Received: 01.04.2020
Accepted: 17.06.2020
Published: 30.09.2020

Roczniki Administracji i Prawa
Annuals of The Administration and Law
2020, XX, z. 3: s. 223-233
ISSN: 1644-9126
DOI: 10.5604/01.3001.0014.4245
https://rocznikiadministracjiiprawa.publisherspanel.com

Przemysław Niemczuk*
Nr ORCID**:** 0000-0002-2274-0128

PUBLIC INTEREST AS A DETERMINANT OF TERRITORIAL AUTONOMY

INTERES PUBLICZNY JAKO DETERMINANTA AUTONOMII TERYTORIALNEJ

Summary: The article aims to explore the concept of territorial autonomy. The research assumption is that public interest is one of the fundamental determinants of territorial autonomy. Territorial autonomy has not been defined by law. It is a general and relative term, and thus difficult to define (if such an enterprise is possible at all). However, one thing is certain - the idea behind this term determines the law regulating the organizational and territorial form of the state, i.e. the distribution of power between the centre and the territory. Further attempts to specify territorial autonomy are met with serious difficulties. Therefore, it is crucial to look at it through the prism of public interest. The term public interest has a relative meaning, because it depends on the constantly changing social conditions. This variability is, among others, a result of the territorial context. The national interest and the territorial interest will be defined in different ways. It seems, therefore, that in order to explicate the notion territorial autonomy, one should refer to the concept of public interest and then take into account the relationship between the interest of a territory and the interest of the whole state. This will make it possible to outline territorial autonomy through the prism of its determinant – the public interest.

Keywords: public administration, administrative law, public interest, territorial autonomy

Streszczenie: Celem niniejszego artykułu jest przybliżenie problematyki autonomii terytorialnej. Tezą wyznaczającą kierunek rozważań jest założenie, że jedną z podstawowych determinant autonomii terytorialnej jest interes publiczny. Autonomia terytorialna nie ma ściśle ustalonej treści prawnej. Jest pojęciem ogólnym i względnym, którego zdefiniowanie jest zadaniem trudnym, o ile w ogóle możliwym. Jedno jest jednak pewne – pojęcie to wyraża ideę, która determinuje system prawny regulujący organizacyjno-terytorialną formę państwa. Chodzi tu

* dr; WSPiA Rzeszowska Szkoła Wyższa. Źródła finansowania publikacji: środki własne autora; e-mail: przemyslaw.niemczuk@wspia.eu

o kwestię podziału w wykonywaniu władzy pomiędzy centrum a terenem związanej z interesem właściwym odpowiednio dla centrum i dla terenu. Natomiast dalsze próby konkretyzacji „autonomii terytorialnej" napotykają już poważne trudności. Stąd szczególnie istotny w tych rozważaniach jest kontekst interesu publicznego. Pojęcie interesu publicznego zasadniczo ma sens względny. Jego treść zależy bowiem od stale zmieniających się uwarunkowań społecznych. Zmienność ta jest między innymi wynikiem kontekstu terenowego. Inna treść będzie właściwa dla określenia interesu ogólnopaństwowego, a inna dla interesu terenowego. Wydaje się więc, że do wyjaśnienia pojęcia „autonomia terytorialna" przybliżyć może odniesienie do koncepcji interesu publicznego, a następnie uwzględnienie relacji pomiędzy interesem „terenu" a interesem ogólnopaństwowym. Zabieg ten pozwoli na uchwycenie zarysu autonomii terytorialnej przez pryzmat determinującego ją interesu publicznego.

Słowa kluczowe: administracja publiczna, prawo administracyjne, interes publiczny, autonomia terytorialna

PUBLIC INTEREST AS A LEGAL CATEGORY

Public interest is a multifunctional, internally complex and multifaceted category. It is extremely difficult to define that notion, if possible at all. There is no absolute, fixed and permanent definition of public interest, because the object of that definition is not permanent, fixed and invariable. The science of law aims primarily at explaining its role in the processes of making and applying law[1]. In the literature, public interest concepts fall under three or four categories[2]. According to M. Wyrzykowski, whose synthesis of views on that matter is particularly interesting, attempts to construct a concise definition of this concept, though praiseworthy, lack tangible and permanent grounds[3]. Public interest has to be continuously redefined and determined through many discussion channels (mass media, legal thought, legislature, judicial decisions, etc.), because it is an ever-changing composition and balance of different values valid in a given society at a given time and place[4].

[1] See J. Lang, *Z rozważań nad pojęciem interesu w prawie administracyjnym* [*eng. Reflections on the concept of interest in administrative law*] [in:] A. Błaś (ed.), *Przeobrażenia we współczesnym prawie administracyjnym i w nauce administracji* [*eng. Transformations in modern administrative law and in the science of administration*], "Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" [eng. Law and Administration Review] 1997, Vol. 38, p. 127.

[2] See e.g. E. Komierzyńska, M. Zdyb, *Klauzula interesupublicznego w działaniach administracji publicznej [eng. Public interest clause in public administration activities],* "Annales Universitatis Mariae Curie-Skłodowska Lublin-Polonia" 2016/2, Vol. LXIII, p. 165 et seq.

[3] See M. Wyrzykowski, *Pojęcie interesu społecznego w prawie administracyjnym [eng. The concept of social interest in administrative law]*, Warszawa 1986, p. 44. Ibid. p. 47. This author points out that those are attempts to determine inviolable (in given social and political conditions) boundaries of public interest as a common good. Research methodology requires the use of both positive and negative designations of the discussed concept. Thus those attempts aim at limiting the possibility of overusing the concept.

[4] Cf. W. Friedmann, *The Changing Content of Public Interest: Some Comments on Harold D. Lasswell,* [in:] *The Public Interest,* New York: Atherton 1962, quoted after: M. Wyrzykowski, *Pojęcie interesu*..., p. 45.

The research thesis of the study is the assumption that public interest is one of the basic determinants of territorial autonomy. It seems that in order to explicate the notion territorial autonomy, one should refer to the concept of public interest and then take into account the relationship between the interest of a territory and the interest of the whole state.

Territorial autonomy has not been precisely defined by law. It is a general and relative term, and difficult to define (if such an enterprise is possible at all). One thing is certain - the idea underlying this term determines the law regulating the organizational and territorial form of the state, i.e. the distribution of power between the centre and the territory. Further attempts to specify territorial autonomy are met with serious difficulties. Therefore, it is crucial to look at it through the prism of public interest.

It is particularly important to identify the elements determining the final structure of territorial autonomy. It is also necessary to determine the shape of these elements and their interrelationships. Hence it seems that the success of the process of giving a „territory" some autonomy depends on the cumulative determination and resolution of such issues as: general distribution of functions between the centre and territories; structure of territorial division; status of the particular levels of the territorial structure; precise distribution of tasks, competences and responsibilities between central and local government administration; legal guarantees of the local bodies and units' autonomy; material support for the implementation of tasks to be performed by territorial units.

The state's territorial organization is one of its greatest problems to solve. It serves as a basis for managing the state's territories and involves adopting certain concepts of administration both at the central and the local levels. Nowadays, there is no doubt that in order to ensure effective management at the local level in Poland, its territories must be given certain autonomy. What is more, it seems that territorial autonomy is a key factor in managing territories effectively, as it allows to identify public tasks with a given territory and its public interest. Therefore, territorial autonomy is crucial in managing the state's territories. Here, however, the basic determinant is the public interest which is identified with a given territory and has a major impact on its autonomy.

The term public interest has a rather relative meaning, because it depends on the constantly changing social conditions[5]. This variability stems, among others, from the territorial context. The national interest and the territorial interest will be defined in different ways.

As regards the former, its social context is the whole nation; as regards the latter, it is particular communities. These communities are closely tied with individual territorial units for which they serve as the constituing basis. Although the activity of

[5] Cf. J. Lang, *Struktura prawna skargi w prawie administracyjnym [eng. Legalstructure of a complaint in administrative law]*, Wrocław 1972, p. 109; A.Z. Kamiński, *Niedialektyczna koncepcja planowania i interes społeczny [eng. Non-dialectical concept of planning and social interest]*, [in:] W. Morawski (ed.), *Gospodarka i demokracja [eng. Economy and democracy]*, Warszawa 1983, p. 135.

the units of particular levels covers the interests of the same inhabitants, it should be remembered that those inhabitants, making up communities of different levels, have different needs. Therefore, other interests can be attributed to the commune (gmina), to the district (poviat) and to the province (voivodship). Moreover, the interests of each of those units will have a territorial scope different from the national one.

Generally speaking, two solutions are possible here. Firstly, legal provisions may, to a specified extent, recognize and take into account the structural separateness of the interests of individual units from the national interest. As a consequence, it is possible for local bodies to freely and independently articulate and implement tasks related to local development and aiming at satisfying the needs of local communities. Secondly, in the state management system that may emerge from the legal provisions, local systems may merely be dependent elements of the nationwide system. This would mean that the interests of individual units are derived from goals formed at the central level and assigned to particular territories. If that was the case, the various functions of local bodies would in fact serve the implementation of the national interest.

There is no doubt that the concept of territorial autonomy should be associated with the first of the solutions presented above. The question arises, however, as to what method of legal regulation should be used in order for particular territorial units to pursue the separateness of their interests on the one hand, and on the other, in order to take into account the unquestionable need to pursue the general social interest, though within a strictly and rationally defined scope. It seems that the normative structure of territorial autonomy should be integrated into a general scheme, which includes: firstly, objectives established at the central level, recognized as nationwide and uniformly pursued throughout the country; secondly, objectives established at the central level but of a more general nature, thus possible to be adapted to the territorial specificity; thirdly, objectives independently shaped and pursued by local bodies.

It can already be concluded, therefore, that territorial autonomy occurs when the interest of individual territorial units acquires the characteristics of an independent legal being, i.e. legal provisions confer on local bodies a permanent sphere of activity free from the domination of the general interest. It is a normative construct based on the assumption that, apart from uniformly implemented nationwide tasks, the legislator stipulates a catalogue of tasks to be independently shaped and implemented by local bodies, tasks characteristic only of their territories. What is more, the proposal that the concept of territorial autonomy be made a system rule seems justified. It should be added that the autonomy referred to in the paper cannot be of an absolute character and should be subject to supervision by central bodies. This supervision, however, must be exercised exclusively in accordance with the criterion of legality, for autonomy is not federalism.

PUBLIC TASKS AS AN ELEMENT OF TERRITORIAL AUTONOMY

Another issue to be tackled is the scope of territorial bodies' activity related to the public interest of a given territory. Due to the complexity of this problem, it is impossible to make a specific a priori assumption. What must be crucial here is the rationality of the legislator and their actual intentions to empower a given territory. However, it seems that the legislator should focus on the whole of the tasks related to the social and economic development of territorial units and satisfying the collective needs of their inhabitants. That would mean following the principle that all public affairs which express the territory's interest should be left to local bodies of different levels, depending on the type of those affairs, their specificity and territorial scope.

Territorial autonomy is also, or rather above all, a possibility to carry out tasks that make up the territorial interest. Needless to say, it is the proportion between the tasks and the instruments necessary to carry them out that ultimately determines the proper legal form of territorial autonomy.

Public tasks are based on the law and serve the fulfilment of public interest. As M. Stahl rightly emphasizes, public tasks are the tasks of the state performed independently through its organs or delegated to other public administration entities[6]. The delegation of tasks to another entity does not contradict their public nature which determines the aim of actions, i.e. pursuing the public interest and the general good, not the individual[7]. One should bear in mind, however, that in order to properly distribute the tasks, it is necessary to choose the right instruments.

M. Elżanowski introduces a noteworthy term here, i.e. „spatial scope of task implementation and competences"[8]. According to the author, it is somewhat similar to the concept of „local jurisdiction or competence" commonly used in legal language and the language of the law. He stresses, however, that these concepts should not be considered identical, as they put stress on different elements. Local jurisdiction is basically a procedural term. It is mainly used in order to assess the correctness of judicial or administrative decisions, whereas the „spatial scope of task implementation and competences" is an administrative science concept. It indicates that there is a relationship between all the competences and tasks of a body of a given level and the size and shape of the territory where those tasks are to be performed.

[6] See e.g. M. Stahl, *Wykonywanie zadań publicznych w interesie publicznym i władztwo jako cechy podmiotów administrujących [eng. Power and forming public tasks in the public interest as features of administering entities]* [in:] R. Hauser, A. Wróbel (eds.), *System prawa administracyjnego. Podmioty administrujące [eng. Administrative law system. Administering entities]*, Vol. 6, Warszawa 2011, p. 32.

[7] See e.g. Z. Leoński, *Samorząd w Polsce [eng. Local government in Poland]*, Warszawa 1998, p. 80.

[8] See M. Elżanowski, *Kompetencje i zadania naczelników gmin a nowy podział administracyjny [eng. Competencies and tasks of heads of communes and the new administrative division]*, „Państwo i Prawo" eng. State and Law] 1977/4, pp. 31-32.

Due to the significance of that issue, it deserves several general comments. It seems that when it comes to the correctness of the legislative technique, it is crucial to distinguish between the terms „task" and „competence" and thus to divide the legal norms providing for the functioning of territorial bodies into „competence norms" and „task norms"[9]. Unfortunately, the lack of legal definitions as well as the legislator's terminological inconsistency have led to ambiguity in legal language and the language of the law[10]. These concepts seem to be used quite haphazardly and require a broader analysis, which would however go beyond the scope of the paper. For the sake of simplification, it should be assumed that the term „task" refers to more or less specific social and economic goals stipulated by task norms and related to the development of a territory and satisfying the collective needs of its inhabitants. The term „competence" should be understood as the rights and obligations to undertake specific legal actions provided for by competence norms and oriented at implementing tasks. As Z. Leoński concisely puts it, competence is necessary to accomplish tasks[11].

In view of the above, it should be noted that, first of all, tasks cannot authorize one to undertake legal actions, and second of all, the legal situation regarding the implementation of tasks one is interested in is determined by competences.

It seems that it is the material scope of the activities undertaken by the bodies of territorial units that determines their autonomy. That scope, in turn, is determined by the scope of public tasks related to the public interest of a given area. In the literature it is emphasized that public interest is an external factor administration bodies have to take into account. They do not have their own interest but carry out tasks that serve the public interest[12].

The tasks the above-mentioned bodies perform are basically divided into their own ones and delegated to them. The latter can be quite problematic, which stems from the fact that they are closely related to the centre, and their implementation in the territory has only executive nature. The Resolution of the Constitutional Tribunal of 27 September 1994 is crucial in this respect[13]. Pursuant to the Resolution, all local government tasks are public tasks in the sense that they all serve to meet the collective needs of local communities, in respect of delegated tasks, that make up the state and the whole society. The implementation of delegated tasks is supported

[9] Cf. J. Filipek, *Rola prawa w działalności administracyjnej państwa [eng. The role of law in the state's administrative activity]*, Warszawa – Kraków 1974, pp. 38 et seq.; *Elementy strukturalne norm prawa administracyjnego [eng. Structural elements of administrative law norms]*, Warszawa – Kraków 1982, pp. 63 et seq.

[10] See more about competence e.g. in T. Rabska, *Prawny mechanism kierowania gospodarką [eng. Legal mechanism of economic management]*, Ossolineum 1990, pp. 100 et seq.

[11] See Z. Leoński, *Organy administracji państwowej w RP [eng. Public administration bodies in the Republic of Poland]*, Poznań 1995, p. 72.

[12] See J. Blicharz, *Kategoria interesu publicznego jako przedmiot działania administracji publicznej [eng. Public interest as an object of public administration activity]*, "Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" [eng. *Law and Administration Review*] 2004/40.

[13] W 10/93, OTK 1994, No. 2, item 96.

by financial resources provided by the government administration. As Z. Gilowska points out, local government units cannot refuse to carry them out even if they have no or insufficient financial resources, or the transfer of those resources has been delayed[14]. Thus all they have to do is accomplish their tasks to the best possible extent and then claim reimbursement of incurred expenditures from the state budget[15]. All in all, the implementation of delegated tasks is closely related to the state budget and its administrator, the government administration.

Currently, the activities of local government units can only be subject to legal supervision[16], which is guaranteed by Article 171 Paragraph 1 of the Constitution. This applies both to own and delegated tasks. Therefore, the activity of local government units cannot be assessed against any other criteria. Provisions that allow other supervision criteria are incompatible with Article 171 Paragraph 1 of the Constitution and should not be applied. However, the performance of delegated tasks may be subject to control based on the purpose criterion[17]. As opposed to supervision, the constitutional legislator has not limited the criteria of control only to legality. Therefore, exercising control over the implementation of delegated tasks on the basis of the purpose criterion is permissible, which results from Article 8 Paragraph 2 of the European Charter of Local Self-Government[18]. It can be cautiously assumed that there is no contradiction between the provisions of the Polish Constitution[19] allowing only supervision based on the criterion of legality and the provisions of the Charter on the control of purpose[20]. This assumption results from the difference between the scope of supervision and control, and their gradability. Supervision is a broader concept encompassing the concept of control. According to the principle *argumentum a minori ad maius*, a legal norm prohibits not only doing less but also doing more. Therefore, if the legislator decided that control could be exercised only

[14] See a commentary on communes: Z. Gilowska [in:] A. Agopszowicz, Z. Gilowska, *Ustawa o gminnym samorządzie terytorialnym. Komentarz [eng. Act on commune self-government. Commentary]*, Warszawa 1999, p. 88.

[15] Cf. E. Olejniczak-Szałowska, *Zadania własne i zlecone samorządu terytorialnego [eng. Local government's own and delegated tasks]* "Samorząd Terytorialny" [eng. Local Government] 2000/12, p. 10.

[16] As pointed out in the science of law, the concepts of „legality" and „compliance with the law" do not have identical content. See e.g. A. Wiktorowska, *Prawne determinanty samodzielności gminy. Zagadnienia administracyjnoprawne [eng. Legal determinants of the commune's autonomy. Administrative law issues]*, Warszawa 2002, p. 209. J. Niczyporuk has a different opinion about this issue. See J. Niczyporuk, in: Stelmasiak, J. Szreniawski (eds.), *Prawo administracyjne ustrojowe. Podmioty administracji publicznej [eng. Administrative law system. Public administration entities]*, Bydgoszcz – Lublin 2002, p. 77.

[17] It is also suggested in the literature that the purpose criterion be given also to the supervision over the implementation of delegated tasks. See e.g. B. Dolnicki, *Samorząd terytorialny [eng. Local government]*, Kraków 2006, p. 65.

[18] Dziennik Ustaw z 1994, nr 124, poz. 607. [eng. Journal of Laws of 1994, No. 124, item 607].

[19] Journal of Laws of 1997, No. 78, item 483.

[20] It should be noted, however, that in the science of administrative law there is also a contrary view, according to which the cited Article 8 of the European Charter of Local Self-Government is partly in conflict with the Constitution. See J. Niczyporuk, J. Szreniawski, in: E.J. Nowacka (ed.), *Ustrój administracji publicznej [eng. Public administration system]*, Warszawa 2000, p. 154.

based on the criterion of legality, then supervision, as a broader concept, would be bound by that requirement. A broader entitlement does not block a narrower one.

As E. Olejniczak-Szałowska aptly points out, the Polish literature lacks a uniform view on the independence of local government units in performing delegated tasks[21]. A. Agopszowicz claims that, when it comes to their own tasks, these units are independent of other entities' will and can act at their own discretion within the competence they possess. When it comes to delegated tasks, however, territorial units are limited by the will of the delegating body, because the act of delegation itself implies a requirement to stay within its limits[22]. Such tasks are not the tasks of local government units but the tasks of government administration. Thus the principle that a given territorial unit performs task on its own behalf and at its own risk does not apply here[23]. The standpoint of J. Boć and M. Miemiec[24] is similar. The scholars claim that the tasks delegated to a local government unit are „alien" in the sense that they come from another administration entity, i.e. the state. Such units perform these tasks after receiving funds from the government administration, on behalf of this administration, and thus not fully independently. Moreover, delegated tasks serve the general interest, while own tasks are strictly related to a specific territory and its interest[25].

All those factors allow to conclude that delegated tasks are not a shaping element of the territorial autonomy of territorial units. Therefore, the boundaries of the territorial units' autonomy are determined only by the scope of their own tasks. Another problem that arises here is the criteria for dividing tasks into own and delegated. This issue, however, requires a broader analysis, which would go beyond the framework of this study.

When discussing instruments for implementing the tasks being part of the public interest in a given territory, one should not consider competence alone. Based on competence norms, it is possible to determine which and what kind of legal forms are at the disposal of local bodies, but the actual financial, organizational, technical and material resources, as well as human resources, that is to say „economic efficiency", would not receive enough interest. Obviously, economic efficiency is largely shaped by the scope and nature of competences (e.g. the possibility of calculating and collecting

[21] See E. Olejniczak-Szałowska, *Zadania własne...*, p. 5.

[22] Cf. A. Agopszowicz, [in:] A. Agopszowicz, Z. Gilowska, *Ustawa o gminnym samorządzie...*, p. 67.

[23] A. Agopszowicz, [in:] A. Agopszowicz, Z. *Gilowska, Ustawa o gminnym samorządzie...*, p. 77.

[24] See J. Boć, [in:]J. Boć (ed.) *Prawo administracyjne [Eng. Administrative law]*, Wrocław 2000, p. 185; W. Miemiec, M. Miemiec, *Podmiotowość publicznoprawna gminy [Commune'scapacity to act in public law]*, „Samorząd Terytorialny" [eng. Local Government] 1991/11-12, p. 17.

[25] For example, issuing ID cards does not serve the commune's or its residents needs, but it is part of the national population registration system, so it is a delegated task carried out uniformly throughout the country (see Article 8 Paragraph 2 of the Act of 6 August 2010 on Identity Cards, Journal of Laws of 2020, item 332). When it comes to performing social assistance tasks, it is closely related to the needs of the community living in a given territory. The scope and amount of assistance will depend on the residents' needs and the economic capability of individual units (see Article 17 of the Act of 12 March 2004 on social assistance, Journal of Laws from 2019, item 1507).

taxes). However, it also depends on one's economic potential (e.g. the size of municipal property). This means that competences may in many cases remain a useless instrument for performing tasks if this potential is not sufficient.

Finally, yet another fundamental issue must be tackled, i.e. the legal capacity and the capacity to perform acts in law. Each unit of the state territorial division displays all the features of a legal person, including its own public interest. Legal personality should be considered an underlying element of each of these entities' autonomy. Public interest is an immanent feature of such units' separateness from the state, including legal separateness. It makes it possible for them to become separate from the state apparatus, to act on their own behalf, and bear sole responsibility. It entitles them to use judicial protection. Finally, legal personality is a guarantee of their self-governance.

CONCLUSIONS

It seems that the basic elements determining the territorial autonomy of territorial division units are: 1. legal personality, 2. the scope of own tasks, 3. the scope and nature of legal instruments for performing tasks, 4. the scope and character of state supervision, 5. economic efficiency. It should be emphasized, however, that these are only the most important elements. Undoubtedly, the most important determinant of territorial autonomy is the public interest of a given territorial unit. Without that, all the other determinants are unimportant.

Another feature of territorial autonomy is also the democratic way of appointing and dismissing territorial bodies, as well as the democratic way of their functioning. Territorial autonomy makes sense only when territorial bodies are actual representatives of the will and the needs of the society. This in turn is connected with another element of territorial autonomy, i.e. social control.

And finally, the *sine qua non* condition for territorial autonomy is local self-government. It seems quite self-explanatory, as autonomy lies in the very nature of local self-government. It should be emphasized that, although local government is one of the means of territorial autonomy, perhaps the most important one, the very fact of its existence should not allow one to draw too far-reaching conclusions regarding territorial autonomy. The decisive factor here is the local government's legal structure emerging from the applicable legislation, or more precisely, the shape of particular elements defining the boundaries of territorial units' public interest and legal mechanisms for the protection of this autonomy. Finally, another important factor is the legal relations between individual components of the territorial system.

The process of territorial autonomization of Poland was complex and extended in time. Despite many reforms carried out under the slogan of decentralization and democratization, the first visible step towards territorial autonomy was the Act of 20

July 1983 on the system of national councils and local government[26], and its amendment of 1988[27]. It should be noted that the then legislator, despite introducing many new elements that made the territory more autonomous, advocated the continuation of the then functioning model of territorial units that had been in force since 1950.

The turning point was the Act of 8 March 1990 on territorial self-government[28]. This time the legislator's expressed an intention to establish the autonomy of basic territorial division units. This autonomy was to be guaranteed by the institution of local government, which was the basic form of public life organization in the commune. Further normative acts resulting from the structural reform of 1999, i.e. the Act of 5 June 1998 on poviat self-government[29] and the Act of the same day on voivodship self-government[30] introduced territorial self-government at other levels of the state's territorial division. So while the Act of 1990 was the turning point in making the territory autonomous, the real breakthrough came at the beginning of 1999. Only system solutions assuming autonomy at all levels of territorial division are effective and thus creating an internally coherent system. Each of the territorial units has its own role in pursuing the public interest.

The question arises whether the adopted solutions are correct in the context of territorial autonomy. The fact that territorial autonomy exists at the level of commune raises no doubts. At this basic level of territorial division, local government is authentic and, what is more, other determinants of territorial autonomy are also present here. But is it similar at higher levels, i.e. poviat and voivodship? The answer does not seem so obvious. Is the local government in these units authentic? Do they have their own public interest? And finally, are these units characterized by territorial autonomy? Answering these questions seems to be the key to determining whether the decentralization process in Poland has been successful.

References

Agopszowicz A. [in:] A. Agopszowicz, Z. Gilowska (eds.), *Ustawa o gminnym samorządzie terytorialnym. Komentarz*, Warszawa 1999.

Blicharz J., *Kategoria interesu publicznego jako przedmiot działania administracji publicznej*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2004, 40.

[26] Original text: Pol. ustawa z dnia 20 lipca 1983 r. o systemie rad narodowych i samorządu terytorialnego (Journal of Laws of 1983, No. 41, item 185).
[27] Original text: Journal of Laws of 1988 No. 26, item 183.
[28] Original text: Pol. ustawa z dnia 8 marca 1990 r. o samorządzie terytorialnym (Journal of Laws of 1990, No. 16 item 95).
[29] Original text: Pol. ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym (Journal of Laws of 1998, No. 91 item 578).
[30] Original text: Pol. ustawa z dnia 5 czerwca 1998 r. o samorządzie wojewódzkim (Journal of Laws of 1998, No. 91 item 576).

Boć J. [in:] J. Boć, *Prawo administracyjne*, Wrocław 2000.

Dolnicki B., *Samorząd terytorialny*, Kraków 2006.

Elżanowski M., Kompetencje i zadania naczelników gmin a nowy podział administracyjny, „Państwo i Prawo" 1977, 4.

Filipek J., *Elementy strukturalne norm prawa administracyjnego*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego" 1982.

Filipek J., *Rola prawa w działalności administracyjnej państwa*, „Zeszyty Naukowe Uniwersytetu Jagiellońskiego" 1974.

Friedmann W., *The Changing Content of Public Interest: Some Comments on Harold D. Lasswell*, [in:] *The Public Interest*, New York 1962.

Gilowska Z. [in:] A. Agopszowicz, Z. Gilowska, *Ustawa o gminnym samorządzie terytorialnym. Komentarz*, Warszawa 1999.

Kamiński A.Z., *Niedialektyczna koncepcja planowania i interes społeczny*, [in:] W. Morawski (ed.), *Gospodarka i demokracja*, Warszawa 1983.

Komierzyńska E., Zdyb M., *Klauzula interesu publicznego w działaniach administracji publicznej*, „Annales Universitatis Mariae Curie-Skłodowska" 2016, 2.

Lang J., *Struktura prawna skargi w prawie administracyjnym*, Wrocław 1972.

Lang, J., *Z rozważań nad pojęciem interesu w prawie administracyjnym*, „Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 1997, 38.

Leoński Z., *Organy administracji państwowej w RP*, Poznań 1995.

Leoński Z., *Samorząd w Polsce*, Warszawa 1998.

Miemiec W., Miemiec M., *Podmiotowość publicznoprawna gminy*, „Samorząd Terytorialny" 1991, 11-12.

Niczyporuk J. [in:] J. Stelmasiak, J. Szreniawski (eds.), *Prawo administracyjne ustrojowe. Podmioty administracji publicznej*, Bydgoszcz – Lublin 2002.

Niczyporuk J., Szreniawski J. [in:} E.J. Nowacka (ed.), *Ustrój administracji publicznej*, Warszawa 2000.

Olejniczak-Szałowska E., *Zadania własne i zlecone samorządu terytorialnego*, „Samorząd Terytorialny" 2000, 12.

Rabska T., *Prawny mechanizm kierowania gospodarką*, Wrocław – Warszawa – Kraków 1990.

Stahl M., *Wykonywanie zadań publicznych w interesie publicznym i władztwo jako cechy podmiotów administrujących*, [in:] R. Hauser, A. Wróbel (eds.), *System prawa administracyjnego. Podmioty administrujące*, Vol. 6, Warszawa 2011.

Wiktorowska A., *Prawne determinanty samodzielności gminy. Zagadnienia administracyjnoprawne*, Warszawa 2002.

Wyrzykowski M., *Pojęcie interesu społecznego w prawie administracyjnym*, Warszawa 1986.