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## **Evolution of supervision over the activities of local self-government in Poland**

**Keywords:** supervision, local self-government, Poland, self-government bodies, independence.

**Słowa kluczowe:** nadzór, samorząd terytorialny, Polska, organy samorządowe, niepodległość.

### **Abstract**

The legal order of contemporary democratic states consists of a supervisory institution which cannot be used for political purposes or used in a discretionary manner. Poland, returning to the maps of Europe in 1918, was a country in which territorial self-government functioned, differing in many aspects from the model we encounter today. The differences concerned, among others supervision, which also played an important role in the activities of local government units in the Second Republic of Poland. The purpose of this article will be to show the evolution of supervision over territorial self-government in Poland.

### **Streszczenie**

#### **Ewolucja nadzoru nad działalnością samorządu terytorialnego w Polsce**

Współczesne państwa demokratyczne w swoim porządku prawnym posiadają instytucję nadzoru, która nie może być wykorzystywana do celów politycznych, bądź stosowana w sposób

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uznaniowy. Powracając na mapy Europy w 1918 r. Polska, była państwem, w którym funkcjonował samorząd terytorialny, różniący się w wielu aspektach od modelu, z którym mamy styczność w dzisiejszych czasach. Różnice dotyczyły m.in. nadzoru, który również w II RP pełnił ważną rolę w działalności jednostek samorządu terytorialnego. Celem niniejszego artykułu będzie ukazanie ewolucji nadzoru nad samorządem terytorialnym w Polsce.

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### **I. Supervision over territorial self-government in the Second Polish Republic**

The existence of supervision results from the obligations of local self-government in relation to the state, which is why the state ensures that the local government fulfills its obligations towards the citizens and the country. Nowadays, supervision plays an important role, going beyond the framework of the territorial self-government relations of the state, because it is an important measure that influences the implementation of goals important to society. Currently, it is also an instrument that is responsible for protecting citizens against various types of abuse of local government and illegal local government activities. It can be understood as a whole of powers that are entrusted to specific entities. The tasks delegated are aimed at systematizing the activities of specific institutions or bodies functioning in the structure of public administration. This systematization aims at shaping the legal order and creating socially accepted principles<sup>2</sup>.

In 1918, after 123 years of annexations, Poland regained its independence. A number of tasks appeared before the reviving state, including multifaceted reconstruction of the country. One of the key areas in which it was necessary to re-create the basis for proper functioning, was the local self-government. Works undertaken in this area concerned the unification of legally binding legal solutions<sup>3</sup>.

<sup>2</sup> M. Karpiuk, *Samorządu terytorialny, a państwo. Prawne instrumenty nadzoru nad samorządem gminnym*, Lublin 2008, pp. 120–124.

<sup>3</sup> J. Babiak, A. Ptak, *Samorząd terytorialny w II Rzeczypospolitej*, [In:] *Władza lokalna w procesie transformacji systemowej*, eds. J. Babiak, A. Ptak, Kalisz – Poznań 2010, p. 23.

The provisions of the March Constitution of 1921 clearly indicated that the Republic of Poland would base its system on the principle of a broad territorial self-government, in which its representatives would obtain relatively large powers. Regulations at the level of the constitution also indicated the transfer of autonomy to self-governments, which was to apply to the provinces. Unfortunately, the announcements have not been implemented, because no provincial government was established in the whole country until the end of the Second Polish Republic<sup>4</sup>. The basic unit of local self-government was the rural commune, which in the case of combining several localities, was divided into groups. The executive body in the commune was the board, which consisted of the governor, vice governor and lay members whose number was determined by the number of population. The city self-government functioned on the basis of analogous solutions, to those used in rural communes. Also, in this case, the residents chose their representatives in a five-choice election. The intermediate level of self-government, which was located between the commune and the province, was the powiat, headed by the staroste appointed by the Minister of the Interior, which meant that he was directly connected with the government administration<sup>5</sup>.

Supervision over the activity of territorial self-government in the Second Polish Republic was exercised by the organs of general administration: The Minister of Internal Affairs, voivodes and starosts. Such authority was also possessed by executive bodies of the higher self-government. Legislative bodies indicated by the current law, which obtained supervisory powers in relation to local self-government, had a wide range of means, such as: approving the election results of governors, village administrators, mayors and city presidents, approving or suspending local government resolutions, approving budgets and resolving legislative and executive bodies on all levels of self-government. The use of supervisory powers intensified after the May Coup. The use of powers conferred by law was largely dictated by political considerations<sup>6</sup>. The Supreme Administrative Tribunal was in charge of the legality of super-

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<sup>4</sup> H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, Warsaw 2009, p. 71.

<sup>5</sup> R. Stawicki, *Samorząd terytorialny w II Rzeczypospolitej – zarys prawno-historyczny*, Warsaw 2015, pp. 13–14.

<sup>6</sup> J. Bardach, B. Leśniodorski, M. Pietrzak, *Historia państwa i prawa polskiego*, Warsaw 1979, pp. 541–542.

vision over the territorial self-government. He adjudicated on the compliance with the law of ordinances and judgments of government and self-government administration bodies in the event that the given decision was final<sup>7</sup>.

In 1930, municipal councils dissolved in six cities. At that time, work continued to prepare a uniform local government law, the so-called Consolidation Act, which was adopted on March 23<sup>rd</sup>, 1933. The provisions contained in it, introduced uniform names and system in rural communes, municipalities and in powiat self-government<sup>8</sup>. In accordance with the current practice, the division of self-government bodies into constitutive and executive as well as managing bodies was adopted. The function of law-making and control in communes was exercised by municipal councils, city councils analogous in cities, and powiat councils in powiats. The governing and controlling bodies in the communes were the head of the municipality and the management, in the cities, the municipal administration with the president or mayor, and in powiats the powiat department with the staroste. The changes adopted in 1933 limited the competences of collective bodies. The competences not mentioned in the provisions of the Act were assigned to the executive bodies.

The new legal solutions at that time strengthened the supervision of the state over the activities of the self-government, which in a way led to limiting its role. More frequently, organs elected during common elections were being replaced by electoral bodies. In The municipal government in Warsaw was built this way. Pursuant to the regulation of 1934, the constitutional authorities of the capital city of Warsaw were: the Temporary Municipal Board, which served as a constituting organ and comprised of the president appointed by the chairman of the Council of Ministers and 5 vice presidents appointed by the minister of Internal Affairs and the Temporary City Council that came from the nomination and was an advisory body of the Temporary Municipal Council. This way, the City Board in Warsaw operated until 1939<sup>9</sup>.

The Constitution of April, adopted in 1935, did not formulate the principle of a broad territorial self-government. There were also no provisions on the autonomy of the provinces. The self-government in the light of this con-

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<sup>7</sup> M. Karpiuk, *op.cit.*, p. 227.

<sup>8</sup> H. Izdebski, *op.cit.*, pp. 71–72.

<sup>9</sup> A. Ajnenkiel, *Administracja w Polsce, zarys historyczny*, Warsaw 1975, pp. 101–102.

stitution was recognized as a particular part of the state administration<sup>10</sup>. Local government units had the right to issue standards in force in their area of operation. In order for the regulations adopted at the self-government level to have universally binding force in a given area of activity, they had to be confirmed by the supervisory authority. In practice, this meant that local governments did not have the freedom to legislate<sup>11</sup>. Since 1945, a process has been taking place in Poland consisting in limiting the competences of territorial self-government and its essence. Territorial self-government, which existed in a minimalist form, was gradually deprived of competence for the central administration. The Act of March 20<sup>th</sup>, 1950 on the territorial organs of uniform state power, led to the abolition of territorial self-government, which was restored only due to reforms since 1989<sup>12</sup>.

## II. Supervision over territorial self-government in the Third Polish Republic

Supervision over the activity of territorial self-government was established in the Constitution of the Republic of Poland of April 2<sup>nd</sup>, 1997 in art. 171, where the legislator indicates that the activities of local self-government are subject to supervision due to the criterion of legality. In the second paragraph of art. 171 supervisory bodies over territorial self-government units were indicated: the voivode and Prime Minister, and within the financial scope, regional accounting chambers. The third paragraph of art. 171 defines the terms and competent institutions, to dissolve the body constituting the local government. In accordance with the constitution, the Sejm may, at the request of the Prime Minister, decide on the dissolution of the decision-making body if it violates the constitution<sup>13</sup>.

The bodies of supervision over the activity of the commune are the Prime Minister and voivode, whereas in the area of financial matters, the regional accounting office is the competent body. The activity of the commune may be subject to interference by the supervisory authorities only in cases speci-

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<sup>10</sup> H. Izdebski, *op.cit.*, p. 71.

<sup>11</sup> M. Karpiuk, *op.cit.*, p. 45.

<sup>12</sup> S. Wójcik, *Samorząd terytorialny w Polsce w XX w.*, Lublin 1999, pp. 215–222.

<sup>13</sup> Constitution of the Republic of Poland of April 2, 1997 (Dz.U. No. 78, item 483).

fied in the acts. The Local Government Act of March 8<sup>th</sup>, 1990 enables the supervisory authorities to request information and data concerning the organization and functioning of the commune. The indicated data in accordance with the Act must be necessary to perform the assigned supervisory powers<sup>14</sup>.

The literature on the subject indicates a series of classification of supervision measures<sup>15</sup>. These divisions concern the subject of own tasks and commissioned tasks. The legislator clearly emphasizes the uniformity of measures, regardless of their type. The European Charter of Local Self-government indicates in art. 8<sup>16</sup>, that the administrative control of the functioning of local communities should maintain an appropriate balance between the importance of protected interests and the dimension of intervention carried out by the control body. The use of appropriate means depends on the progress of law violations<sup>17</sup>.

The supervisory authorities have the right to undertake far-reaching activities in relation to the municipal government. They can submit a motion to dismiss the head of the commune head, appoint a person to perform the tasks of the executive body, establish a receivership and appoint a person who will act as a commune council<sup>18</sup>.

Supervision over the activity of the powiat is performed by the Prime Minister and voivode, and in the area of financial matters, the Regional Audit Office. It is exercised only on the basis of the lawfulness criterion. The basis for exercising supervision over the powiat's activity is the Constitution of the Republic of Poland and the Powiat Local Government Act of June 5<sup>th</sup>, 1998<sup>19</sup>, which clearly stipulates that supervisory authorities may interfere in the activity of the powiat only in cases specified by law, in accordance with the legality criterion. The justification for exercising supervision results from art. 16 sec. 2 of the Constitution of the Republic of Poland, which shall assign to the

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<sup>14</sup> The Act of 8 March 1990 on local government (Dz.U. No. 16, item 95).

<sup>15</sup> Ł. Buczkowski, *Środki nadzoru nad działalnością samorządu terytorialnego*, [In:] *Prawo naszych sąsiadów, Konstytucyjne podstawy budowania i rozwoju społeczeństwa obywatelskiego w Polsce i na Ukrainie*, eds. W. Skrzydło, K. Eckhardt, P. Steciuk, Rzeszów 2013, pp. 63–88.

<sup>16</sup> European Charter of Local Self-government, drawn up in Strasbourg of 15 October 1985 (Dz.U. 1994, No. 124, item 607).

<sup>17</sup> M. Karpiuk, *op.cit.*, p. 125.

<sup>18</sup> *Ibidem*, pp. 128–129.

<sup>19</sup> Act of 5 June 1998 on powiat self-government (Dz.U. No. 91, item 578).

local government the participation in the exercise of public authority. Participation concerns the majority of public tasks<sup>20</sup>.

The Act on voivodship self-government lists the supervisory bodies consisting of the Prime Minister, voivode and regional accounting chamber, responsible for financial matters. According to the law, the indicated bodies may interfere in the activities of the voivodship board and voivodeship regional council, only in cases explicitly defined by statutes. Performing supervision is possible thanks to the obligation of the voivodship marshal to file in accordance with art. 81<sup>21</sup> of the Act on the voivodship self-government: a) regional accounting chamber for a budgetary resolution, resolutions on granting discharge to management and other resolutions subject to supervision; b) the province governor of voivodship board and province voivodship resolutions within 7 days of their approval.

By means of supervision over the voivodship self-government it is possible to apply legal measures that state the proper application of the law. The Act on voivodeship self-government indicates two types of supervision measures: a) annul the resolution of the voivodship parliament or voivodship board, in case of a significant violation of the law; b) an indication that the resolution was issued in violation of the law, in the event of non-material breach of applicable provisions<sup>22</sup>.

### III. Summary

Since 1918, Poland has gone through numerous reforms, which significantly influenced the shape of the state and the way the state organization now functions. This was the cause of many changes in the local government, which also underwent numerous transformations. Despite the fact that in the Second Republic of Poland, the self-government was never established, which the creators of the March Constitution had in their minds, we can talk about considerable achievements, the result of which was the creation of territorial self-government. The imperfections of those solutions are reflected in the issue of super-

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<sup>20</sup> E. Zieliński, *Administracja rządowa i samorządowa w Polsce*, Warsaw 2013, pp. 353–354.

<sup>21</sup> The Act of June 5, 1998 on the self-government of the voivodship (Dz.U. No. 91, item 576).

<sup>22</sup> *Ibidem*, p. 396.

vision, which was unfortunately used as a tool for political struggle. Despite the existing abuses, it was possible to create regulations that introduced supervision that was important for the functioning of local self-government. The period of the Polish People's Republic caused that the territorial self-government ceased to function, which contributed to the suppression of self-government development and supervision over it. The transformations initiated in 1989 created new opportunities for local self-government, which was reflected in the clarification of provisions regarding its supervision. The regulations currently in force provide an opportunity for further development of self-government, which plays a significant role in contemporary Poland.

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