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Chosen Dysfunctions of Political Practice in Local Government's Activities²

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Abstract

The paper presents four problems which constitute the most important problems related to the functioning of local government in Poland. The first issue concerns the unfinished reform of the political system. The author finds that the legislator did not implement fully the assumptions concerning the creation and functioning of local governments which are determined in the provisions of the Polish Constitution of 1997. In consequence, a contemporary political system is full of internal contradictions and does not function properly. Next, it was indicated in the work that the legislator interferes too much in the independence of local government units. Too many acts, which regulate duties and procedures, limit the autonomy of local government bodies which should determine their duties and objectives and allocate financial resources to their implementation. Third, the author finds that the permanent underfinancing of local government units poses a very

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² This lecture is an extended and in-depth version of the lecture on "Dysfunctions of the Political System on the basis of the Functioning of Local Government" given on 13 October 2020 at the Wielkopolskie Forum Samorządowe.

serious problem. The system of financing is outdated and does not correspond to contemporary needs of local communities, which results in a decrease in investments and development and an increase in debt. Finally, the article discusses the issue of excessive politicization of local governments. The author finds that transferring political disputes from the central level to the local one is very detrimental and has a negative influence on the development and functioning of local governments.

Streszczenie

Wybrane dysfunkcje praktyki ustrojowej w odniesieniu do działania samorządu terytorialnego

W publikacji przedstawiono cztery zagadnienia, które stanowią najpoważniejsze problemy związane z funkcjonowaniem samorządu terytorialnego w Polsce. Pierwszy problem dotyczy niedokończenia reformy ustrojowej. Autor uznaje, że ustawodawca nie zrealizował w pełni założeń dotyczących budowy i funkcjonowania samorządu, które wynikają z przepisów Konstytucji RP z 1997 r. W konsekwencji współczesny model ustrojowy jest pełen wewnętrznych sprzeczności i nie działa prawidłowo. Następnie w opracowaniu wskazano, że prawodawca nadmiernie ingeruje w samodzielność jednostek samorządowych. Zbyt duża liczba ustaw, które regulują zadania i procedury, ograniczają autonomię organów samorządowych. Powinny one samodzielnie określać zadania, cele i przeznaczać środki na ich realizację. Po trzecie, autor uznaje, że bardzo poważnym problemem jest trwałe niedofinansowanie jednostek samorządowych. System finansowania jest przestarzały i nieadekwatny do współczesnych potrzeb wspólnot lokalnych. Skutkuje to ograniczeniem inwestycji i rozwoju oraz zwiększeniem zadłużenia. Na końcu opracowania została omówiona kwestia nadmiernego upolitycznienia jednostek samorządowych. Autor uznaje, że przenoszenie sporów politycznych ze szczebla centralnego na poziom lokalny jest bardzo szkodliwe i ma negatywny wpływ na rozwój i funkcjonowanie samorządów.

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I. Introduction

One of the most significant outcomes of political changes which began in Poland in the late 1980s was the reinstatement of local governments in 1990. Lo-

cal government constitutes an important constitutional element of the state's political system and its effective management³. It also seems to be an indispensable feature of a democratic state under the rule of law. Initially, it functioned at the level of commune⁴, but three levels of local government units: communes, districts and provinces were introduced on 1 January 1999. Furthermore, it was vital that Poland joined the European Union (EU) on 1 May 2004 as local communities became beneficiaries, as well as distributors (local government of province) of aid resources allocated as funds to fulfil objectives of EU Cohesion Policy.

Despite existing for 30 years some spheres of its activity cause controversy and raise doubts. Some of them have existed since local government was established, the others appeared after the Constitution of the Republic of Poland was founded in 1997. The aim of this work is to attempt to present key problems related to the functioning of local government units. To some extent the choice of the topic is of subjective nature as there are issues which will not be discussed in this work. The criterion which I have found vital was that the presented issues should refer to all local government levels. Consequently, I have distinguished four main dysfunctions associated with the functioning of local government units: 1) the unfinished reform of the political system; 2) overregulation; 3) the system of financing and 4) excessive politicization. In the course of analysis, I have used a dogmatic approach which involves the examination of provisions of law and literature of the subject. I have also done empirical research in certain fields. Moreover, the conclusions to which I have come are based on the experience gained while working in local government units.

II. The Unfinished Local Government Reform

The Constitution of the Republic of Poland of 1997 established a general model of local government units based on several rules: 1) decentralization, 2) multilevelness, 3) independence from governmental administration au-

³ P. Sarnecki, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. I, eds. L. Garlicki, M. Zubik, Warsaw 2016, p. 479.

⁴ The Act of March 1990 on local government (Dz.U. No. 16, item 95).

thorities, 4) autonomy and responsibility and 5) participation in public revenues. However, the Polish Constitution creates only the frameworks of the system whereas specific solutions result from statutory solutions⁵ which determine the objectives, functions, structure and other essential elements related to the functioning of local governments.

The foundation of the new Constitution of 1997 commenced the process of creating a new structure of local government. The political reform of 1998⁶ began a process of forming a system and created its frameworks and concept. The adopted Act on district local government, on province local government and an amended Act on commune local government (previously, local government), as well as the Act on provisions implementing acts reforming public administration formed the framework of the system and an initial concept. They implemented the assumptions of the basic law; at the same time constituting specific resolutions. In the course of time, they were to be improved and transformed into a consistent uniform system compliant with the constitutional model. The accomplishment of the reform required knowledge and experience which could be gained only by empirical observation of the system and concurrent corrections of its defects. It should be found that to some extent it meant conducting experiments on a living and functioning organism. However, such a solution was imposed by the Art. 236.1 of the Polish Constitution. The Acts and the reform of 1998 formed the scheme and the structure of local government which was to be improved in the course of time following gained experience and knowledge on practical functioning of local government. Initially, this scheme was being implemented. The manifesta-

⁵ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, pp. 108–109. Cf. also in this matter the judgement of the Constitutional Tribunal of 18 February 2003, K 24/02 OTK-A 2003, No. 2, item 11.

⁶ The reform involved in the first place: passing the acts of 5 June 1998 on district local government (Dz.U. No. 91, item 578, present consolidated text Dz.U. 2020, item 920); of 5 June 1998 (Dz.U. No. 91, item 576, present consolidated text Dz.U. 2020, item 1668); of 24 July 1998 on introducing fundamental three-tier territorial division of the state (Dz.U. No. 96, item 503 with amendments) and the transformation of the act on local government into the act on commune local government. K. Kociubiński, *Budowa i reformy struktur ustrojowych samorządu terytorialnego w Polsce*, “Zeszyty Naukowe DWSPiT. Studia Nauk Społecznych” 2013, No. 6, p. 179.

tion of a further reform of the system was for instance a change of a concept of electing the executive body of the commune⁷. And that is where thorough changes of the local government system ended. The legislator stopped adjusting the construction of the local government to the constitutional model. Consequently, the system is imperfect, clearly unfinished and inconsistent with its constitutional concept.

The best example of the mentioned subject is the status of a district staroste. Firstly, the staroste is not the body of a district, but the chairman of the executive body (management board), although it serves as a body and fulfils doctrinal (functional) prerequisites of being a public authority⁸. At the same time in certain cases a staroste may perform the duties of the board autonomously⁹. Another problem is the fact that at the district level governmental administration and local administration weld together. In consequence, contemporary district starosteies have a dualistic organizational and functional structure. On the one hand, they support a self-governing community and its bodies; on the other hand, they are executive bodies of governmental administration¹⁰. Many normative acts directly treat a sta-

⁷ The Act of 20 June 2002 on direct election of village mayors, town mayors and city mayors (original Dz.U. No. 113, item. 984; consolidated text Dz.U. 2010, No. 176, item 1191).

⁸ The literature on administrative law perpetuates the view that from the functional perspective a staroste fulfils the requirements of being a body of governmental administration. For example, the staroste is authorized to make administrative decisions (cf. Art. 38 of the Act on district local government). J. Boć, *Powiat a reszta*, [in:] *Powiat. Z teorii. Kompetencje. Komentarz*, ed. J. Boć, Wrocław 2001, p. 49; S. Dolnicki, *Samorząd terytorialny*, Warsaw 2012, p. 119; M. Gurdek, *Monokratyczne organy jednostek samorządu terytorialnego*, Sosnowiec 2012, p. 134; W. Kisiel, *Tryb określania obowiązków samorządu terytorialnego*, [in:] *Prawo samorządu terytorialnego w Polsce*, ed. W. Kisiel, Warsaw 2006, p. 67; K. Lewandowski, E. Wituska, *Dychotomia aktywności starosty powiatowego w strukturze terenowej administracji publicznej*, "Studia z zakresu prawa, administracji i zarządzania UKW" 2012, No. 2, p. 26; C. Martysz, *Pozycja prawna monokratycznych organów samorządu terytorialnego*, [in:] *Problemy prawne działalności samorządu terytorialnego*, ed. S. Dolata, Opole 2002, p. 117–118; M.W. Sienkiewicz, *Samorząd Powiatowy w Polsce. Założenia i realizacja*, Lublin 2011, p. 298; E. Zieliński, *Administracja rządowa i samorządowa w Polsce*, Warsaw 2013, p. 328.

⁹ Cf. Art. 34.3 of the Act on district local government.

¹⁰ P. Niemczuk, *Rządowe funkcje powiatu*, "Administracja. Teoria – Dydaktyka – Praktyka" 2009, No. 1, p. 158.

roste as the body of governmental or local¹¹ administration, just like administrative courts¹².

In practice the staroste operates as an organ of governmental administration and as a quasi-organ of local administration. The Act of 23 January 2009 on the voivode and governmental administration in the province explicitly states that this entity performs duties of governmental administration (cf. Art. 2.5)¹³. In this aspect of its activity the staroste is subordinated to the voivode that controls its actions in terms of legality, economy and conscientiousness (cf. Art. 3.2 of the mentioned act). I will just indicate that pursuant to the Art. 171.1 of the Polish Constitution the activity of the local government is supervised only in terms of legality. The Staroste is also in charge of district services, inspections and guards which constitute district combined administration. These entities are assisting (organizational) units, separated within the starosty, which managers are independent bodies of public administration and perform the duties of governmental administration independently (not on the behalf of the staroste)¹⁴. The staroste carries out duties on the basis of acts which feature is the fact that they do not belong to the duties of the district. As a result, the status of the district staroste is full of inconsistencies; moreover, this entity to a large extent operates outside the defined frames of the functioning of local governments¹⁵.

¹¹ For instance, the Act of 20 January 2005 on the recycling of end-of-life vehicles (consolidated text Dz.U. 2019, item 1610 with later amendments) defined the staroste as one of the organs of public administration (cf. Chapter 7, Art. 39). In the Art. 80 of the Act of 7 July 1994 on building law (consolidated text Dz.U. 2020, item 1333) the staroste is defined as a body of architecture and building administration. The Act of 14 April 1994 on nature conservation (consolidated text Dz.U. 2020, item 50 with later amendments) in Art. 91.3 defines the staroste as a body involved in nature conservation, whereas in the Art. 5 § 2. 6 of the Act of 14 June 1964 the Code of Administrative Procedure (consolidated text Dz.U. 2020, item 265 with later amendments) the staroste was defined as a body of local government unit.

¹² Cf. the decision of the Supreme Administrative Court of 26 August 2011, case ref. No. II OW 52/11.

¹³ The Act of 23 January 2009 (consolidated text, Dz.U. 2019, item 1464).

¹⁴ J. Jagoda, *Powiatowa (miejska) administracja zespolona*, [in:] *Dziesięć lat reformy ustrojowej administracji publicznej w Polsce. Ogólnopolska konferencja naukowa Łańcut, 12–14 czerwca 2008 r.*, eds. J. Parchomiuk, B. Uliasz, E. Kruk, Warsaw 2009, p. 235.

¹⁵ M. Dąbrowski, *Pozycja prawna starosty powiatowego, czyli ustawowe mydło i powidło*, "Przegląd Prawa Konstytucyjnego" 2015, No. 5, p. 89.

As a side note, I would like to add that there are multiplications of the mentioned functions at the level of cities with district rights. A village mayor, a town mayor and a city mayor serve as both an executive body of the commune and of a district staroste in its hybrid formula.

Yet another debatable and problematic issue is the duplication of governmental administration and local administration at the province level.

III. Overregulation

Another problem which local government has to face is excessive legal regulations which determine the status, duties, competence and procedures of local government units. The basic law guarantees that commune units are autonomous (Art. 165.2) and have relative independence (Art. 16.2). Pursuant to these principles local government units should autonomously make decisions about their objectives, duties and financial resources allocated to their execution. The main instrument in this matter should be legal acts issued by their regulatory authorities. In this way it is possible to optimise activities of local governments. However, by passing a large number of acts governing the issues connected with the functioning of local governments to an enormous extent, the legislator in fact replaces and does their activities for them. This, in turn, limits the autonomy of local governments to a large degree. Through the acts the legislator defines the objectives of local policies, which clearly opposes the idea of decentralization. It is impermissible that governmental administration, through acts, shall force local governments to fulfil its policies. Furthermore, this solution is inflexible and makes certain commune units unable to set their own aims and choose the most suitable means of their implementation. Local governments do not have an opportunity to determine their own tasks, define priorities and rules of their implementation. Consequently, this limits their possibility to adjust their operations to the needs of local community.

Legislation serves the implementation of the interest of the public (or alternatively the state). These interests do not necessarily have to be consistent with the interests of other local government units. Therefore, excessive regulation constitutes unjustified interference in the independence of local governments and limits their autonomy.

IV. The System of Financing Local Government Units

One of the most important problems of local government units is the issue of them being permanently or even systemically underfinanced. The Constitution determines three sources of income of local governments: own income, general subsidies and designated subsidies (cf. Art. 167). In fact, there is one more source, that is all types of EU funds.

The existing model of financing local government units does not correspond to modern rules of economic processes and managing organizational units, undertakings and using both economic, as well as human resources.

One may diagnose a few main problems with reference to financing local governments. First, it is easy to notice a lack of suitability of financial resources granted (owned) by local government units for the tasks which they carry out. It means that in the broad sense incomes of the majority of local governments are not enough to cover the costs of implementing such tasks. As a consequence, local governments are in debt. Second, there is a constant increase in a number of tasks with a concurrent lack of their measurable financing. In other words, the government, through acts, burdens communes, districts and provinces with more and more duties which are not always supported by adequate funds or subsidies which could cover all the expenses related to their implementation¹⁶. This solution is contrary to the Art. 167.4 of the Polish Constitution which provides that changes in tasks and competences of local governments happen together with changes in the allocation of public incomes¹⁷. In such circumstances commune (pol. *gmina*) units may increase their running expenses at the cost of decreasing spendings on investments. One may notice a tendency to delegate statutorily expensive and complicated duties, previously implemented and financed by governmental administration, simultaneously accompanied by transferring resources which are insufficient to implement them. In this aspect one

¹⁶ For example, it is estimated that from the state budget communes receive more or less half of the financial assistance necessary for education; the other half has to be provided from communes' own incomes.

¹⁷ The normative meaning of this provision was weakened by the judgements of the Constitutional Tribunal (cf. the judgement of the Constitutional Tribunal of 1 April 2003, K 46/01, OTK-A 2003/4, item 27. J. Wiśniewski, *Rola i znaczenie zasady adekwatności z perspektywy orzecznictwa Trybunału Konstytucyjnego*, "Samorząd Terytorialny" 2015, No. 1–2.

may also point out one more issue. The state (governmental administration), through acts, disposes of unpopular, expensive and problematic duties. Third, there are situations in which the legislator, by limiting sources of income of local government units, does not provide and guarantee other sources which may cover the losses¹⁸. 2020 is the last year of big investments of local government units made with the support of the European Union, which means that in the next years local governments will receive considerably smaller financial assistance from EU funds.

Another reason for a significant decrease in incomes and for a financial crisis of local governments is an unfavorable fiscal and financial policy of the state which aims at lowering the costs of living of the citizens at the expense of incomes of local government units. Apart from the mentioned changes in Personal Income Tax, it also comprises such actions as the transformation of the right of perpetual usufruct of land for residential use into a singled-out ownership of property and at the same time granting a reduction in price and, in case of large cities such as Warsaw, an increase in payments to the budget on account of so-called “Janosikowe”.

At present an own income constitutes about 50% of commune incomes (at the level of provinces and districts this rate is even smaller). Consequently, activities of local governments depend on subsidies and funds from the state’s budget or EU funds. Unfortunately, the distribution of state resources is dependent on many factors, in many cases is insubstantive and not related to real needs. Therefore, local governments continue to sell out their own assets, in particular by selling real-estates. Half the trouble if the money gained is spent on investments. Nevertheless, these resources are often spent on fulfilling current tasks and paying off debts.

Consequently, local government units allocate considerably fewer financial resources to investments. For example, in 2017 local governments spent about 53 billion zlotys on investments; out of which about 14 billion came from their own income. In turn, in 2018 local governments allocated only 5.2 billion zlotys from their own income to investments, whereas in 2019 – only 3.2 billion zlotys.

¹⁸ It is estimated that the introduction of the so-called zero PIT for employees under 26, the lowering of Personal Income Tax and an increase in the income tax threshold will result in the decrease of communes’ income by about 6.6 billion zlotys.

All the given mentioned reasons lead to disturbing consequences – there has been a sudden decrease in investments. Investments mean progress; their suspension results in a serious slowdown in the development of local governments. Moreover, the system of financing (underfinancing) of local governments brings about a significant growth of debt of these units. Local government debts amounted to about 76.1 billion zlotys at the end of 2018; in 2019 – 79.4 billion zlotys, whereas the forecast for 2020 shows an increase up to 97.5 billion zlotys.

V. Excessive Politicization

An entry in the dictionary defines a term “to politicize” as “to introduce elements of politics, to make something political”¹⁹. I am of the opinion that this process is an inherent part of the functioning of local governments. In this aspect it has become their immanent feature and does not have to be perceived as pejorative. Election procedures, functions performed and conducting statutory powers make local governments operate within political structures. Clashing powers and interests, as well as standing for power or staying in power are part of what local governments are about.

On the other hand, these circumstances bring about the involvement in politics which at times may turn out and turns out to be negative. In the recent years the process of politicization of local governments has escalated. This problem is noticeable at most at the regional level and in the biggest cities where local governments become an arena at which the large political parties of national level fight for power, and which, to a smaller extent, express the needs of the community in a particular area. Instead of dealing with problems of their communities, local politicians start doing global politics which objectives are defined at the central level. This often happens to the detriment of the local community. Initiatives and engagement of local authorities are excessively subordinated to political and image-building objectives which aim is to get election support rather than to present community growth initiatives. Accordingly, local politicians transfer patterns of behavior and conflicts which originate in “big politics” to the manage-

¹⁹ S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, vol. 4, Warsaw 2003, p. 258.

ment of their communities. Divisions that exist at a national level are also visible in local politics.

In this area one may name three serious issues. The first one concerns finances. Decisions of central authorities on the allocation of resources from the state budgets depend on which party local authorities belong to. Local government units managed by authorities which originate from the same political faction that the government belongs to are more likely to participate more in the division of budget resources. Secondly, artificial political divisions formed at the central level are then transferred to a local one, which results in unnecessary disputes over community growth initiatives just because the originator is a member of the oppositional faction. Thirdly, the mentioned transmission of views gives birth to the aggregation of unnecessary and harmful disagreements over political conflicts of national range. Instead of solving local problems, politicians wage wars based on views and ideology.

VI. Conclusions

I have presented four issues which in my opinion lead to the weakening of the implementation of tasks of local government units and to a large extent prevent their development. The problem rests on the lack of clear-cut and simple panacea to their solution. Undoubtedly, in this matter it is indispensable to finish the reform in a well-thought-out manner, to limit excessive and statutory interference in the activities of local governments, to change a policy and concept of financing local governments and to educate local elites and raise their awareness. Moreover, it is essential to develop, both in local communities, as well as in the elites, a belief that the community itself and a positive view of local patriotism are values. Obviously, I am aware that the implementation of the presented claims requires complex and systemic actions that, in turn, require the accomplishment of a compromise both at a local level and at the level of central authorities.

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