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Major Dilemmas and Increasing Dysfunctions of the Polish Local Government Model on the Basis of an Electoral Law and Metropolitan Act

Abstract: The right for electing the representatives of authority bodies is one of the fundamentals of democracy. This right entitles citizens for active public participation through expressing their support (votes) for candidates, which will respectively represent their voters in certain institutions. Polish electoral law, which regulates the local self-government elections is very controversial. The existing legal rules were changed many times since 2011. Among the subjects being discussed one can mention electoral campaigns, candidate registration rules and organization of elections. Frequent changes in the electoral law result in misunderstandings and unwillingness to participate in elections. Their effect is low voter turnout and a large number of invalid votes. To sum up considerations over a political model of large cities, it is worth to indicate that during the last 25 years of operation of Polish local government none of political models of big cities was adopted.

Keywords: *electoral law; self-local government; metropolis*

Introduction

The restoration of local government (at the level of municipality) in Poland, which took place in 1990, was a crucial political act. Having been assigned multiple social and economic functions, local government achieved a very important position in Polish political system. Therefore, its role was to fulfil public needs as well as to manage public matters at the local level. A creation of the local government ‘from the start position’ demanded intensive conceptual and organizational effort and social engagement. The following years of functioning of decentralized system of state reflected

its weaknesses and were an incentive for seeking new solutions. In consequence, the public administration reform was implemented (since 1 January 1999). The afore-said act introduced new territorial and administrative units: a county (powiat) and a self-governed voivodship. This change was implemented almost 20 years ago, which was rich of negative and positive experiences. The aim of this article is to analyse the problems of the local elections. It presents the changes in electoral procedures and rules and how Polish 'metropolises' function. Its author studied the legal acts and their projects, which are reliable and complete source of information.

The Administrative Division of Poland: Controversies over a Metropolis

The functionality of local government is strictly associated with the administrative division of the state. It should be realized in a way, which would improve functionality of the state, its bodies and administration. Therefore, building up appropriate network of specific structures (so-called territorial system) seems to be important in terms of effectiveness of state's functionality and its safety. In projects of the state's territorial division many different factors were mentioned, on the basis of which there is a need to build up 'a territorial fragmentation'. Undoubtedly, a preparation of rational assumptions and projects of territorial division is uneasy and time-consuming task. It also demands a cooperation of several institutions involved in this question. A reform of the public administration in years 1998-1999 is still in progress of implementation as its projects were not appropriately prepared and realized. In fact, none of final solutions, which would enable units of a local government to operate rationally, was officially implemented (e.g. a city with the administrative rights of a county).

Moreover, assumptions of the above-mentioned reform in years 1998-1999 introduced a new and peculiar administrative unit – a city with the administrative rights of a county. The specificity of such units based on inter alia the criteria of selection such cities. Conferring cities rights of counties was not obligatory. As per applicable regulations of *the Act on County Government* "a city with the administrative rights of a county amounts to more than 100,000 inhabitants as well as since 31 December 1998 has been no longer a seat of a provincial governor" (Article 91 Paragraph 1). The Polish legislator provided a possibility of a resignation from the status of a city with the administrative rights of a county claiming that 'at the request of the relevant council of a city, which is no longer a seat of a provincial governor since 31 December 1998, the Council of Ministers shall derogate from conferring this city the status of a city with the administrative rights of a county'" (Article 92 Paragraph 2). This regulation was used by three Polish cities: Ciechanów, Piła and Sieradz.

The main shortcoming of the new-implemented rules of the reform was lack of specification of the regulations regarding the cities with the administrative rights of counties. The legislator failed to specify the newly created local governmental entities. The rather laconic provisions of the Chapter 9 of *the Act on Commune Local Government* as amended on the day of its entry into force did not clearly regulate the political and functional model. It was assumed that “wherever mention is made of a county (powiat), a city with the administrative rights of a county is intended” (Article 91 Paragraph 5). The role of local governmental bodies was assigned to both, a city council and a council board. In terms of names, a membership and its number as well as terms and conditions of the action of local governmental bodies of a city with the administrative rights of a county subject to the applicable regulations it was ordered to respect *the Act of Commune Local Government*. The councillors were selected on the basis of the provisions of the Electoral Law regarding municipalities amounting to 20,000 inhabitants. The cities with the administrative rights of counties performed tasks on the basis of the rules mentioned in *the Act of Commune Local Government* (Article 92 Paragraph 2).

One of the final stages of the aforesaid reform of the public administration of 1998 was supposed to be the adoption of the Act on metropolitan and urban areas (Nawrot, 2011, p. 167). Together with the correction of the territorial division at the regional level (the amendment of number of voivodships) an attempt of establishing of the legal and political form of ‘metropolitan areas’ was initiated. Regardless of the multiple attempts, until now organizational and political solutions, which would take into account the specificity of urban areas (metropolitan), have not been generated in Poland. The only exception is the capital of Poland, Warsaw, which was regulated by a separate law, the Act on governance of the city of Warsaw of 15 March 2002. The frequency of amendments of the governmental rules of Warsaw, which take place since 1990, may indicate the necessity of existence a solid and effective management of metropolitan city together with its surrounding. The lack of clear assumptions pertaining to the governmental model of metropolis affected differences between drafts of a final act, inter alia:

- 1) *the Act on Development of Cities, Regional Growth Centres and Metropolitan* (hereafter: URM).
- 2) *the Act on Urban Policy and Cooperation of Local Government Units* (hereafter: UPM).
- 3) *the Act on the Governance of Metropolitan Areas*.
- 4) *the Act on Metropolitan Areas*.
- 5) *the Act on the Metropolitan County* (hereafter referred as UMR).

According to the proposed regulations this differences pertain to inter alia the notion of metropolitan area, which shall be understood as ‘spatially continuous

settlement system including at least 1 city with the administrative rights of a county together with surrounding municipalities or rural areas, characterised by its strong functional and spatial relations, including high movement of persons, goods and services as well as an intensive development and a high population density across the area. This are shall include municipalities located within the designated territory, even if they do not perform strong relations with a city with the administrative rights of a county' (Article 8 Paragraph 1 and 2 of UPM) or 'a terrain including certain urban agglomeration entirely or partially, which is characterised by an intensive greenfield development and a high population density, a high movement of persons and goods as well as a substantial trade in services. It constitutes a spatially continuous settlement complex including at least one metropolis as its centre and a direct surrounding functionally associated to this centre in the form of settlement units of a different size of a urban, suburban or rural character that are located in neighbourhood or are another municipalities' (Article 9 Paragraph 1 and 2 of URM).

On the above-mentioned basis specification of a number and a territorial extent of metropolitan areas differentiates, e.g. creation of 2 metropolitan areas: Warsaw and Upper Silesian (Article 9 Paragraph 1 of UPM) or indication of 12 metropolis: the City of Warsaw, 14 cities with the administrative rights of counties included in Upper Silesian metropolis, Cracow, Łódź, 3 cities with the administrative rights of counties included in Gdańsk metropolis, Wrocław, Poznań, Bydgoszcz and Toruń, Szczecin, Lublin, Białystok and Rzeszów (Article 3 Paragraph 3 of URM). The common feature of both of the projects is a possibility to create the other metropolitan areas (by the Council of Ministers by way of ordinance) amounting to circa 2 million inhabitants or of a population density exceeding 200 inhabitants per 1 km² (Article 11 of UMR. and Article 10 of UPM). The assumption (mentioned in all the drafts), that metropolitan areas shall not be treated as additional units of the general territorial division of Poland on the basis of the Act of 24 July 1998, a three tier division of administration, appears to be reasonable.

The assumption regarding the tasks and competencies of metropolitan areas with the primary aim is to provide a sustainable development of the whole metropolitan area through coordination and realization of certain public tasks, should be regarded as a positive phenomenon, for instance: an adoption of metropolitan study of circumstances and directions of spatial and communicational development as well as road management. Furthermore, metropolitan areas are assigned a catalogue of peculiar urban policy aims, including inter alia:

- a) forming rational functional and spatial structure of cities and their surroundings, especially provision of appropriate life conditions for their inhabitants;

- b) increasing the coherence of the settlement system, especially through rising the availability of public transport to large urban centres and realization of building bypasses near them;
- c) improving a spatial order in urban centres (including revitalization and modernization of degraded, neglected and irrationally managed areas) (Jałowiecki, Szczepański, Gorzelak, 2007, s. 51).

The authors of 'metropolitan acts' specified regulations regarding operation of structures e.g.: metropolitan authorities and principles of their operation, financial economy as well as forms of supervision. The initiative pertaining to improvement of conditions of urban areas development and enhancement of managing them should be considered as a positive phenomenon. Polish experience in the above-mentioned field (so-called Warsaw act and working over agglomeration act for Upper Silesian conurbation) in creation of legal system for large urban areas is thought to be a political and manipulative tool.

Until now any peculiar lobby supporting development and effective functionality of urban agglomeration and metropolis has not been created. Perhaps the solution regarding the operation of large urban areas exists in a conception of creation mandatory union of cities and municipalities. In the Polish realities there exist a high risk pertaining to moving away from cooperation based on a voluntary partnership. The reason of such situation is associated with the lack of appropriate financial resources for the realization of tasks (e.g. by one of the partner) (Jałowiecki, Szczepański & Gorzelak, 2007, p. 7-9). The adoption of an assumption regarding a mandatory municipal union could constitute a tentative solution – until an approval of law regulating functioning of large urban centres; however, the compulsory belonging of random self-government units to a union could have a destabilizing result. To sum up considerations over a political model of large cities, it is worth to indicate that:

- 1) during the last 25 years of operation of Polish local government none of political models of big cities was adopted;
- 2) the solutions adopted of tentative character failed in practice and therefore, they demand rework;
- 3) works over the metropolitan act (frequently interrupted, amended in terms of criteria of cities qualification) without any active engagement of all interested entities (large urban centres and neighbouring municipalities) will probably result in adoption of solutions less satisfying for big cities/metropolis.

The realization of a 'metropolitan reform' should be based on socialisation of metropolis and at the same time, this should constitute an element of stimulation of a voluntary cooperation between the units of the territorial self-government. This reform should not rely on introduction of technocratic tools of power and new

decisive structures. This conclusion was reached following the analysis of content of act's drafts. The continuation of metropolitan debate should include experiences of Western European countries as well as the European Union's international cooperation in terms of the 'urban issue'. The result of solving problems internationally was preparation of documents supporting development of metropolis (the Leipzig Charter, the Declaration from Marseille and the Declaration from Toledo). Nowadays, EU's institutions prepare the programme of the regional policy in the EU for years 2014-2020, including the metropolitan issue. The above-mentioned bodies negate the metropolitan model of sector management, suggesting integrated and territorial approach. The effect of such attitude is visible in fact that the importance of urban areas for EU development was noted. In addition, the urban extent of a planned policy of integrity was strengthened.

Further changes regarding the termination and the appointment of the state organization at the metropolitan level announced by the authority bodies has not been realized in a proper way. There is a fundamental lack of discussion between all the interested parties. Furthermore, there are no common assumptions regarding metropolitan project as a whole. The chaos and lack of determination of Polish authorities foster the continuation of creation and realization of 'flawed' solutions.

The final settlement of the metropolitan issue associated with the adoption of *the Act on Metropolitan Relations* constitutes a solution for a long-lasting problem. Regardless of the above, the content of the act – the adopted solutions – remain poor. The process of creation metropolitan relations itself is a little controversial. It should answer the following the following questions:

- a) the draft – which area should be occupied by the metropolis?
- b) issuing opinions – the consent obtained by the authority bodies of units included in a metropolitan area
- c) the decision – the positive opinion obtained by the councils of the self-government units within the metropolitan area.

The limitation of the social participation rule in the process of creation a union means that the inhabitants are deprived form the active participation in the process of creation the brand new 'large local community'. As per Article 7 Paragraph 1 Item 1 of the act the project of creation a union should be a subject of local consultancies conducted by Municipality Council with inhabitants. Nevertheless, Paragraph 3 of the same Article annuls a necessity of local consultations as it is provided that: 'In case of failure of conducting the consultations (...) not later than 3 months from the date of obtaining the request of conducting the consultancies, the obligation of conducting the consultancies shall be considered as fulfilled'. Thus, these consultancies should be conducted, but the lack of conducting them would not affect the course of the

creation of metropolitan areas. Therefore, the municipality, which will not conduct the consultancies can still participate in the process of creation a metropolitan union. Furthermore, the obligation of social consultancies was not imposed in terms of issues settled by the local authorities, e.g. the union's budget, the project of the metropolitan study or the project of communication plan.

The solutions regarding an appointment of the union's authority bodies also seem to be interesting as it was clearly suggested that a delegation of representatives of self-government authorities would not support the effectiveness in terms of making decisions, but will result in politicising and dysfunctionality of such structures. It is hard to explicitly assess the Act on Metropolitan Relations as this law is relatively new (applicable since 1 February 2016) and its realization demands some time.

The Electoral Law

The factor supporting the functionality of a territorial self-government is an active engagement of a local society in decision-making. The inhabitant's engagement in managing a municipality should be performed through their active participation in municipal elections. This procedure as well as its mechanisms and rules are crucial for both, the candidates and the voters. The frequency of amending the electoral law does not affect the election's quality in a positive way.

The local self-government constitutes a crucial link to shaping a democratic state. It is one of the forms of devolution of power. As far as its history is concerned, it was established in order to enable bodies of authority to complete tasks of a local character, which in fact central authorities could not realize properly. The local self-government performs its mission through local authorities. According to the 1997 Constitution of Poland of, the bodies of authority include: decision-making bodies – selected through indirect elections, as well as, implementing bodies – selected on the basis of appropriate regulations. The reactivation of Polish self-government, which took place in 1990, was associated with i.e. conduction of local elections. The first local elections were conducted on 27 May 1990, when representatives (councillors) of Municipality Councils were selected. As for collective implementing bodies (Council Boards) they were chosen in direct elections. Within several next years the local electoral law was amended. Finally, in 2002 new procedure of elections of implementing bodies in municipalities was launched. The collective Council Board was changed into single-implementing body (*wójt* – head of commune in polish villages , a mayor and a president of a city) that was selected in direct elections. In consequence, the aforesaid change of procedure had a strong impact on a higher voter turnout and engagement of citizens in local issues. Another amendments of the electoral law were

of character ‘tailored’ for the necessities of certain political parties, which sought to gain a power in the state.

Local authorities are one of the most important public institutions. Their representatives are elected in general elections. The above elections are regularly announced each 4 years and are guaranteed by the regulations of the Constitution of the Republic of Poland (Article 169) and the other regulations. According to the Constitution the bodies of local authority are divided into: decision-making bodies – chosen in the general, equal, indirect and secret elections, as well as executive bodies – which election is specified by the regulations. After introduction of the reform of public administration (since 1 January 1999) and brand new election act dated 2002, a new structure of local authorities was established. The decision-making bodies are municipal, district and voivodship councils. Whereas the executive bodies are village and town mayors and presidents, who are chosen in a procedure of direct elections, as well as district and voivodship boards – collegiate bodies including representatives selected in indirect elections. A crucial change of Polish election law was an adoption of a new law – the Electoral Code of the Republic of Poland. It meant at the same time a rejection of then applicable and separate acts regulating terms and conditions of electing authorities, inter alia:

- a) *the Act on Presidential Election* dated 27 September 1990,
- b) *the Act on Elections Municipal and County Councils and Provincial Authorities* dates 16 July 1998,
- c) *the Act on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland* dated 12 April 2001,
- d) *the Act on Direct Elections a Head of Commune, a Major and a President of a City* dated 20 June 2002,
- e) *the Act on Elections to the European Parliament* dates 23 January 2004.

A repeal of 5 electoral acts and substitution of one was a decision made in order to unify a dispersed electoral matter. The new adopted act dated 5 January 2011 (the Electoral Code of the Republic of Poland) was applicable since 1 August 2011. In the first the Directive 1 of the Code several common matters regulating the elections were included. Apparently a huge experience regarding disputes over the electoral law its creation and reforms would not constitute a problem in terms of unified code. In case of *vacation legis* lasting for 7 months the Electoral Code, which was then not applicable, was amended several times.

Another amendments of the Electoral Code regarded: an addition of an annexure including a registry of constituencies to the Sejm of the Republic of Poland together with the number of deputies, a specification of general regulations, an extension of regulations, that will enable disabled citizens to participate in elections (a separated

chapter was also added), an introduction of regulations pertaining to terms of office of councillors, a specification of limit of costs incurred by an electoral committee, a verification of European citizens engagement in elections to the European Parliament, possibilities to vote via letter or proxy (Chapter 6a).

Before a validation of the Electoral Code in 1 August 2011 its content was amended five times and subsequently, was assessed by the Constitutional Tribunal. Up until 31 December 2014 it was amended for the sixth time and it was twice send back to the Constitutional Tribunal. So many amendments and such a high frequency of alteration of the Electoral Code was not a proof of a high quality. Furthermore, a problem of 'candidates' preparation' to the elections was also raised. Therefore, it was not possible to foresee the new ideas for enhancing elections procedures. As far as voters are concerned, a method and a frequency of changing the electoral law were encouraging to participate in the elections.

Information broadcasted by media was too general and rather alarmed the voters, but did not submit any specific and understandable information regarding electoral problems. A lack of appropriate civil education in terms of the electoral law as well as 'the noise' pertaining to the new form of the Electoral Code, did not whatsoever encourage citizens to vote, e.g. the electoral frequency in the elections to the European Parliament dated 25 May 2014 reached 23.83%, as well as, in the municipality elections only 47.40% of citizens (PKW, 2014) took part. The propensity of low frequency has lasted for decades, e.g. in regular municipality elections each 4 years an electoral frequency has not exceeded 50%. This can confirm a lack of civil engagement in local issues. On the one hand, public authorities can be blamed for not stimulating the engagement of citizens; however, on the other hand, voters themselves are guilty of this situation, who due to a possible lack of appropriate knowledge, do not want to have an impact on a political situation in their country.

The crucial change of a quality of municipality elections on a gmina level was introduction of single-mandate districts (so-called SMDs). This rule was examined before. It was introduced with Article 12 Paragraph 1 of the Act on Elections to Municipal Councils dated 8 March 1990, which regarded municipalities up to 40,000 inhabitants. Another bill dated 16 July 1998 (the Act on Elections to Municipal and County Councils and Provincial Assemblies) mentioned municipal and county councils as the bodies responsible for creation of single-mandate districts (Article 90 Paragraph 1).

According to the regulations of the Electoral Code SMDs pertained to the municipalities, which were not cities with powiat rights. Only in 2014 37.842 single-mandate districts were created. The specific rules of municipalities division to constituencies was regulated by the resolution of the State Electoral Commission dated 7 May

2012¹. An authority entitled to divide an area of a municipality is a Municipality or County Councils, which is active on the basis of a request lodged by a wójt (a mayor, a president of a city).

A 'construction' of voting cards raises some concerns. The State Electoral Commission, which was obliged to prepare such cards (Article 160 Paragraph 1 Point 6 of the Electoral Code), did not double-check the consistency of an adopted specimen. The adoption of a 'book format', i.e. several stapled pages including each electoral list, was a source of problems of voters as well as members of precinct election commissions. The above-mentioned cards were used during local elections, where proportional system is applied (elections to County Councils and regional assemblies in cities with powiat rights). According to the Electoral Law, e.g. in elections of councillors in cities with powiat rights, a voter should mark one list with a cross (x) in a box on the left side of a candidate's name. This means a priority for a mandate as per Article 440 Paragraph 1 of the Electoral Code. Each additional 'x' marks on the same or the other list makes a vote invalid. The above information is mentioned in the bottom of each page of a voting card. This content, on the other hand, appeared to be illegible for voters and mentioning it on the each page suggested a possibility to vote for a one candidate mentioned in each list.

The 'book format' of the card extended the procedure of voting as well as counting votes. Due to the fact that after reading this 'book' precinct election commissions in general assign each vote to a one candidate and an electoral committee. In practice cards are distributed between members of a commission, who implement different criteria of counting votes. Some of them read the whole 'book'; some of them end counting as soon as they see the first 'x' mark and then barely verifying whether a vote is valid. Therefore, we may assume that the results of local elections are 'more or less detailed'.

It is worth to consider the other methods of counting votes. Perhaps a card in 'sheet format' or in 'envelope format' would be more useful. The first specimen is a big-sized sheet consisting of all the electoral lists. The second one bases on choosing one list before voting and subsequently, hiding a marked list in an envelope. Additional lists included in an envelope would mean that a vote is invalid. The implementation of one of the above-mentioned methods would be less time-consuming for either voters or members of a precinct election commission.

Checking the completion of cards before voting is one of the most important obligations of a precinct election commission. Each of voting cards delivered to a poll-

¹ Due to the change of territorial division in Poland for Zielona Góra (applicable since 1 January 2015) the local elections were not conducted.

ing place should be counted, appropriately sealed and verified in terms of a quality of print. A lack of professional preparation of members of a commission results in errors and reflects an irregularity of an electoral procedure.

The above amendments introduced in the Electoral Code (pertaining to a regulation of local elections) do not constitute a guarantee of elimination or limitation of risk regarding irregularities that occurred in the local elections in 2014. The proposition of transparent ballot boxes raised some concerns, as it appeared to be expensive. A cost of the one transparent ballot box was estimated for PLN 1,000 (as per a draft of the act). Taking into account that currently there are 27,435 polling places in Poland, the estimated cost would amount to circa PLN 28,000,000. In order to retain a confidential rule, voting cards will be placed in envelopes. Polling places will be equipped with envelopes, which will be provided to a voter by request. Undoubtedly, the use of envelopes would make a voting procedure even more complicated. Moreover, it would lengthen the time of counting votes, as well as, it would increase expenses.

The multitude and a quality of propositions regarding the amendments of the electoral law is not always a reflection of a will to 'enhance' it. A lack of proven assumptions for enacting detailed regulations of the electoral law, its application as a tool of gaining a political power (i.e. on the local level), as well as, a lack of civil education results in a low interest of elections (low voting frequency, huge amount of invalid votes). Public authorities should make an effort to constitute 'the ideal electoral law', which would be a basis of other elections. It is hard to resist an impression that amendments of electoral rules do not support high quality of elections, but particular political goals. The analysis of adoption and novelisation of the electoral rules – the Election Code – indicates the above conclusions.

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