

# PRZEGLĄD PRAWA ADMINISTRACYJNEGO

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## Reputation of a Local Government Unit – Legal Aspects

*Dobre imię jednostki samorządu terytorialnego – aspekty prawne*

### I.

1. The issue of reputation of a local government unit discussed in this article is on the border of two important subsystems of law – public and private<sup>1</sup>. The institution of personal rights is regulated in Art. 23 of the Polish Civil Code<sup>2</sup> (CC) in relation to natural persons, and pursuant to Art. 43 of the CC, the provisions on the protection of personal rights of natural persons apply, accordingly, to legal persons. Personal right in the form of reputation was not explicitly mentioned in applicable legal regulations, however, it was recognized as such by case law and subject literature<sup>3</sup>.

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<sup>1</sup> More on this division by A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2018, p. 26.

<sup>2</sup> Act of 23 April 1964 – Civil Code, consolidated text, Journal of Laws of 2019, item 1145, as amended.

<sup>3</sup> Cf. the rich case-law examples, e.g. the judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNC 1988, No. 2–3, item 40; the judgment of the Supreme Court of 28 May

Reputation is a category of civil law – it is a personal right vested in legal persons. The second of the issues that make up the subject of this study concerns local government units – matters of administrative law, regulated in detail by constitutional laws of the local government (also known as local government acts), i.e. the Act on Municipal Self-Government<sup>4</sup> (USG), the Act on Poviats Self-Government<sup>5</sup> (USP) and the Act on Voivodeship Self-Government<sup>6</sup> (USW). The article has been prepared with a dominant usage of dogmatic research method, involving the analysis of the content of legal regulations, views of literature and theses of case law.

When indicating the interdependencies of the aforesaid institutions, it should be noted that the local government unit is a legal person within the meaning of Art. 33 of the CC, to which the provisions on legal persons apply, provided that local government acts do not regulate it otherwise<sup>7</sup>. The basic unit of local self-government in Poland, which has direct authorization in the Constitution of the Republic of Poland<sup>8</sup>, is the municipality. After the liquidation of local self-government in the People's Republic of Poland, it was restored at the municipal level in 1990 by the Act on Local Self-Government<sup>9</sup>, and in 1998, two remaining levels of local government were created, i.e. the poviats and the voivodeships. Local government continues to function in this form till present date.

2. Due to the progressive development of social and political life, one can observe more and more cases of applying for legal protection in matters concerning personal rights. This claim does not apply only to natural persons, but also to the second category of civil law entities – legal persons, i.e. also to the local government units. The analysis of the jurisprudence that will be elaborated in the present study will aim to draw attention to the ever more frequent cases of defamation of municipalities, poviats and voivodeships. In addition, there will be a list of legal remedies that these entities are equipped with, enabling them to obtain due legal protection.

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1999, I CKN 16/98, OSNC 2000, No. 2, item 25, the judgment of the Supreme Court of 9 June 2005, III CK 622/04, Legalis No. 76125.

<sup>4</sup> Act of 8 March 1990 on Municipal Self-Government, consolidated text, Journal of Laws of 2019, item 506, as amended.

<sup>5</sup> Act of 5 June 1998 on Poviats Self-Government, consolidated text, Journal of Laws of 2019, item 511 as amended.

<sup>6</sup> Act of 5 June 1998 on Voivodeship Self-Government, consolidated text, Journal of Laws of 2019, item 512, as amended.

<sup>7</sup> J. Jagoda, *Dobra osobiste jednostki samorządu terytorialnego i ich ochrona*, „Administracja: Teoria. Dydaktyka. Praktyka” 2015, nr 3(40), p. 36.

<sup>8</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997 No. 78 item 483, as amended.

<sup>9</sup> The original title of the bill was Act of 8 March 1990 on Territorial Self-Government, however, on 29 December 1998, the title of the act received its new, current wording – cf. footnote 4.

## II.

3. There is constant discussion around the concept of local government in the doctrine of administrative law, because it was not unanimously defined<sup>10</sup>. This polemic began already in the interwar period, when the first concepts on the legal nature and essence of local government were formulated by Jerzy Panejko and Tadeusz Bigo. According to Panejko, public-law personality has no significant meaning for the concept of local government, and what is more – it is not possible at all. He emphasized that one cannot speak of the public subjective right of local government units as a law in relation to the state, because the subject of public rights is the state itself, and local government units are only state organs<sup>11</sup>. According to this concept, public-law personality cannot be applied to local government, because the only entity in the field of public law is the state. On the other hand, Bigo believed that what individualizes and separates self-government from administration is the legal personality of local government units in the sphere of public law, because these entities have their own rights and obligations, and therefore they possess administrative authority<sup>12</sup>. It is currently believed that the legal structure of local government units causes them to be legal persons under public law. However, in the present study, our detailed analysis will concern the second aspect of the legal subjectivity of the municipality, powiat or voivodeship, which is not negated in the subject literature, i.e. their legal personality under private law. At this point, it is worth quoting the position of the Constitutional Tribunal, which stated that local government has a dual role in legal transactions. On the one hand, it acts as a public authority, on the other – as a private law body<sup>13</sup>.

Contemporary administrative law theory formulated various definitions of “local government”<sup>14</sup>. The local government is a separate local community created by law, which has specific public tasks and competences, performed under the supervision of the state, but in its own name and own interest, on the basis of relative independence. Furthermore, the territorial self-government was provid-

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<sup>10</sup> E. Olejniczak-Szałowska, [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, red. M. Stahl, Warszawa 2013, p. 361.

<sup>11</sup> J. Panejko, *Geneza i podstawy samorządu europejskiego*, Paryż 1926 (reprint Warszawa 1990), p. 87.

<sup>12</sup> T. Bigo, *Związki publiczno-prawne w świetle ustawodawstwa polskiego*, Warszawa 1928 (reprint Warszawa 1990), p. 152.

<sup>13</sup> Cf. the judgment of the Constitutional Tribunal of 14 November 2000, K 7/00, OTK 2000, No. 7, item 259.

<sup>14</sup> Cf., e.g. E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 1999, p. 299; Z. Niewiadomski, *Geneza i istota samorządu terytorialnego. Przekształcenia instytucji*, [in:] *Ustrój administracji publicznej*, red. J. Szreniawski, Lublin 1995, p. 148; W. Kisiel, *Ustrój samorządu terytorialnego w Polsce*, Warszawa 2003, p. 17.

ed with judicial protection of its independence, equipped with legal personality under civil law, and granted the right to shape its internal organization, establish local law and appoint representative bodies in elections<sup>15</sup>. As already mentioned, the most important feature, from the point of view of the conducted considerations, is that local government units were granted legal personality within the meaning of Art. 33 of the CC, which provides that the State Treasury and organizational units to which special provisions grant legal personality shall be considered legal persons.

4. There are three levels of local government in Poland: municipality, powiat and voivodeship. The municipality, as the only unit referred to directly by the Constitution of the Republic of Poland, in Art. 164, has a presumption of competence over other units that were not literally listed in the Basic Law, but only specified as regional or local and regional units, created by statute<sup>16</sup>. The legal personality of local government units under civil law is of a special nature, as it constitutes a constitutional category resulting directly from the will of the constitution-maker, regulated in Art. 165 par. 1 of the Constitution of the Republic of Poland. This legal personality serves the empowerment of local self-government and constitutes the basic legal structure guaranteeing independence of local self-government units<sup>17</sup>. In addition to the above constitutional regulation, the special provisions within the meaning of Art. 33 of the CC, which directly grant specific local government units legal personality are the regulations contained in local government acts. In the case of municipality this is stated in Art. 2 par. 2 USG, in the case of powiat – Art. 2 par. 2 of the USP, and in the case of a voivodeship – Art. 6 par. 2 USW.

In addition, Art. 165 par. 1 of the Constitution of the Republic of Poland further indicates that local government units have the right to property and other property rights. Therefore, there should be no doubt that granting territorial self-government units separate property conditions the right to own and dispose of their property rights. As a consequence of the fact that local government units are subjects of civil law – in addition to property rights – they also have the rights to protect their non-pecuniary rights, including personal rights.

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<sup>15</sup> E. Olejniczak-Szałowska, *op. cit.*, p. 362.

<sup>16</sup> *Ibidem*, p. 363.

<sup>17</sup> L. Bosek, [in:] *Konstytucja RP*, t. II: *Komentarz do art. 87–243*, red. M. Safjan, L. Bosek, Legalis 2019, art. 165, Nb 16.

## III.

5. In connection with the above findings that determined the possession of legal personality by local government units, the provisions on personal rights shall also apply to them. The issues of personal rights of legal persons are regulated by Art. 43 of the CC, which, as already mentioned at the beginning, provides that the provisions on the protection of the personal rights of natural persons shall apply, *mutatis mutandis*, to legal persons. It should be noted that the legislator did not define the concept of personal rights of legal persons, nor did it not create their sample catalogue, as it did in Art. 23 of the CC in relation to the personal rights of individuals. The jurisprudence has accepted the view that personal rights of legal persons are non-property values, thanks to which a legal entity can function in accordance with its scope of activity<sup>18</sup>. Pursuant to well-established case law of the Supreme Court, legal persons are entitled to such personal rights as reputation (good fame, repute, authority), name (company), confidentiality of correspondence<sup>19</sup>. The above catalogue, pursuant to the views expressed in the literature, is expanded with the inviolability of the rooms in which the legal entity performs its tasks, as well as – which is still disputed – the right to privacy<sup>20</sup>. However, it is not possible to assign personal rights related to feelings to a legal person. This means that goods such as life, health, dignity, freedom of conscience, image cannot constitute personal rights vested in a legal person<sup>21</sup>.

6. There is no doubt that most of the personal rights of legal entities indicated above are also available to local government units<sup>22</sup>. According to the well-established view of the Supreme Court, the personal rights of a legal person are connected with the separation of the legal person itself and its activities in the area of its tasks<sup>23</sup>. The Court emphasized that these are the values that enable the correct functioning of the respective legal persons within the scope of its tasks. In the opinion of the Court, in the case of a municipality, it will be a whole broad sphere of tasks set out by the Act on Municipal Self-Government: satisfying

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<sup>18</sup> Cf. the judgment of the Supreme Court of 14 November 1986, II CR 295/86, OSNCP 1988, No. 2–3, item 40.

<sup>19</sup> The judgment of the Supreme Court of 11 August 2016, I CSK 419/15, Legalis No. 1507540.

<sup>20</sup> Cf. the judgment of SA in Katowice of 25 February 2014, V ACa 690/13, Legalis No. 831368, where the Court, in my opinion, incorrectly opposed the attribution of personal rights to legal persons in the form of the right to privacy.

<sup>21</sup> Cf. the judgment of the Supreme Court of 5 April 2013, III CSK 198/12, OSNC 2013, No. 12, item 141.

<sup>22</sup> Cf. the judgment of the Constitutional Tribunal of 10 March 2001, K 7/01, OTK 2001, No. 6, item 64, where the Court ruled that due to specific nature of local government units, they cannot be vested in a personal interest in the form of the right to privacy.

<sup>23</sup> The judgment of the Supreme Court of 16 November 2017, V CSK 81/17, LEX No. 2440468.

housing needs, urban planning, communication, healthcare, trade, education, culture, entertainment, tourism – as indicated in Art. 6–9 USG. An analogous principle can be clearly applied to other local government units, i.e. powiat and voivodeship.

Literature also features a controversial view, stating that the independence of local government unit, resulting from Art. 165 par. 2 of the Polish Constitution, is one of the personal rights of local government units<sup>24</sup>. This view cannot be accepted due to the essence and legal nature of the attribute of independence. Independence is defined in literature as the right of a local government unit to decide on its own – without an external dictate and top-down instructions – about all local (regional) matters, the use of municipal property, the rules for using public facilities, spatial planning, the scope of investments, the order, ways and means of their implementation, as well as related financial and material expenditure<sup>25</sup>. The administrative law doctrine emphasizes the multifaceted nature of the concept of the independence of local government units. In civil law transactions it is connected with equipping them with legal personality – the municipality, powiat and voivodeship participate in legal transactions on general principles, which also apply to other legal persons. Protection of the independence of local government units under private law means that these entities are legitimate to take legal action before common courts, on general principles, i.e. they can initiate a lawsuit, be a defendant or other participants in civil proceedings. In relation to the sphere of public law, independence concerns the issue of tasks and competences of local government units, and its protection takes place through proceedings before administrative courts and the Constitutional Tribunal<sup>26</sup>.

Provision of Art. 165 par. 2 of the Basic Law indicates independence as a certain constitutional value granted to local government units by a regulation of a public law nature. In opposing the recognition of independence as a personal right, it should be noted that this feature does not belong to the attributes that make up the essence of legal persons, and it does not determine their proper functioning within the scope of their tasks. Legal entities lacking the aforesaid characteristic may operate in legal transactions, and it does not automatically constitute a violation of their personal rights. As an example of a legal person without the feature of independence, we may name a subsidiary within the mean-

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<sup>24</sup> Cf. A. Agopszowicz, [in:] A. Agopszowicz, Z. Gilowska, M. Taniewska-Peszko, *Zarys prawa samorządu terytorialnego*, Katowice 1997, p. 15. Joanna Jagoda, among others, was against the recognition of independence as a personal right of the local government unit – cf. J. Jagoda on this subject – *Sądowa ochrona samodzielności jednostek samorządu terytorialnego*, Warszawa 2011, p. 38 *et seq.*

<sup>25</sup> J. Jagoda, *op. cit.*, pp. 50–55.

<sup>26</sup> L. Bosek, *op. cit.*, art. 165, Nb 31.

ing of Art. 4 par. 1 item 4 of the Code of Commercial Companies<sup>27</sup>, which was deprived of the right to independently manage its financial and operational policy for the benefit of another company called “the parent company”.

It is undoubted that the catalogue of personal rights listed in Art. 23 of the CC is not exhaustive, but neither the Civil Code nor any other legal act creates grounds for assuming that it includes personal interests in the form of independence of a local government unit. We should also agree with the view of the Supreme Court, which stated that within the framework of existing instruments of civil law protection, reaching for its mechanisms should be performed with appropriate caution and restraint, without a tendency to artificially expand the catalogue of these rights<sup>28</sup>.

#### IV.

7. A particular personal right of legal entities, which we will devote the most attention to in the present study, is the reputation related to local government units. According to the view of the Supreme Court, the personal right of legal persons – that corresponds to the so-called external reputation, i.e. a personal right of natural person listed in Art. 23 CC – is good fame, also known as reputation. External fame, in the case of natural persons, is an idea that other people have about other people, about their value. The reputation of a legal person is combined with the opinion that other people have about it in connection with the scope of its activities. It covers the repute resulting from the past activities of legal entity, that the entity holds since its incorporation<sup>29</sup>. In another important judgment, the Supreme Court emphasized that a violation of the personal right of a legal person, in particular its right to reputation (good fame, repute), occurs only when the conduct of the perpetrator leads (or potentially can lead to) to loss of confidence vested in it and prerequisite for proper functioning within the scope of its tasks<sup>30</sup>.

8. It should be assumed, as a rule, that personal right in the form of reputation can only be violated in two cases<sup>31</sup>. The first consists in the dissemination of false

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<sup>27</sup> Act of 15 September 2000 – Code of Commercial Companies, consolidated text, Journal of Laws of 2019 item 505, as amended.

<sup>28</sup> The judgment of the Supreme Court of 19 November 2010, III CZP 79/10, Legalis No. 260723.

<sup>29</sup> The judgment of the Supreme Court of 22 January 2015, I CSK 16/14, LEX No. 1621771.

<sup>30</sup> The judgment of the Supreme Court of 11 January 2007, II CSK 392/06, TSO 2009, No. 5, item 55.

<sup>31</sup> Cf. differently K. Michałowska, *Dobre imię osoby prawnej w świetle orzecznictwa*, „Studia Oeconomica Posnaniensia” 2015, vol. 3(3), p. 14, where it was stated as a principle that “publishing true information about an entity may constitute damage to reputation, taking into account the situational context and the social perception of such information”. In my opinion, this situation

information about the entity, which at the same time undermines its repute in the public perception, and the second – the dissemination of evaluative statements about the respective legal person, in which it is criticized. In addition – in the second of the presented situations – the type of criticism is of crucial importance. According to the opinions presented in the literature, evaluative statements falling within the limits of real and constructive criticism are allowed<sup>32</sup>. In the jurisprudence of courts there were cases referring to both categories indicated, which concerned local government units. By way of an example of violating the good name of a local government unit by disseminating false information, one can indicate the actual state in which the candidate running in local government elections distributed leaflets, demanding the curtailment of the behaviour specified in it in the form of corruption and abuse in the offices and organizational units of the poviát council. In the materials he disseminated, he undoubtedly suggested the occurrence of such behaviours until now, as only an existing phenomenon can be curtailed. In the Court's view, unlawfulness in this state of affairs could be excluded only if such information had been presented in a fair and truthful manner. According to the Court, these statements were unequivocally negative and undocumented<sup>33</sup>. Another example of violating the reputation, this time of a municipality, by dissemination of false information, was the publication of a press article suggesting dishonesty in the activities of municipal officials. The publication described officials as corrupt persons, acting unlawfully and against the public interest. Due to the fact that this information was not duly justified by the writers of the press material, there was a violation of the reputation of the local government unit<sup>34</sup>.

The second signalled situation, in which the reputation of a legal person is violated, occurs when evaluative statements about the respective entity are made, in which it is subjected to unreliable criticism. In practice, such situations also occurred in relation to local government units. An example would be a situation in which an article critically evaluating the education system appeared in the press. The reason for this publication was a moral scandal in one of the junior

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should be treated as a rare exception in practice, due to the fact that, in principle, providing true information excludes the unlawfulness of violating personal interests.

<sup>32</sup> Cf. more on this subject in A. Szpunar, *Ochrona czci w prawie cywilnym*, „Studia Iuridica Silesiana” 1979, nr 5, p. 34.

<sup>33</sup> Cf. the facts presented in more detail in the judgment of the Supreme Court of 28 April 2016, V CSK 486/15, LEX No. 2041120, as well as regarding the exclusion of unlawfulness see more broadly, e.g. the judgment of the Supreme Court of 3 December 2010, I CSK 95/10, Legalis No. 414112, the judgment of the Supreme Court of 28 February 2002, I CKN 413/01, OSNC 2003 No. 2 item 24.

<sup>34</sup> Thus, in the presented facts, the Supreme Court ruled in its judgment of 9 May 2002, II CSK 740/00, LEX No. 1147737.



high schools. This material ascribes to an educational institution that “corrupts children”, “demoralizes young people”, and is also accused of improper performance of educational duties. There is no doubt that publishing the aforesaid information, which falls outside the limits of honest criticism, undermined the authority and negatively affected the opinion about that junior high school, i.e. a municipal organizational unit, which was a violation of the reputation of municipality itself<sup>35</sup>.

9. Moving on to the further part of the discussion, it is worth quoting the important position of the Supreme Court, which pointed out that personal rights of a legal person cannot be combined only with the bodies of that person, because they do not entirely fill the legal entity’s personal substrate<sup>36</sup>. In connection with the above, another issue to be addressed in this study is to indicate the full circle of recipients of specific information or statements, which constitutes a violation of reputation of a local government unit. Because of the specificity of municipality, poviát and voivodeship, this circle is wider than in the case of other legal persons.

First of all, it should be pointed out that a violation of reputation of a local government unit may occur in the case of dissemination of false, unreliable or critical information about persons holding the functions of local government bodies in connection with their function. In the case of a municipality these bodies are, according to Art. 11a USG, the head of municipality (mayor, city president) and the municipal council, in the case of a poviát, in accordance with Art. 8 par. 2 USP – the poviát council and the poviát board, while in relation to the voivodeship – in the light of Art. 15 USW – voivodeship parliament and voivodeship board. In relation to the above, it concerns both persons performing the function of the one-person bodies indicated above and those being members of the above-mentioned collegiate bodies.

In the second case, the good name of the local government unit may be violated when untrue or evaluative information is published and concerns municipal, poviát or voivodeship organizational units that are not civil law entities separate from the local government unit, as well as their employees. Examples of such units include schools, social welfare centres, municipal police, infrastructure boards and offices. As the Supreme Court has accepted, statements which attribute improper conduct that may result in the loss of trust necessary for its proper functioning to the organizational unit of the municipality, violate the reputation of that municipality<sup>37</sup>. The above considerations can also be clearly related to

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<sup>35</sup> Thus, in the presented facts, the Supreme Court ruled in its judgment of 22 January 2015, I CSK 16/14, LEX No. 1621771.

<sup>36</sup> Cf. the judgment of the Supreme Court of 11 January 2007, II CSK 392/06, LEX No. 276219.

<sup>37</sup> The judgment of the Supreme Court of 22 January 2015, I CSK 16/14, LEX No. 1621771.

the powiat and voivodeship. In this context, the Supreme Court's view that the allegations relating to the way, in which both organs and its officials operate, are relevant to the repute and reputation of a legal person, appears to be apt. Negative wording in relation to the behaviour of persons, who are just employees of a legal person, may lead to damage of the reputation of the legal person itself, because it suggests its functioning that undermines the trust required for the proper performance of its tasks<sup>38</sup>.

It seems that another thesis should also be considered correct, according to which the next, third case – in which the reputation of a local government unit is violated – occurs when the unlawful behaviour of another person or information disseminated by it affects all residents living in the respective municipality, powiat or voivodeship. Using the example above, one can point to the situation in which the inhabitants of a given local government unit are accused, by means of a press article, of not paying the legal liabilities, and thus putting the state treasury at loss.

Fourth case occurs, at least in our opinion, when the damage of reputation does not relate to the organs of the local government unit, its organizational units and their employees, or its residents. It applies to a situation, where a specific statement infringing the reputation refers to a specific municipality, powiat or voivodeship, but as an unspecified, undefined whole. By way of illustration of this thesis, one may point to the situation where an accusation is made at the address of a given local government unit that it improperly performs its public tasks, e.g. in the field of road transport, the environment or education, without clearly indicating any specific persons or entities.

## V.

**10.** In accordance with the principle adopted in Art. 43 of the Civil Code, in the event of a threat or damage of personal rights, the legal person shall be entitled to the same protection measures as natural persons<sup>39</sup>. Premises for the protection of personal rights are: threat or violation of personal interests and unlawfulness of such action. However, it should be emphasized that in accordance with Art. 24 par. 1 sentence 1 of the Civil Code it is the infringer of personal rights who bears the burden of proof that his or her behaviour was not unlawful. Circumstances

<sup>38</sup> The judgment of the Supreme Court of 28 April 2016, V CSK 486/15, LEX No. 2041120.

<sup>39</sup> Cf. A. Szpunar, *Ochrona dóbr osobistych*, Warszawa 1979, pp. 170–172; A. Kubiak-Cyruł, *Ochrona dóbr osobistych osób prawnych*, [in:] *Dobra osobiste w XXI wieku. Nowe wartości, zasady, technologie*, red. J. Balcarczyk, Warszawa 2012, p. 488.

excluding unlawfulness may include: consent of the right holder, acting within the applicable legal order, exercising the subjective right or acting in defence of a justified social or private interest<sup>40</sup>.

Non-property protection measures for personal rights include<sup>41</sup>, in accordance with Art. 24 par. 1 of the Civil Code, a claim for abandonment in the event of a threat of violation, and after the violation besides a claim for abandonment also a claim to remove its effects, in particular by submitting a statement of appropriate content and in an appropriate form. In addition, pursuant to Art. 189 of the Code of Civil Procedure (CCP), one also has an action to establish the existence or non-existence of a right<sup>42</sup>. Property protection measures for personal rights of legal persons are<sup>43</sup>: a claim for damages and – as recognized by the Supreme Court – a claim for monetary compensation or payment of an appropriate amount for a given social purpose, pursuant to Art. 448 of the CC<sup>44</sup>. The aforementioned means protecting the personal rights of legal persons are also available to local government units in connection with their legal personality. According to the view recognized in the literature, civil law claims of local government units may relate to the protection of property rights, claims for damages, protection of personal rights, economic matters, matters of inheritance law<sup>45</sup>.

**11.** Pursuant to Art. 38 of the Civil Code, a legal person acts through its organs in the manner provided for in the Act and its statute based on it. In the case of a commune, the provision of Art. 31 USG states that the task of the prefect is to represent the municipality outside. In the light of Art. 11a par. 3 of the USG, this also applies to the mayor and the president of the city, respectively. In relation to the powiat, pursuant to Art. 34 par. 1 of the USP, it is up to the starosta to represent the powiat, while in relation to the voivodeship, pursuant to Art. 43 of the USW – the Marshal of the voivodeship was indicated as the body authorized to represent the voivodeship in external relations. Representation of legal persons is defined as the actions of their bodies, statutory representatives, proxies, which are executed by – or on behalf of – legal persons and relate to all matters connected with the scope of these persons, with an external effect. These matters may concern both

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<sup>40</sup> Cf. J. Panowicz-Lipska, [in:] *Kodeks cywilny*, t. I: *Komentarz do art. 1–352*, red. M. Gutowski, Legalis 2018, art. 24, Nb 9.

<sup>41</sup> Cf. J. Matys, *Dobra osobiste osób prawnych i ich niemajątkowa ochrona*, „Monitor Prawniczy” 2006, nr 10, pp. 525–529.

<sup>42</sup> The Act of 17 November 1964 Code of Civil Procedure, consolidated text, Journal of Laws of 2019, item 1460, as amended.

<sup>43</sup> Cf. J. Koczanowski, *Ochrona dóbr osobistych osób prawnych*, „Zeszyty Naukowe Akademii Ekonomicznej” 1999, nr 139, pp. 154–159.

<sup>44</sup> Cf. the judgment of the Supreme Court of 24 September 2008, II CSK 126/08, Legalis No. 118211.

<sup>45</sup> L. Bosek, *op. cit.*, art. 165, Nb 31.

substantive and procedural legal relations<sup>46</sup>. In connection with the above, the persons performing the function of the prefect of the municipality (mayor, city president), starosts and marshals of the voivodships are entitled to perform all judicial and extrajudicial actions in matters of personal rights for the respective local government unit.

## VI.

**12.** To conclude these considerations, it should be noted that local government units are entitled to personal rights that are protected under civil law. The municipality, powiat and voivodeship are entitled to lodge appropriate claims by acting through their bodies in court proceedings. Undoubtedly, the personal rights of local government units include: their name, inviolability of rooms, and the secret of correspondence. In the light of the presented considerations, it should be pointed out that reputation also forms one of the most important, from the practical point of view, personal rights vested in local government units. This is evidenced by both the jurisprudence of the Supreme Court and numerous theoretical publications devoted to this issue. Reputation of a local government unit may be violated in two cases. The first of these occurs in case of spreading false information about the entity, which also undermines its reputation. In the second case, there is a violation of good name when publishing evaluative statements in which the respective subject is criticized, lacking in the constructive feature. In order for the reputation of a municipality, powiat or voivodeship to be violated, its addressee can be both their organs, self-government organizational units and their employees, as well as the general public of their residents as well as a local government unit as an unspecified whole.

Local government units, due to their specificity, may experience different violations of personal rights in a different way, but they are entitled to the same protection measures as all other civil law entities, provided for in the Civil Code in the scope of personal rights.

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<sup>46</sup> A. Kidyba, *Prawo handlowe*, Warszawa 2015, p. 128.

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**Abstract:** The issue of reputation of a local government unit is located on the border of two important branches of law – civil and administrative. Reputation is a category of civil law – it is a personal right vested in legal persons, while the issue related to local government units concerns institutions in the field of administrative law. Reputation of a local government unit may be violated in two cases. The first of them consists in spreading false information about the entity, which also undermines its reputation. In the second case, there is a violation of good name when publishing evaluative statements in which the respective subject is criticized, lacking in the constructive feature. In order for the reputation of a municipality, powiat or voivodeship to be violated, it can be addressed to both their organs, self-government organizational units and their employees, as well as the general public of their residents as well as a local government unit as an unspecified whole. Local government units have the same legal remedies as all other civil law entities provided for in the Civil Code, i.e. claims under Art. 24 and 448.

**Keywords:** reputation; local government unit; personal rights; legal person; municipality; powiat; voivodeship

**Streszczenie:** Problematyka dobrego imienia jednostki samorządu terytorialnego znajduje się na pograniczu dwóch istotnych gałęzi prawa: cywilnego i administracyjnego. Dobre imię jest kategorią prawa cywilnego – to dobro osobiste przysługujące osobom prawnym, natomiast zagadnienie związane z jednostką samorządu terytorialnego dotyczy instytucji z zakresu prawa administracyjnego. Dobre imię jednostki samorządu terytorialnego może zostać naruszone w dwóch przypadkach. Pierwszy z nich polega na rozpowszechnianiu nieprawdziwych informacji o podmiocie, równocześnie podważających jego reputację. W drugim przypadku mamy do czynienia z naruszeniem dobrego imienia podczas rozgłaszania wypowiedzi wartościujących, w których dany podmiot jest poddawany krytyce pozbawionej cechy konstruktywności. Aby doszło do naruszenia dobrego imienia gminy, powiatu lub województwa, może być ono skierowane zarówno do ich organów, jak i do samorządowych jednostek organizacyjnych i ich pracowników, a także do ogółu mieszkańców oraz do całej jednostki samorządu terytorialnego jako nieskonkretyzowanej całości. Jednostkom samorządu terytorialnego przysługują takie same środki ochrony, jak wszystkim pozostałym podmiotom prawa cywilnego, przewidziane w Kodeksie cywilnym, tj. roszczenia z art. 24 i 448.

**Słowa kluczowe:** dobre imię; jednostka samorządu terytorialnego; dobra osobiste; osoba prawna; gmina; powiat; województwo