

**Robert K. Adamczewski<sup>1</sup>**

## **Formation of local government after regaining independence**

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**Słowa kluczowe:** samorząd terytorialny, historia samorządu terytorialnego

### **Abstract**

Creation of new foundations for local government after regaining independence covered in practice only the former Russian partition. In remaining areas of the Re-born Republic of Poland, it was decided to temporarily preserve the administrative structures remaining after the former partitioners, adapting them only to the extent necessary.

The first legal actions were the decree of the Head of the Polish State of 27<sup>th</sup> November 1918 on the establishment of municipal councils in the area of former Congress Kingdom. There were two levels of self-government – rural communes and municipalities and the poviats. In the Prussian partition there were three levels of self-government – municipal (rural and urban), poviats, and at the highest level, there was a provincial council with an executive body. Structure of self-government in the area of former Austrian partition varied depending on the Crown Country. In Galicia and in Cieszyn Silesia showed many similarities.

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<sup>1</sup> ORCID ID: 0000-0002-9645-479X, PhD, The Department of Constitutional Law of Faculty of Law and Administration of the University of Łódź. E-mail: rkadamczewski@wpia.uni.lodz.pl.

**Streszczenie****Kształtowanie samorządu terytorialnego po odzyskaniu niepodległości**

Tworzenie nowych podstaw samorządu terytorialnego po odzyskaniu niepodległości objęło w praktyce jedynie były zabór rosyjski. Na pozostałych terenach odrodzonej Rzeczypospolitej zdecydowano się na czasowe zachowanie struktur administracyjnych, pozostałych po byłych zaborcach, dostosowując je jedynie w niezbędnym zakresie.

Pierwsze działania prawne stanowił dekret Naczelnika Państwa Polskiego z 27 listopada 1918 r. o utworzeniu rad gminnych na obszarze byłego Królestwa Kongresowego. Funkcjonowały dwa szczeble samorządu – gmina wiejska i miejska oraz powiat. W zaborze pruskim istniały trzy szczeble samorządu – gminny (wiejski i miejski), powiatowy, a na najwyższym szczeblu sejmik prowincjonalny. Struktura samorządu na terenie byłego zaboru austriackiego była zróżnicowana w zależności do kraju koronnego. W Galicji i na terenie Śląska Cieszyńskiego wykazywał wiele podobieństw.

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When Poland regained its sovereignty in 1918, the process of building a completely new state structure began, of which territorial self-government was an important element. The basic difficulty in this respect was created by legal and organizational considerations resulting from the functioning of completely different self-government structures in the area of particular partitions. The shape, organization, way of functioning and above all the scope of competence of local government bodies were different. As W. Witkowski aptly stated, “in no area of public life of the reborn state did the district differences manifested as strongly as in the area of local government”<sup>2</sup>.

In a situation where there was no independent experience of its own, the legislator had to rely on traditions of self-government of the former parti-

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<sup>2</sup> W. Witkowski, *Historia administracji w Polsce 1764–1989*, Warsaw 2007, p. 341.

tioning states<sup>3</sup>, which resulted in the fact that self-government functioned on the basis of highly differentiated “partitioning” regulations<sup>4</sup>.

Construction of the local government foundations progressed quite slowly and did not cover the whole country at once. This could be seen first of all in the lack – in the first period after regaining independence – of a separate act regulating the self-government system. There was also no local government regulation in the Little Constitution of 1919.

Actual changes in the structure of local government and in practice entirely from scratch took place only in the former Russian partition. The regulations adopted there subsequently became the basis for construction of self-government structures in the territory of Reborn Republic of Poland<sup>5</sup>. In remaining areas, the existing legal solutions of the former partitioners were largely retained.

The first legal actions were a decree of the Head of the Polish State of 27 November 1918 on the establishment of municipal councils in the area of former Congress Kingdom<sup>6</sup>. It abolished the institutions of municipal representatives and established an independent municipal council. In the internal structures of the rural commune there were three types of organs: legislative (commune meeting), executive-controlling (commune council) and executive (mayor)<sup>7</sup>.

The municipal assembly was convened at least 4 times a year by the mayor, who presided over its meetings. In order for the resolutions to be valid, the presence of half of all residents entitled to vote was required<sup>8</sup>. The right to participate in the assembly was provided for persons who were over 21 years of age and had been living in the commune for 6 months. It also included,

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<sup>3</sup> A. Warzocha, *Samorząd terytorialny w II RP – w drodze ku własnemu państwu*, Prace Naukowe Akademii im. Jana Długosza w Częstochowie, Seria: Res Politicae, Częstochowa 2012, wydanie specjalne, p. 352.

<sup>4</sup> M. Szczypliński, *Organizacja, zadania i funkcjonowanie samorządu terytorialnego*, Toruń 2004, pp. 12–13.

<sup>5</sup> Z. Naworski, *Samorząd terytorialny w „Ankiecie” rządu Ignacego Paderewskiego*, [In:] *Samorząd terytorialny i rozwój lokalny. Studium monograficzne*, ed. H. Szczechowicz, Włocławek 2015, p. 33.

<sup>6</sup> Dziennik Prawa Państwa Polskiego (Dz.P.P.P.) 1918, No. 18, item 48.

<sup>7</sup> A. Ajnenkiel, *Administracja w Polsce: zarys historyczny*, Warsaw 1977, p. 63.

<sup>8</sup> M. Jaroszyński, *Samorząd terytorialny w Polsce. Stan obecny. Wnioski do reformy*, Warsaw 1926, p. 17 et seq.

for the first time, women. The powers of the municipal assembly included all matters concerning the municipality, budgeting, contributions and other municipal burdens. An important task of the meeting was to appoint the mayor and the municipal council.

The municipal council consisted of a mayor and 12 members elected by secret voting on the basis of a simple majority of votes. Only persons with the right to participate in the municipal assembly could become members of the council. At the same time, six alternate members of the Council were elected. Members of the council performed their functions socially. The Council meeting was convened by the mayor on his own initiative or at the request of 5 members. Meetings had to be held at least once a month and as a rule were open to the public<sup>9</sup>. Resolutions of the council were passed by a simple majority of votes, in case of an equal number of votes, the head of the council decided. At least once a year, the municipal council reported on its activities to the municipal assembly. In practice, the Council has become the governing and controlling body of the municipality and term of office lasted three years.

The municipal assembly elected the mayor – for a period of three years – and the deputy mayor. The mayor had to be 25 years of age and demonstrate the ability to read and write in Polish. It was an executive body of the municipal council and at the same time a government administration body.

Supervision over the commune self-government was entrusted to the poviats departments of the poviats councils and starosts, and in the second instance to the governor.

On the territory of former Russian partition there was no municipal self-government. It was not until the Decree of the Head of State of 4 February 1919 on municipal self-government<sup>10</sup> that the foundations of its functioning were laid.

The decree initially covered 150 cities indicated in the attached list. It introduced the concept of an urban commune as independent territorial unit, guaranteeing its public and legal personality. Members of municipalities were persons “belonging to the Polish State, living permanently in the municipality for six months”. They were guaranteed the right to hold municipal offices

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<sup>9</sup> The municipal council could decide by a majority of votes to keep its meetings confidential.

<sup>10</sup> Dz.P.P.P. No. 13, item 140.

and the right to participate in elections. An active and passive right to vote was determined by the local authority's electoral law regulated by the Decree of the Head of State of 13 December 1918 on elections to local authorities in the former Congress Kingdom<sup>11</sup>. The condition for obtaining active voting rights was: 21 years of age, possession of Polish nationality and permanent residence in the municipal commune for at least 6 months. The right to stand for election was held by persons who met additional requirements, i.e. were over 25 years of age, and had the ability to read and write in Polish. Municipal and state officials, supervising the activities of commune, as well as police and popular police officers, were excluded from this right. The ordinance provided for a secret voting on proportional basis.

The local authorities, elected for a three-year term of office, were the legislative and control body of commune. The number of councilors depended on the size of commune and predicted from 12 councilors – up to 5.000 inhabitants in communes, up to 70 councilors – in towns with more than 100.000 inhabitants. It is also stipulated that the local authorities in Warsaw will include 120 councilors and in Łódź 75 councilors. The council's term of office was 3 years. The councilors performed their functions on an honorary basis. Legislation has also been introduced to prevent possible conflicts of interest and to prevent corruption. The councilor was not allowed to occupy a “paid position in the magistrate”. The councilor was also excluded from taking part in the matter and from voting if he or a member of his family could have a “material interest” in the matter.

Meetings of the council were convened according to needs, at least once a month and were open to the public. For resolutions to be effective, a simple majority of council members were required to be present. A majority of 2/3 of the members of the Council was required for borrowing, disposal of real estate and amendments to the Regulations of the Councils.

The governing and executive body of the municipality was the magistrate. It was headed by the mayor or president (in towns separated from the counties), its deputy and jurors<sup>12</sup>. The number of jurors was determined as 10% of the number of councilors. The members of magistrate were elected for a peri-

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<sup>11</sup> Dz.P.P.P. No. 20, item 58.

<sup>12</sup> In Warsaw – president, 3 vice-presidents and jurors, in Łódź and Lublin – president, 2 vice-presidents and jurors.

od of three years, their term of office was equal to that of the council and expired with it. The mayor (president) had to be a Polish citizen, have the right to vote to the city council and have at least an education at the level of primary school. The other members of magistrate did not have to meet the conditions for education. All members of the magistrate received remuneration.

General supervision over urban self-government was exercised by powiat divisions, and in the second instance by the Minister of Internal Affairs (cities not separated from powiats). In cities separated by the Minister of the Internal Affairs. The minister's decision could be appealed to the Supreme Court.

The system of powiat self-government was based on the decree of 5 December 1918 on the temporary electoral law for powiat assemblies<sup>13</sup> and the decree of 4 February 1919 on the temporary powiat law for the area of former Russian partition<sup>14</sup>.

The powiats created independent territorial units equipped with legal personality and their own assets. Two types of powiats were distinguished – land powiat (urban communes and towns not separated) and urban powiat – municipal powiat (towns separated from powiat municipal associations and not subject to supervision of powiat departments)<sup>15</sup>. Cities with more than 25.000 inhabitants constituted independent urban powiats.

The bodies of the land district self-government were: the county council, the county department and the county commissioner (or his deputy). In urban districts, these functions were performed by appropriate municipal self-government bodies (city council, magistrate and president).

The Council was the legislative and controlling body, deciding on all matters concerning the activities of powiat associations. It consisted of delegates of towns and communes of the county, two from each commune, performing their functions on an honorary basis. In rural municipalities, representatives were elected by municipal councils, in urban municipalities it was local authorities and magistrates, at a joint meeting headed by the mayor. Term of office of the Council was three years. The decree provided for anti-corruption regulations.

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<sup>13</sup> Dz.P.P.P. No. 19, item 51.

<sup>14</sup> Dz.P.P.P. No. 13, item 141.

<sup>15</sup> M. Jaroszyński, *op.cit.*, p. 63.

Meetings of the Council were convened at least once a quarter and were open to the public<sup>16</sup>. As a rule, debates concerning the budget and “consideration of district accounts” were secret. For resolutions to be effective, a simple majority of council members had to be present. A majority of 2/3 of the members of Council had to be present in matters relating to borrowing, disposal of real estate and amendments to the Regulations of the Councils. The Council was headed by the district commissioner, who was at the same time the chairman of the district department. In urgent cases, he had the right to take decisions, which as a rule remained within the competence of the district department, but for them to be legally binding it was necessary to be approved by the department at the next meeting. The Chairman was entitled to the same right of revision with respect to department resolutions as the department with respect to resolutions of the Council.

The district department was a typical executive and governing body. It was entitled to review any resolution of the Council, if it violated the provisions governing the operation of the Council or other statutory provisions or was unenforceable or could cause damage to the county municipal association. The department consisted of a chairman and 6 members, elected for a three-year term of office, by a simple majority of votes, from among county residents with the right to stand for election to local authorities or communes.

On similar principles as in case of local government units at a lower level, the institution of supervision over powiat self-government was constructed.

The above mentioned regulations establishing a new self-government in the areas of former Kingdom of Poland were later extended to the area of Eastern Territories<sup>17</sup>.

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<sup>16</sup> The Council could declare its meetings secret by a majority of 2/3 of votes.

<sup>17</sup> Relevant regulations concerning self-government introduced ordinance of the Commissar General of the Eastern Territories of 25 June 1919 on the temporary electoral law for meetings and municipal councils (*Dziennik Urzędowy Zarządu Cywilnego Ziem Wschodnich – Dz.U.Zarz.Cyw. Ziem Wsch. – 1919, No. 7, item 45*) and the ordinance of 26 September 1919 on commune self-government (*Dz.U.Zarz.Cyw. Ziem Wsch. 1919, No. 21, item 215*). With regard to urban communes – which do not have radiums – ordinance of 27 June 1919 on temporary municipal law (*Dz.U.Zarz.Cyw. Ziem Wschodnich 1919, No. 7, item 46*). The elections were regulated by ordinance of 25 June 1919 on the election to temporary municipal councils (*Dz.U.Zarz.Cyw. Ziem Wsch. 1919, No. 7, item 44*). The Provisional Urban

In remaining areas of Reborn Republic of Poland, it was decided to temporarily preserve the administrative structures remaining after the former partitioners, adjusting them only to the extent necessary.

Thus, in the Prussian partition there were three levels of local government. The first one was communal self-government. The communes were single-rural. Resolutive and control bodies in rural municipalities were, depending on their size, assembly (municipalities up to 100 persons) or representation. The congregation consisted of all inhabitants of the municipality who were over 20 years of age and lived in its area. In larger communes there was a representative office (commune council) elected by the inhabitants. The executive power was exercised by a board of governors and jurors, elected by the assembly or council for a period of 3 years. Their counterpart in the city, which obtained the status of a public-law entity, was local authorities – appointed for a three-year term of office as legislative bodies. The body of executive power was a magistrate appointed by the council for a six-year term (the magistrate consisted of officials called jurors). The magistrate was headed by the Mayor or Lord Mayor.

At the poviát level, initially the self-government bodies were: an elected council and poviát department (consisting of 6 members) headed by a starost. The starost was also the representative of the government administration in the district and the chairman of executive body. The superior unit over the poviát was regency, but deprived of the function of self-government.

At the highest level of local government, there was a provincial council – elected for a four-year term by district councils and local authorities – along with an executive body in the form of a provincial department headed by the head of the county starost. The Council of Deputies performed legislative and opinion-forming functions in matters recommended by the state authorities<sup>18</sup>.

Territorial self-government in the area of former Austrian partition was characterized by a high degree of independence. In practice, the territory of former Austrian partition was the only area where Polish administration and

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Act was replaced by the ordinance of 14 August 1919 on the municipal law (Dz.U.Zarz.Cyw. Ziem Wsch. 1919, No. 12, item 99).

<sup>18</sup> A. Ajnenkiel, *op.cit.*, pp. 17–18.



self-governments existed in the second half of the 19th century, and the official language was Polish<sup>19</sup>.

The structure of self-government varied depending on the Crown country in which it was situated.

In Galicia there was a uniform political model of commune – the commune included one village. The bodies of rural commune were the commune councils and the so-called commune superiors, led by the head. In addition, it consisted of its deputies and from 2 to 5 assessors. In the city, local authorities and a magistrate consisting of the mayor (the president in larger urban centres), its deputies and from 3 to 5 assessors performed the functions of self-government bodies. The number of councilors was dependent on the number of persons having the right to vote, determined on the basis of education and property censuses. The term of office of the commune authorities was set at 6 years, but it was of a rotational nature.

At the poviat level, the self-government authority was exercised by the district parliament along with the poviat department appointed by it<sup>20</sup>. Due to problems related to holding of new elections, at first the council – acting as a legislative and controlling body – was elected in the so-called curia system<sup>21</sup>. Voters were divided into four curias: great land ownership, chambers of commerce and industry, larger cities and rural areas. The district department consisted of 6 members elected partly by the curia groups and partly by the whole council. The Marshal stood at its head.

In the local reality – on the territory of former Austrian partition – the district self-government did not take proper action. In many poviats, instead of district parliament, there were commissioner boards<sup>22</sup>.

There was no self-government at the provincial level in the Austrian system. Therefore, it did not take up activities on regained territories of the former Austrian partition after regaining independence, and its competences

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<sup>19</sup> See A. Ajnenkiel, *op.cit.*, p. 21.

<sup>20</sup> J. Bardach, B. Leśnodorski, M. Pietrzak, *Historia państwa i prawa polskiego*, Warsaw 1977, p. 410.

<sup>21</sup> K. Kumaniecki, B. Wasiutyński, J. Panejko, *Polskie prawo administracyjne w zarysie*, Cracow 1929, pp. 1079–1080.

<sup>22</sup> For more on this subject see A. Tarnowska, *Z dziejów unifikacji administracji II Rzeczypospolitej. Rola przepisów pruskich*, Toruń 2012, pp. 168–176.

were to be temporarily exercised by the Provisional Self-Government Department<sup>23</sup>.

In each of the Crown countries, in the territory of former Austrian partition, there was a National Parliament, which elected the National Department that was the executive and supervisory body of self-government.

In fact, it was only the extension of decrees activity concerning the introduction of self-government in territories of the former Kingdom of Poland that initiated formation of territorial self-government in territories of the former Austrian partition.

Solutions adopted in Cieszyn Silesia showed many similarities. The department, executive council or superiority was the legislative body of the commune self-government. In Silesia, there was no powiat level self-government at all, there was a so-called powiat department with a chairman, and the powiat starost was also a representative of the central government. Municipal self-government in Lviv and Cracow was also regulated differently.

As can be seen from conducted deliberations, at the beginning of functioning of the Second Republic, the structure of local government was a mosaic of different legal regulations. In practice, there were nine systems of administrative law and four different systems of local government. At the beginning of the Second Republic of Poland many barriers and difficulties were encountered in creating the basis for functioning of self-government. The system and administrative differences were compounded by deep economic, social, political, religious and national differences. It is all the more important to appreciate how great an achievement was the creation of an efficiently functioning system of local government.

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<sup>23</sup> Ibidem, p. 175.

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