations similar to those applicable to the purchase of airline tickets (Radvan, 2022) is proposed. This would mean that all payments related to accommodation would be included in one final amount, and it would also be easy to take tourist taxes into account when landlords promote accommodation or when bookings are made on online platforms (e.g. Booking.com or AirBnB) (Radvan, 2022).

In the context of the disadvantages of tourism levies, it is pointed out that they can negatively affect property prices, especially in tourist cities, and even destroy the property market in these areas, due to the fact that investors often buy property in cities with the intention of renting it out (Radvan, 2022). A solution could be to raise taxes on short-term rental properties or to introduce a high tax on second and subsequent flats or houses, as well as to introduce penalties for property not designated as business premises which is used for short-term rentals (Radvan, 2022).

In Slovakia, municipalities may levy a local tax on accommodation based on Act No. 582/2004 Coll. on Local Taxes and Local Fees for Municipal Waste and Small Construction Waste, as Amended. The tax is of a facultative nature and may be imposed by any municipality regardless of its location or natural/tourist-related conditions, subject to which it is paid on temporary accommodation for up to 60 overnight stays (i.e. only short stays) in an accommodation facility, which is defined by law (hotel, motel, hostel, guest house, apartment house, spa house, treatment house, cottage, building for individual recreation, log cabin, bungalow, campsite, family house, apartment in an apartment block, family house or building serving multiple purposes, or any other establishments providing paid temporary accommodation to a natural person). The character of a stay is not reflected, thus not only tourists are affected by the tax.

The rate determination is fully in the competence of a particular municipality, with no upper or lower statutory limits, and may be set differently for different parts of the municipality or its cadastral areas, which enables the municipality to take recreational or tourist zones and other locations of the municipal area into account (Vartašová, 2021). The tax revenue is not earmarked as in the case of, for example, development fees (Vartašová & Červená, 2023, p. 526) and thus is not reinvested in the development of tourist-related benefits at particular sites; this is related to the criticism of rising rates potentially discouraging tourists (Dnes24, 2023). The tax may also be set as a flat rate (upon agreement with accommodation providers, if it suits them better), which should reduce the administrative burden laid upon the providers.

The tax is borne by the accommodated person, but it is collected and remitted to the municipality by the provider of the accommodation and, since December 2021, may also be performed by an electronic platform which acts as an intermediary (AirBnB, Booking.com, etc.), if the accommodation provider and the platform so agree (Simić, 2022). This option, however, is not yet really used in practice (which may be caused by a certain ambiguity in the wording of the law), perhaps apart from in Bratislava, where AirBnB already came to an agreement with the City of Bratislava on such a tax collection in June 2021 (Vartašová et al., 2022).

The statutory regulation imposes many administrative duties upon the accommodation provider (reporting and record-keeping), and these should be specified by the local law of the municipality which imposes the tax (a generally binding regulation), where municipalities should also define the tax rate(s) or the flat rate, the means and time limits for payment of the tax, and tax exemptions or rebates. The municipality should also determine the details and time limit of the obligation to notify the taxpayer, the extent and manner of keeping evidential records, the manner of collecting the tax, the details of tax payment certificates, the time limits and manner of paying the tax to the municipality, and any exemptions or reductions in the tax.

2. Basic legal conditions of the tourist tax in Poland

Pursuant to Art. 17(1)(1)(a) of the Act of 12 January 1991 on Local Taxes and Fees (Act on Local Taxes and Fees 1991), a municipal council may introduce a location fee and a resort fee (both hereinafter referred to as a 'local tax' or a 'tourist tax'). Such a solution, which has functioned only since 1 January 2016, means that both fees are optional, and their levy within the territory of a given municipality is decided by the decision-making body by way of a resolution. While the imposition of a particular fee itself depends on the will of the decision-making body of the municipality, the law introduces certain limitations with regard to the characteristics of the localities in which such fees may actually be levied. The local tax can only be levied in lo-

calities that have favourable climatic characteristics, scenic qualities and conditions that enable people to stay for tourism, recreation or training purposes, or which are located in areas that have been granted the status of a health-resort protection area on the terms set out in the Act of 28 July 2005 on Health Resort Treatment, Health Resorts and Health Resort Protection Areas, and on Health Resort Communes. It should be emphasised that the question of the conditions which need to be met in order for a given site to be granted the status of a health resort or a health-resort protection area has been analysed in the literature on the subject (Dowgier et al., 2021; Lizak, 2021; Potycz, 2019; Sikora, 2014).

Pursuant to Art. 17(5) of the Act on Local Taxes and Fees 1991, the list of places that fulfil the conditions specified in the law (favourable climatic characteristics, a scenic landscape and conditions that enable people to stay for tourist, recreational or educational purposes) where a local tax is levied is normally determined by the municipal council. In Art. 17(3), the legislation obliged the Council of Ministers to issue a decree specifying the minimum conditions to be met by a locality where a local tax may be levied. The obligation of the municipality, pursuant to Art. 17(5), to determine a list of localities which are characterised by favourable climatic characteristics, a scenic landscape and conditions which enable people to stay for tourist, recreational or educational purposes is independent of the actual introduction of the local tax in the territory of a given municipality. A decision to introduce a local tax pursuant to Art. 17(1) of the Act on Local Taxes and Fees 1991 (the introduction of which is at the discretion of the constituting authority) and a list of towns in which this tax may be levied – in this case, the categorical content of Art. 17(5), 'the municipal council determines' – leads to the claim that the establishment of this list is obligatory, even if the municipal council would not be willing to introduce a local tax. However, this does not mean that the list of towns in which a local tax may be levied cannot be established by other normative acts, in the nature of acts of local law other than a resolution of the municipal council.

On 1 January 2006, Art. 17(5) of the Act on Local Taxes and Fees 1991 was amended in such a way that the right to designate the localities where the local fee may be levied and which meet the conditions set out in the Council of Ministers' regulation was granted to community councils. Until now, such localities have been designated by the voivode at the request of the local council after consultation with the Minister of the Environment. Against this background, the problem arose that the existing voivodes' ordinances lost their binding force, a situation which was aggravated by the fact that the Council of Ministers' ordinance, based on the currently valid Art. 17(5) of the Act on Local Taxes and Fees 1991, was published almost two years after the amendment of this law. Aware of the fact that the mandatory authorisation of the Council of Ministers contained in Art. 17(3) of the Act on Local Taxes and Fees 1991 will be issued at an unspecified date, the Ministry of Finance, in a letter dated 21 December 2005, pointed out that until the Council of Ministers issues the

above-mentioned ordinance and the local councils adopt resolutions on the determination of places where the local tax shall be levied, the basis for the collection of the local tax will be the voivode's ordinance issued following the then applicable Art. 17(3) of the Act on Local Taxes and Fees 1991.

3. Problems with the collection of the tourist tax in Zakopane

In Zakopane, the city council determined the collection location of the local tax through their resolution of 27 March 2008, No. XXII/250/2008 on the Determination of the Locality in Which the Local Tax Shall Be Levied (2008 Zakopane Resolution). However, it was annulled by the judgment of the Supreme Administrative Court of 15 March 2018 (II FSK 3579/17). Nevertheless, the tax office in Zakopane assumed that the collection of the local tax should continue, after the Supreme Administrative Court annulment, on the basis of the city council resolution of 26 November 2015, No. XV/245/2015 on the Local Tax (2015 Zakopane Resolution).

This position seems to be in line with the interpretation resulting from the analysis of Art. 47(2) of the Act of 29 July 2005 on the Amendment of Certain Legal Acts in Connection with Changes in the Division of Tasks and Territorial Competencies (Act of 2005). According to this provision, local legal acts (in this case, Regulation No. 227/a of the Małopolska Voivode of 8 May 2001 on the Determination of Cities in the Małopolska Voivodeship in Which a Local Tax Shall Be Levied (the Małopolska Voivode Regulation of 2001)) issued on the basis of the provisions amended by the Act of 2005 within the scope of the tasks and competences transferred by that Act shall remain in force until the authorities taking over those tasks and competences issue new local legal acts.

There is no doubt about the meaning of this provision. It refers to acts of local law that remain in force until new acts of local law are enacted, and according to Art. 87(2) of the Constitution of the Republic of Poland, acts of local law are sources of law generally applicable in the sphere of activity of the bodies that adopted them. They are issued by local government bodies on the basis of and within the limits of the powers contained in the act (Art. 94 of the Constitution). In this context, it is obvious that an act of local law is an ordinance of a voivode, as well as a resolution of the local council. With regard to the legal acts regulating the local tax, the provision of Art. 47(2) of the Act of 2005 refers to the voivode's ordinances on determining where a local tax is levied in a given voivodeship.

However, this regulation did not refer in any way to the Council of Ministers' regulation on the minimum conditions that a locality should fulfil in order to be able to levy a local tax. It is impossible to recognise that Art. 47(2) of the Act of 2005 refers to the above-mentioned regulation of the Council of Ministers. This leads to the conclusion that until the local council issues an act of local law on the local fee (a resolu-

tion of the local council based on Art. 17(5) of the Act on employment in the wording in force since 2006), another act of local law is in force (a regulation of the voivode issued on the basis of Art. 17(3) of the Act on employment in the wording in force until the end of 2005). In view of this, the interpretation of the Małopolska Voivode Regulation of 2001 remains in force only until the adoption of the Council of Ministers' Regulation on the Minimum Conditions to be fulfilled by the Town where the Local Tax may be Levied. The ordinance of the Council of Ministers is not a local law referred to in the above-mentioned Art. 47(2) of the Act of 2005.

The Act of 2005 amended Art. 17(3) of the Act on Local Taxes and Fees 1991, which included the authorisation for the voivode to establish a list of towns in which a local tax may be levied, after consultation with the Minister of the Environment. It should be emphasised that the voivodes' decree was issued on the basis of legal authorisation, and only after it was issued did the local council adopt a possible decision on the local tax. Art. 47(2) of the Act of 2005 thus stipulates that the voivodes' ordinances, including the ordinance about the list of places where the local tax may be levied, remain in force until new local acts are issued by the authorities taking over the relevant tasks and powers. In this case, and in others, it is crucial that no legal act sets a time limit (a specific date) for the validity of the Małopolska Voivode's regulations. They will remain in force as long as the local council does not revoke them in accordance with Art. 17(5) of the Act on Local Taxes and Fees 1991, on new acts of local law, i.e. resolutions on the determination of the locality in which the local tax is levied.

In this context, pursuant to Art. 47(2) of the Act of 2005, the Małopolska Voivode Regulation of 2001 remains in force until the entry into force of the local council's resolution (adopted on the basis of the Act on Local Taxes and Fees 1991, taking into account the Council of Ministers' regulation on minimum conditions) determining the list of towns where the local tax is levied. As Dowgier (2016, p. 74) rightly points out, there are no provisions that would force local councils to adopt new resolutions on the list of localities in line with the conditions set out in the Council of Ministers' regulation. Therefore, it cannot be excluded that, many years after the change in the rules for determining the list of localities in which the local tax may be levied, communities (in this case the municipality of Zakopane) may continue to levy the local tax in the localities listed in the Małopolska Voivode Regulation of 2001. Such a situation concerns, among others, cases in which the fee could not be collected in those towns covered by that regulation due to the need to comply with the conditions set out in the Council of Ministers' decree. As a result, it should be noted that the failure of local councils to take decisions on the basis of Art. 17(5) of the Act on Local Taxes and Fees 1991, after the entry into force of the ordinance of the Council of Ministers of 18 December 2007 on the conditions to be fulfilled by a locality where a local fee may be levied, means that the 'old' voivodes' regulations apply in this respect.

The above position is also reflected in court rulings, where it is pointed out that the legislature may postpone the application of new legal regulations by providing for a *vacatio legis* or by introducing a transitional provision postponing the effects of the entry into force of a given legal regulation. Transitional provisions may maintain previous rules after an amendment enters into force, especially when it comes to the legal assessment of facts that occurred before the entry into force. It should also be emphasised that the form of the rules of intertemporal law depends on the legislature, which is free to formulate provisions within the existing legal order. Thus, if the legislature deems it necessary, in certain cases relating to past, incomplete or ongoing events after the entry into force of the new rules, it applies the existing rules or other rules than those introduced by the new act to them (so as not to violate the principle of non-retroactivity) by means of transitional, adjusting or introductory provisions. Therefore, if the transitional provision refers to the application of the 'old' rules (before the amendment), these rules cannot be omitted by referring to the purposive interpretation of the rules resulting from the newly amended law. Such an approach is contrary to the constitutional principle of the rule of law.

In the present case, such an intertemporal norm is contained in Art. 47(2) of the Act of 2005, the interpretation of which allows the correct resolution of the dispute. The powers transferred by the amending act in connection with the changes in the distribution of local government tasks and powers concern the determination of the cities in which the local tax is levied. Prior to the amendment to the Act on Local Taxes and Fees 1991, the determination of the cities in which the local tax was levied, in accordance with the criteria set out in Art. 17(1) of the Act on Local Taxes and Fees 1991, was within the competence of the relevant voivode. The Act of 2005 transferred the power to determine the cities in which the local tax is levied to the municipal council. Therefore, the acts of local law referred to in Art. 47(2) of the Act of 2005, within the scope of competencies related to the local tax, are the voivodes' ordinances which determine the places where the tax is levied, pursuant to Art. 17(3) of the Act on Local Taxes and Fees 1991 in the wording valid prior to 1 January 2006, i.e. before the date of entry into force of the Act of 2005. According to the provision of Art. 47(2) of the Act of 2005, it follows that the voivodes' ordinances which establish the list of municipalities in which the local tax is levied shall remain in force until the council of the respective municipality adopts a resolution on the determination of the municipalities in which the local tax is levied pursuant to Art. 17(5) of the Act on Local Taxes and Fees 1991. As mentioned above, the legislature did not specify the maximum period of validity for voivodes' decrees, nor did it impose an obligation on local councils to adopt resolutions determining the localities in which the local tax is to be levied within a certain period. The validity of the voivodes' ordinances determining the places where the local fee is to be collected depends solely on the adoption by the council of a local act determining the places where such a fee is to be collected. It follows that, despite the change in the legal status at the legislative level, the voivodes'

regulations concerning the locations of local fee collection may remain in force as long as the local council does not exercise its powers pursuant to Art. 17(5) of the Act on Local Taxes and Fees 1991.

It should be emphasised that the adoption of local law, as referred to in Art. 47(2) of the Act of 2005, is not only a situation in which the municipal council does not take any legislative initiative at all but is also a case in which a resolution has been adopted which is then removed from legal circulation due to its annulment; this will be discussed in more detail below. In connection with the application of the Małopolska Voivode Regulation of 2001, the relevant term used in Art. 47(2) of the Act of 2005 is 'shall remain in force until new acts of local law are issued by the authorities taking over the tasks and competencies', and in particular the verb 'to issue'.

Unravelling this concept requires the application of the rules of legal interpretation. It should be emphasised that jurisprudence and scholarship have developed many different ways of interpreting the law, which can be divided into the linguistic and the non-linguistic. The latter category includes teleological interpretation, also called theological interpretation, functional interpretation and systemic or systematic interpretation. Some legal scholars, however, consider it unjustified to include systemic interpretation among the non-linguistic interpretations, since it requires determining the meaning of the provision in the context in which it is found, i.e. taking into account its location in a normative act and that act's location within the legal system (Brzeziński, 2001; Mastalski, 2007; Nowacki & Tabor, 1993; Smoktunowicz & Mieszkowski, 1998). However, without entering into doctrinal disputes on the classification of a given type of interpretation as linguistic or non-linguistic, it should be generally stated that in the interpretation of legal provisions, including tax law, it is justified to use linguistic, systemic and teleological interpretation. These do not compete with each other but interact, in the sense that all of them should be used to determine the true meaning of the provision. It should also be emphasised that the interpretation of tax legislation is a complex process; therefore, it should not be reduced to a search for the meaning of individual words – of a philological nature – but should search for the real meaning of legal provisions, which requires their connection with the legal system to which those provisions belong and the purpose of the legal regulation. However, if the legislation does not refer to another legal act when determining the meaning of a given provision, the process of legal interpretation should begin with linguistic interpretation, which is fundamental in all areas of law because language (words and grammar) is the only carrier of information about the will of the legislature, and is a form of communication that reaches the addressees of legal norms.

To issue is to establish, enact, announce, or to inform the public about something; a decision, opinion, statute, resolution or proclamation can be issued. Colloquially, the term has a very broad meaning. However, taking into account the systemic aspect, it should be assumed that the phrase 'until the adoption of new acts of local

law' means the adoption by a municipal council, on the basis of Art. 17(5) of the Act on Local Taxes and Fees 1991, of resolutions on the establishment of towns in accordance with the conditions set out in the provisions adopted on the basis of Art. 17(3)(4) of the Act on Local Taxes and Fees 1991. However, it should be noted that pursuant to Art. 88(1) of the Constitution of the Republic of Poland, the entry into force of the acts listed therein (including acts of local law) is through their promulgation. Therefore, a condition for a legal regulation's entry into force is not only its adoption by a competent authority in the manner prescribed by law but also its promulgation. The promulgation (adoption) of a decision includes both the mere fact of its adoption by the council and its proper publication. Only the fulfilment of these two conditions determines the entry of a given act into the legal order (Wierczyński, 2008).

Pursuant to Art. 87(2) of the Polish Constitution, the sources of generally applicable law in the country are acts of local law in the sphere of activity of the authority which enacted them. An act of local law must be promulgated in order to be binding on the territory of a particular local government unit, which is undoubtedly the case under Art. 88(2) of the Constitution of the Republic of Poland. The rules and procedures for the promulgation of regulatory legal acts, including local legal acts, are specified in the Act on Promulgation of Legislative Acts, Art. 4 of which stipulates that normative acts containing provisions of general application, which are published in the official gazette, enter into force 14 days after their publication unless a longer period is stipulated. In particularly justified cases, it is possible to give retroactive effect to an act of local law, provided that this is not contrary to the principles of a democratic state governed by law.

From the provisions cited, it can be concluded that the condition for the entry into force of local law is its promulgation. Thus, there is no decision in the legal order of a given municipality that has not been duly promulgated. This also follows from Art. 2(1) of the Act on Promulgation of Legislative Acts. The official promulgation of a local legal act is one of the essential elements of the system ensuring the transparency of legal norms. In constitutional states, of which Poland is one, these norms are expressed in legal regulations, which are grouped together in legal acts. Therefore, the official promulgation of normative acts is one of the basic ways of implementing the openness of law. The competent state authorities must make it possible to familiarise oneself with the content of the legal provisions in force so that, for example, no one can plead ignorance of the law. In this sense, the requirement of official publication of normative acts serves to ensure the rule of law. Since the law is open and its content is generally available, citizens have a real opportunity to fulfil their obligation to respect the law.

In the case at hand, there is no doubt that the 2008 Zakopane Resolution was duly published. However, according to the ruling of the Supreme Administrative Court of 15 March 2018 (II FSK 3579/17), it was invalid. As the panel of judges rightly states in that judgment, 'the annulment of the contested resolution means its

removal from the legal order with *ex tunc* effect; it has no legal effect from the outset and is treated as non-existent'. However, the further justification of this judgment, in which the Supreme Administrative Court excludes the application of the Małopolska Voivode Regulation of 2001 and consequently negates the application of Art. 47(2) of the Act of 2005, is incomprehensible. The *ex tunc* effect of the invalidity of the 2008 Zakopane Resolution renders it invalid from the outset, i.e. as if it had not been adopted (issued).

Since, as stated by the Supreme Administrative Court, the 2008 Zakopane Resolution is treated as non-existent, this resolution was not in legal circulation at all, i.e. it should be considered that it was not issued. Taking this into account, the above considerations regarding the conditions for the entry into force of acts of local law referred to in Art. 47(2) of the Act of 2005 cannot be limited to the adoption of a resolution. This seems to be the view of the panel of judges of the Supreme Administrative Court, because 'the resolution does not produce legal effects' cannot be limited only to the annulment of the resolution in the sense of the lack of legal effects (the material effects that it produces), but also to the entire legislative process (adoption of the resolution). The annulment of a resolution invalidates both the act of local law and the procedure for its adoption. This means that, as a result of the annulment of the 2008 Zakopane Resolution, no act of local law which would take over the duties and powers of the Małopolska Voivode was adopted by the city of Zakopane. As a result, the list of cities and towns where the local tax is levied until a new resolution is adopted is based on Art. 17(5) of the Act on the list of towns and municipalities. In such a situation, it is impossible to speak of a violation of the provisions of the Constitution of the Republic of Poland, in particular its Arts. 94 and 217. The approach adopted by the legislature in determining the cities in which the local tax is levied is consistent and logical.

When arguing for the legitimacy of the local tax, it is impossible to ignore the constitutional provision that guarantees local government units financial resources for the performance of their statutory tasks. According to Art. 16(2) of the Constitution, local government participates in the exercise of public authority, and this is not possible without adequate financial resources for communities, districts and voivodeships. For these reasons, the following provisions of the Constitution guarantee these entities a share in public revenues in accordance with the tasks assigned to them. The revenues of local government units include their own revenues, as well as general and earmarked subsidies from the state budget (Art. 167(1)(2) of the Constitution). The attribute of their 'own' (local) taxes and levies is the right to determine their amount within the scope of the law and to formulate tax exemptions and reliefs from an objective point of view. The local tax is the revenue of the Zakopane community. The essence of a strong state is a strong local government which, in turn, becomes dysfunctional without the provision of sufficient income. That is why, in Art. 47(2) of the Act of 2005, the legislature introduced a norm which allows for the appli-

cation of existing local acts – the Małopolska Voivode Regulation of 2001. It should be emphasised that this regulation is of an indefinite nature.

As a result of the Supreme Administrative Court's ruling, the Zakopane municipality would clearly be deprived of its constitutionally guaranteed rights (financial independence). This situation would violate not only constitutional provisions but also the principle of legal protection of local self-government, as expressed in the provisions of the European Charter of Local Self-Government (ECLS), which Poland was one of the few countries to ratify in its entirety in 1993; a similar situation is present in Slovakia, but not in the Czech Republic (Radvan et al., 2018; Románová et al., 2019, pp. 597 & 603). The ECLS is a ratified international agreement that is part of the Polish legal system and concerns local government units. According to Art. 9 of the European Convention on Human Rights, local authorities have the right, within the framework of national economic policy, to have sufficient financial resources of their own, which they can freely dispose of in the exercise of their powers. Municipalities have guaranteed tax powers, albeit limited, but they have the right to enact (or not) legal regulations in the field of taxation, to collect tax revenues for their benefit and to manage these revenues.

In this context, the 'mechanism' of the provisions on the designation of towns where the local tax is levied is fully understandable. If a resolution of the local council on the determination of the localities where the local tax is levied has been adopted, but this resolution has been declared invalid, then it is not in legal circulation, and therefore no local law has been adopted establishing those localities. This solution guarantees that the municipalities will be able to levy their statutory fee in connection with the application of Art. 47(2) of the Act of 2005 and the corresponding regulation of the voivode issued on the basis of Art. 17(3) of the Act on Local Taxes and Fees 1991 in the wording valid until the end of 2005. The violation of constitutional provisions in the field of individual rights and the determination of public charges could only be discussed if there were no transitional provisions, i.e. in Art. 47(2) of the 2005 Act. However, this is not the case (Bobrus-Nowińska, 2019).

The fact that Art. 2 of the 2015 Zakopane Resolution does not affect the possibility of levying the local tax refers to the 2008 Zakopane Resolution. Firstly, the annulment of the 2008 Zakopane Resolution does not annul the 2015 Zakopane Resolution. Secondly, the annulment of the former does not affect the validity of the latter, since in this respect, pursuant to Art. 47(2) of the Act of 2005, the Małopolska Voivode Regulation of 2001 applies. The annulment of the 2008 Zakopane Resolution means that the part of the provision of Art. 2 *of* the 2015 Resolution has no legal effect. In this respect, the Małopolska Voivode Regulation of 2001, which has not been repealed, is legally valid; the basis for its application is Art. 47(2) of the Act of 2005.

In addition, the 2015 Zakopane Resolution is an act of local law and has *erga omnes* effect. It was adopted on the basis of current legal regulations and its application is in no way affected by the annulment of the 2008 Zakopane Resolution. The

2015 Zakopane Resolution is an act of local law and is self-contained in the sense that its application does not depend on the resolution about the list of places where the local fee may be collected, as in this respect the Małopolska Voivode Regulation of 2001 applies, which does not specify the period of its application. The act will be applied until the relevant resolution of the Zakopane city council is adopted and enters into force (will not be annulled).

Conclusion

In the Polish legal system, the possibility of introducing a tourist tax (for local and health resorts) depends, among other things, on clean air. However, the research shows that the legal solutions in Poland are flawed; they make it possible to charge a tourist fee even if the permissible level of air pollution is exceeded. This leads to the claim that the legal solutions in this area should be changed. Maintaining the solutions currently in force in Poland leads to a situation in which legal fictions are allowed. Solutions should be introduced that do not make the tourist tax dependent on air pollution. It should be emphasised that both in the Czech Republic and in Slovakia, the tourist tax does not depend in any way on the level of air pollution in places where the tourist tax is collected. The characteristic feature of this tax should be that it is levied on all types of stays, regardless of the purpose of the stay, the type of contract between the guest and the accommodation provider, or the place where the guest stays.

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