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The metropolitan union in Pomorskie Province. The Senate draft act analysis

Związek metropolitalny w województwie pomorskim. Analiza senackiego projektu ustawy

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Abstract: The local government reforms of the 1990s created a three-tier local government system. The results of the reform are generally perceived as positive. However, it is pointed out that the legislator has not completed the political transformation process. This is the outcome of a failure to introduce an adequate and effective system of managing large cities - metropolises. In 2017, the first “metropolis” was established in the form of the Górnośląsko-Zagłębiowska Metropolia (Upper Silesia-Dąbrowa Basin Metropolis, GZM). The act sparked a nationwide discussion with other metropolises voicing their demands, including Gdańsk, Gdynia and Sopot, which make up the core of the Tri-City. The Senate of the Republic of Poland, having listened to the Pomeranian (Pomorskie Province) local government officials and experts, put forward a legislative initiative. This article discusses it.

Keywords: metropolitan government, metropolitan area, metropolitan union

Abstrakt: Reformy samorządu terytorialnego z lat 90. XX wieku stworzyły trójszczeblowy system samorządu terytorialnego. Rezultaty reform są odbierane, generalnie rzecz ujmując, pozytywnie. Wskazuje się jednak, że prawodawca nie zamknął procesu transformacji ustrojowej. Nie wprowadził bowiem adekwatnego i skutecznego systemu zarządzania wielkimi miastami – metropoliami. W 2017 r. została powołana pierwsza „metropolia” w postaci Górnośląsko-Zagłębiowskiej Metropolii. Ustawa otworzyła ogólnokrajową dyskusję, w której swoje żądania artykułowały inne metropolie, w tym też Gdańsk, Gdynia i Sopot stanowią-

ce rdzeń Trójmiasta. Senat Rzeczypospolitej Polskiej, wsłuchując się w głos pomorskich samorządowców i ekspertów, wystąpił z inicjatywą ustawodawczą. O niej jest ten artykuł.

Słowa kluczowe: samorząd metropolitalny, obszar metropolitalny, związek metropolitalny

1. Introduction

On 9 October 2015, the Sejm (the Lower Chamber) of the Republic of Poland adopted an act on metropolitan unions – hence closing a decade-long debate on the optimal organizational form of large city local governments. This bill – although far from being flawless – had numerous positives, and above all, it was trailblazing and broke the political and legal deadlock. It provided grounds for establishing novel associations grouping communes (Polish: *gmina*) and counties/districts (*powiat*), referred to as “metropolitan units”. However, the government administration bodies responsible for shaping and managing metropolitan policy (both in terms of delimitation, as well as creation) lead to the “death” of the act in question through the failure to publish executive acts. The state of legislative inactivity lasted approximately 2 years and ended with the act being repealed. On 9 March 2017, the Sejm of the Republic of Poland adopted the Act on the Metropolitan Union in the Śląskie Province (*województwo*), which – pursuant to Article 62 – derogated its precursor: “The act on 9 October 2017 on metropolitan unions (Dz. U. No. 1890 of 2016, item 2260) shall expire.” The act on systemic and framework character was repealed by the act providing for special legal and financial solutions – as such, strongly inspired by the already known structure – solely for a single metropolitan area (Katowice and its functional area), leaving other areas outside the metropolitan policy and regulatory framework (socio-economic geography and urban planning professionals argue about the issue of identification and delimitation of metropolitan area; depending on the approach and method, it is estimated that there are from several to a dozen or so metropolises within the Republic of Poland; however, it should be noted that the recently applicable “National Spatial Development Concept 2030” assumed the existence of 10 such functional areas, namely, the Silesia, Warsaw, Tri-City, Wrocław, Poznań, Łódź, Kraków, Toruń-Bydgoszcz, Szczecin and Lublin conurbations). The legislator, disregarding the constitutional principle of equality (both for residents, as well as local government communities) before the law, definitely deprived the largest cities of the possibility for in-depth communal integration via a metropolitan union.

However, without going into historical, legal or political details – even more so that numerous scientific and expert elaboration have been developed in this field, it should be noted that the aforementioned activities of the legislator opened a “wish market”. Various draft acts appeared, including:

- draft act on the Poznań Metropolitan Union (2016);
- draft act on the Metropolitan Union of the Capital City of Warsaw (2017);
- draft act on the Wrocław Metropolitan Union (2018);
- draft act on the Łódź Metropolitan Union (2019) or ultimately, the draft act on the metropolitan union in Pomorskie Province – which is the subject matter of this article.

The local governments of large cities, deprived of the possibility to form metropolitan unions, while at the same time encouraged by solutions dedicated for the Górnośląska-Zagłębiowska Metropolis or “Upper Silesia-Dąbrowa Basin Metropolis” (since this is the official name of the metropolitan union, established by way of the regulation of the Council of Ministers of 26 June 2017 on the establishment of the “Upper Silesia-Dąbrowa Basin Metropolis” metropolitan union within Śląskie Province), including financial mechanisms (which should be stressed, since the metropolitan union was provided with an additional financial source; as stipulated by Article 52 sec. 1 of the aforementioned act, it is entitled to a 5% income tax), started to demand adopting further individual acts. This is also the context for the Gdańsk-Gdynia-Sopot Metropolitan Area Association and the local self-government units associated therein, striving to establish similar legal regulations, which is reflected, among others, by the Senate’s legislative initiative. On 10 September 2020, the Senate of the Republic of Poland adopted an act on submitting the draft act on the metropolitan union within Pomorskie Province to the Sejm (form No. 646).

The objective of this article is to analyse the organizational and functional solutions proposed in the draft act on the metropolitan union within Pomorskie Province.

2. Metropolitan union structure

It should be noted that the applicable provisions of the law concern two public administration entities referred to as a “union” (Polish: *związek*) – a communal union and a metropolitan union, which shall not be equated with each other, since they exhibit different constitutive features (although they form a common category of territorial local government units). Therefore, the metropolitan union is a generic form of a union of local government units, and not of a communal union – and such an assumption shall be adopted in further considerations.

Both the communal, as well as the metropolitan unions are “corporations of corporations” (“tier II corporations”), composed of local government units. These are special purpose organizations, established to perform public tasks and satisfy social needs. For this purpose, they were empowered by the legislator with separate legal subjectivity (both public and private law) and own bodies (decision-making/control and executive). Nonetheless, this is where the struc-

tural similarities end. However, it should be noted that the metropolitan union is an in-depth form of communal integration, which is evidenced by, among others, the fact that: (1) the legislator granted it legally protected independence (as opposed to a communal union), and (2) it has an own task category (which also distinguishes it from a communal union) (Szlachetko 2018).

Article 1, which mostly duplicates the features of the Upper Silesia-Dąbrowa Basin Metropolis, though with – certain – differences, is crucial from the perspective of the planned metropolitan union's structure. Pursuant to the cited provision:

- “2. A metropolitan union is an association of communes and districts of Pomorskie Province, characterized by the existence of strong functional bonds and the advancement of urbanization processes, located within a spatially-coherent area, inhabited by at least 1,000,000 residents”;
- “3. The metropolitan union contains cities with district rights: Gdańsk, Gdynia and Sopot”;
- “4. A metropolitan union can be composed solely of districts where at least half of the communes compose the metropolitan union.”

Therefore, according to the assumptions of the legislator, the metropolitan union is to be an association (“corporation of corporations”, “second-tier corporation”) both of communes, as well as districts of Pomorskie Province. This is a significant novelty, given the Silesian Act, which basically ignored the existence of a district self-government within the metropolitan union. The legislator's mistake will be remedied in the draft in question, and the planned union will integrate all local government units. Communes and districts will have an equal membership status, and hence, will influence the organization and functioning of the new metropolitan union. The question arises in this context: Is a district self-government within metropolitan areas really required or maybe the metropolitan union should be its natural legal successor. It seems that there is no need to create a peculiar four-tier structure. However, there is no doubt that – should the legislator fear such a decision – the integration of the local government with the metropolitan union structure is better than leaving it outside of it.

The planned metropolitan union will be a legal entity – both in terms of public, and private law regulations. Pursuant to Article 2 secs 1 and 2 of the draft act: “1. The metropolitan union shall conduct public tasks on its own behalf and on its own responsibility, manages the union's property independently and manages the finances based on the budget. 2. The metropolitan union is a legal entity.”

Providing the metropolitan union with legally protected independence is a novel, yet interesting, legal solution. Pursuant to the wording of Article 2 sec. 3: “The independence of the metropolitan union shall be subject to ju-

dicial protection.” Only the local government units (provinces, districts and communes), which are a form of public authority decentralization (hence the independence, which constitutes the essence of the decentralization phenomenon) have been previously benefiting from the systemic trait of independence. Communal unions, with their legal structure similar to that of metropolitan unions, which are a form of local government task decentralization, did not have the privilege of independence. The Silesian Act was the first to change this state of affairs, whereas the draft Pomeranian act petrifies it. Assigning independence to metropolitan unions entails providing them with an own task category. Conducting such tasks independently bears the hallmarks of public authority decentralization. In this context, metropolitan unions and communal unions are a manifestation of completely different system-related trends.

3. Metropolitan union authorities

In the context of the metropolitan union’s authority, the legislator was consistent and scrupulously duplicated the majority of the Silesian Act provisions. The existing differences arise primarily from structural diversity (let us note that the Pomorskie Metropolitan Union is an association of not only communes but also districts). As far as the remaining scope is concerned, the provisions of the draft Pomeranian Act and the Silesian Act are concurring. According to Article 18 of the draft act: “The bodies of the metropolitan union shall be: 1) assembly; 2) metropolitan union board.”

A union assembly is a decision-making and control body, consisting of delegates appointed by associated local government units – communes and districts. Pursuant to Article 23 of the draft: “1. The assembly is made up of delegates from: 1) communes constituting the union – one from each commune; 2) districts constituting the union – one from each district. 2. The delegates referred to in sec. 1 are voits (commune head), mayors, presidents of cities and starosts (district head) or persons duly authorized by them”. The assembly is a decision-making and control body, and also assigns persons to particular positions (e.g., a board). Whereas the board of a union is a collective executive body, elected by the assembly. Its duties include, among others, representing the union, executing assembly resolutions, financial management, as well as managing, coordinating and controlling metropolitan organizational units.

The “democracy deficiency” is a significant drawback. The procedure of forming a union is not of the democratic nature, in the sense that it is made up of virilists and not of the metropolitan community representatives. Furthermore, the latter do not have any impact on the appointment of the union’s board. This is a consequence of adopting a “collective-type” and not “community-type” subjectivity of the metropolis, which was not mitigated by the legislator through

any institution or mechanism – e.g., in terms of participatory or deliberative democracy. The aforementioned state of affairs will have an adverse impact on the metropolitan union, the existence of which will not embed itself in the consciousness or identity of the metropolitan community, which is a clear mistake.

The only attempt to democratize metropolitan life is a report on its state. Pursuant to Article 35 of the draft: “1. The metropolitan union shall be obliged to draw up a report on the state of the metropolitan union. The report shall be presented to the assembly, decision-making and control bodies of local government units comprising the union, as well as the residents. 2. The procedure for drawing up the report on the state of the union and debating it shall be governed by the statute of the union.” However, it does not seem for the perception of this particular solution to change the overall assessment of the democratization degree of the planned metropolitan union.

4. Metropolitan union own tasks

Both in the scientific and public domains, the greatest attention is drawn to the issue of identification (and delimitation) of metropolitan areas, as well as the optimal organizational and legal form of a metropolitan self-government. It goes without saying that they are issues extremely significant in terms of the nature and shape of metropolitan policy and regulations; however, it seems that they are not the most important. It is hard to deliberate on an institution, omitting or, at least, minimizing its target functionality or using legal language terms – scope of activity and public tasks. Institution functionality should be the starting point in each case of the work on the assumptions of an administrative reform.

The functionality of the metropolitan union was referred to by the project drafter in Article 12 of the draft act. Pursuant to its wording: “The metropolitan union shall perform public tasks in the field of: 1) shaping the spatial order; 2) union’s area development policy; 3) mass transit organization and management; 4) metropolitan passenger transport; 5) organizing and coordinating sustainable mobility development; 6) development of the national and regional road network within the union’s area; 7) promoting the union and its area; 8) adapting to climate change and environmental protection.” The aforementioned statutory provision provokes certain reflections.

First of all, it should be noted that the catalogue of tasks of the Pomorskie Metropolitan Union is slightly different from that of the Silesian Union. Of course, the “core” is the same: (1) development policy, (2) metropolitan spatial planning, and (3) broadly understood transport policy. This peculiar triad (development-space-transport) is an inherent field of activity of a metropolitan self-government, simply determining its essence. The functionality of

the planned metropolitan union is, however, governed in greater detail, since it covers “adapting to climate change and environmental protection” (Article 12 sec. 1 cl. 8 of the draft act). The decision of the drafter on expanding the union task catalogue is comforting; however, it seems that it could cover also other areas of social and economic life, such as: (1) crisis management, (2) water and sewage management, (3) waste management, (4) health care, and possibly, (5) higher education and science.

On a side note, it is regrettable that the draft Pomeranian Act does not conform to the conceptual and terminological context of the Silesian Act, including the functionality of the union. For example:

- “union area development policy” (Article 12 sec. 1 cl. 2 of the draft Pomeranian Act), “social and economic development of the metropolitan union area” (Article 12 sec. 1 cl. 2 of the Silesian Act) – are clear signs of the lack of conceptual and terminological consistency of the drafter, and not a substantive difference in the wording of a public task;

- “mass transit organization and management” (Article 12 sec. 1 cl. 3 of the draft Pomeranian act), “planning, coordination, integration and development of mass transit, including road, railway and other rail transport” (Article 12 sec. 1 cl. 3 of the Silesian Act) – it seems that in reality, it is about the same public tasks;

- “organization and coordination of sustainable mobility development” (Article 12 sec. 1 cl. 5 of the draft Pomeranian Act), “planning, coordination, integration and development (...) of sustainable urban mobility” (Article 12 sec. 1 cl. 3 of the Silesian Act) – also in this case, it seems that they refer to identical public tasks;

- “development of national and provincial road network within the union area” (Article 12 sec. 1 cl. 6 of the draft Pomeranian Act), “cooperation in determining the routing of national and provincial roads within the metropolitan union area (Article 12 sec. 1 cl. 5 of the Silesian Act) – in this case, the interpretation of the provision leads to conclusions on the slightly different wording of the tasks in question, which in turn raises a question regarding the ratio legis (principle behind it).

It would be advisable to propose standardizing the nomenclature.

Importantly, public tasks of a metropolitan union (both existing and planned) are of an own task nature, which makes the union structurally similar to local government units on the one hand, and distinguishes it from communal unions which perform only commissioned (or entrusted) tasks, on the other one.

Besides the aforementioned public tasks, the planned union will have the power to also perform tasks commissioned and entrusted by way of relevant agreements. Pursuant to Article 12 sec. 2 and 3 of the draft act: “2. Pursuant to an agreement concluded with a local government unit, the metropolitan union

shall be entitled to conduct public tasks falling within the scope of activity of a commune, district or provincial self-government or to coordinate the execution of such tasks. 3. Pursuant to an agreement concluded with a government administration body, the metropolitan union may execute public tasks falling within the scope of activity of government administration.”

A drawback of the draft act is the lack of specific legal tools for the execution of public tasks under Article 12. Undoubtedly, the metropolitan union will be able to utilize these competences, which are actually provided for by the legislator for such entities. For example, the union will implement development policy in the form of a strategy, referred to in Article 9 cl. 3 of the Act of 6 December 2006 on the principles of development policy. However, the indicated stipulation provides for public tasks, which are not entailed by any “hard” competences. It is enough to mention:

- shaping the spatial order;
- organizing and coordinating sustainable mobility development;
- adapting to climate change and environmental protection.

The fact that the drafter equips a metropolitan union with “a framework study of the conditions and directions of metropolitan union spatial management” (Article 23 cl. 3 of the draft) is kind of a curiosity – incidentally, it is a tool necessary and justified in every way, which is – at the same time – withdrawn by the legislator from legal transactions. It should be pointed out that pursuant to Article 8 cl. 7 of the Act of 15 July 2020 on amending the act on development policy and certain other acts, Chapter 2a of the act on spatial planning and development (“Metropolitan spatial planning”) becomes null and void.

The aforementioned issue is not resolved by Article 13 of the draft act. Indeed, in sec. 1 it stipulates that: “In order to conduct tasks referred to in Article 12, the metropolitan union may, based on statutory rights, proclaim local enactments, which are applicable within its area.” However, there are no relevant statutory authorizations, based on which a union could proclaim local enactments. In this respect, the draft act does not add any novelties to the applicable legal system. The provisions of Article 13 itself – although justified and confirming the validity of the beliefs of this part of the legal doctrine, being in a position that delegating law-making powers to local government unit unions is permitted – however, are not sufficient to accomplish a real change. The intervention of the legislator should be entailed by amendment of material administrative law acts, providing for appropriate legal grounds.

5. Metropolitan union area

As a rule of thumb, the planned metropolitan union will function on two territorial levels. This results from the structure of the union which is an association of both communes and districts. Thus, the union’s borders and area

will be a consequence of communal affiliation on the one hand, and district affiliation on the other. This concept is ascertained by Article 1 sec. 4 of the act, which stipulates: “The metropolitan union can be composed solely of the districts where at least half of the communes compose the metropolitan union.”

The document under analysis provides for certain general criteria that should be taken into account in the course of delimiting a metropolitan area. Apart from the wording of Article 1 sec. 2 of the draft act – since it loses its importance due to the individual nature of the act, reference shall be made to the provisions of Article 4 sec. 3. Pursuant to its wording, delimitation takes into account:

- existing forms of cooperation between communes and districts;
- functional bonds and the advancement of urbanization processes, including planning decisions within the applicable spatial development plan for Pomorskie Province;
- homogeneity of the settlement and spatial system, taking into account social, economic and cultural ties.

In practice, the importance of the “existing forms of cooperation between communes and districts” should be stressed. This phrase primarily means the Gdańsk-Gdynia-Sopot Metropolitan Area Association, which is a specific outpost of a metropolitan self-government within the broadly-understood Tri-City area. Currently, the OMGGG is composed of:

- 3 cities with district rights; Gdańsk, Gdynia, Sopot – hence, the Association satisfies the requirement referred to in Article 1 sec. 3 of the draft act;
- 8 districts (Gdański, Nowodworski, Tczewski, Malborski, Kartuski, Pucki, Wejherowski and Lęborski);
- 46 communes.

The novel legal solution in terms of metropolitan area delimitation was provided for by the legislator in Article 1 sect 4. Pursuant to its wording: “The boundaries of the metropolitan area can extend beyond the province borders.” The proposed provision is substantively justified since expert studies (geographic, urbanistic and transport) unequivocally indicate the presence of “strong functional bonds” between the communes of Warmińsko-Mazurskie Province, and the Tri-City “core” (Gdańsk, Gdynia and Sopot), with the “gravitational” force of Elbląg particularly visible. Therefore, adopting an act in such a form and shape will allow including certain local government units of the neighbouring province in the Pomeranian Metropolitan Union.

6. Conclusions

A discussion on the optimal form of large city local governments has spanned over decades, and although various conceptual and terminological ideas

have appeared (e.g., urban complexes, agglomerations or, ultimately, metropolises), they essentially mean the same – streamlining the process of managing urbanized areas and conducting public tasks therein. Science or politics have introduced numerous concepts in terms of institutionalizing metropolises to the public domain. They include a relatively large number of draft acts – particularly valuable documents, since they express a precise and structured legal and systemic idea. The proposals taking the form of a draft include the following:

- draft act on the Warsaw Commune Complex and the system of the capital city of Warsaw (1994);
- draft act on the Warsaw Capital District (2000);
- draft act on the Capital City of Warsaw and the Warsaw Urban Complex (2001);
- draft act on amending the act introducing a basic three-tier territorial division of the state (2005);
- draft act on the creation and performance of tasks by agglomeration unions (2007);
- draft act on the development of cities and metropolitan areas (2007);
- draft act on the development of cities, regional development centres and metropolitan areas (2008);
- draft act on the Regional Communal Union “Silesia” (2008);
- draft act on urban policy and cooperation between local government units in this regard (2008);
- draft act on the urban policy of the state and cooperation between local government units in this regard (2009);
- draft act on the Upper Silesia and Dąbrowa Basin Metropolitan District (2012);
- draft act on cooperation within a local government for local and regional development (2013);
- draft act on a metropolitan district (2013);
- draft act on the Poznań Metropolitan Union (2016);
- draft act on the metropolitan union in Pomorskie Province (2016);
- draft act on the Metropolitan Union of the Capital City of Warsaw (2017);
- draft act on the development of cities and metropolitan areas (2017);
- draft act on the Wrocław Metropolitan Union (2018);
- draft act on the Łódź Metropolitan Union (2019).

Without going into detailed discussions, it should be stressed that these drafts generally go in two opposite directions, in terms of creating a metropolitan self-government based on a legal structure, that is: (1) a union of local government units (referred to as an urban or metropolitan complex, as well as a metropolitan area or union), and (2) a local government unit (a new unit, with the structure reminiscent of a commune, district or province; the concepts of a metropolitan district or a MEGAPolis also appeared in this context)

(Szlachetko 2020). These are common tendencies, found in many legal cultures and states – one could even risk the thesis that they are not mutually exclusive. The target solution seems creating a metropolitan self-government in a new, supra-communal form that will still remain a local government unit, being a community of the residents, manifesting itself within the local consciousness and awareness, managed in a democratic manner and conducting a number of public tasks of metropolitan nature and range. Such a state of affairs is, however, achievable only in the long run, since a social change requires time, and such processes (as shaping the awareness, building social relations or creating metropolitan identity) are complex and difficult. Therefore, it seems that the measure leading to obtaining the ultimate objective are other organizational forms of a metropolitan self-government, based on the concept of uniting (e.g., commonly used self-government associations or metropolitan unions). They are an avant-garde for target solutions, create the “grounds” for the reform among local communities, and make people accustomed to the perception of a normative and actual reality through other categories. In other words, local government unit associations are a stage in achieving metropolitan success. All this should contribute to the increasing disapproval of the legislator, who seems to fail to notice these regularities and not only fails to maintain the status quo, but takes retroactive measures (such as the derogation of the Act on metropolitan unions, which has a universal application).

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