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Financial autonomy of the commune in Poland – assumptions and results

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Słowa kluczowe: gmina, decentralizacja administracji publicznej, samodzielność, samodzielność finansowa, dochody i wydatki, równowaga budżetowa, zadłużenie

Summary

The present analysis is devoted to the financial autonomy of communes and the ways of understanding it. The author analyzes the legal, jurisdictional and actual determinants of the commune's financial independence and points to the consequences following from them. The author poses a hypothesis that the constitutional value in the form of the financial autonomy of communes is not full realized by the parliament in contemporary Poland, with the Constitutional Tribunal underestimating it. The increase in the revenues of communes is not adequate to the duties assigned to them by the parliament. The consequences of the ongoing process include an increased debt of the communes and their problems with realization of the needs of local communities, the latter being the goal whose realization was the reason to have established the local self-government.

Streszczenie

Samodzielność finansowa gminy – założenia i rezultaty

Przedmiotem analizy uczyniono samodzielność finansową gminy i sposoby jej rozumienia. Autor analizuje prawne, orzecznicze i faktyczne determinanty samodzielności

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ści finansowej gminy i pokazuje wynikające z nich konsekwencje. Stawia tezę, że w Polsce wartość konstytucyjna w postaci samodzielności finansowej gminy nie jest w pełni realizowana przez parlament, że także Trybunał Konstytucyjny nie przyporządkowuje jej należnego znaczenia. Dochody gmin wznoszą się nieadekwatnie do powierzanych im przez parlament zadań. Konsekwencjami zachodzącego procesu są znaczny wzrost zadłużenia gmin i problemy gmin z realizacją potrzeb lokalnych wspólnot, czyli tego celu, dla którego realizacji jest ustanowiony samorząd gminny.

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The period of 25 years that has passed since on 8 March 1990 the local self-government was restored in Poland as the fundamental form of the organization of public life in a commune provokes reflection on the essence of the communal self-government in Poland, its state and the direction of the ongoing processes along the line between the state authorities and the local authorities.

In accordance with the constitutional change effected in 1990 and repeated in the rules of the presently binding Constitution of the Republic of Poland from 2 April 1997, the commune is autonomous. Keeping the force of the principle of a commune's autonomy allows for the conclusions that it is a permanent constitutional value, whose sense, the ways it is understood and applied should become consolidated and strengthened together with the development of the state's political system.

The constitutional rule of the commune's autonomy is connected with two other constitutional rules, namely the rule of subsidiarity (included in the Preamble to the Constitution of RP) and decentralization of power (art. 15 item 1 Constitution of RP). The former says that only those matters that cannot be effectively and economically realized locally should be settled on the state's level. On the other hand, according to the settled jurisdiction of the Constitutional Tribunal, decentralization of public authority means an organization of the systems of state organs where local units by law have a definite independence and interference into this independence can only take place on the basis of the law and in the forms provided by the latter. Hence, the lawmaker's task is to shape the political system in such way that decentralization of public

authority should be ensured². At the same time it needs to be emphasized that the local self-government³ is something more than only decentralized state administration. It is a local authority within the scope of local matters. While establishing the important features of decentralization of public authority, three problems are emphasized: 1) transferring public tasks to be realized on the local level, 2) the local organs using the property and entitlements guaranteeing their independence and the possibility of making decisions on public matters, 3) possessing proper financial resources to realize their own policy⁴.

On the other hand, in accordance with art. 3 item 1 of the European Charter of Local Self-Government from 15 October 1985⁵, which Poland is a party to, the local self-government means the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of their population.

25 years of the binding of the constitutional principle of the commune's independence provokes reflection on the ways of understanding it in legislation, jurisdiction of the Constitutional Tribunal and the doctrine.

As emphasized in the literature of the subject, the foundation of autonomy of the local self-government is the economic-financial independence, without which all other forms of independence are only of illusory character⁶. The financial autonomy of a commune refers both to its revenue and expenditures. In case of fiscal autonomy it refers to the legally secured possibility of increasing the revenue and obtaining it from a variety of sources by different methods. On the other hand, expenditure autonomy means the freedom to decide upon the manner and kinds of expenditures. It is determined both by the level of revenues and their structure.

² The verdict of the Constitutional Tribunal from 25 November 2002, ref. no. K 34/01, OTK ZUN no. 6/A/2002, item 84.

³ In Poland the local self-government consists of a commune, poviats and self-governing voivodeships. In voivodeships, governmental administration works besides the self-government of the voivodeship.

⁴ Verdicts of the Constitutional Tribunal from 18 February 2003, ref. no. K 24/02, OTK ZU no. 2/A/2003, item 11; 18 July 2006, ref. no. U 5/04, OTK ZU no. /A/2006, item 80.

⁵ Journal of Laws from 1994 no. 124, item 607 with changes (error correction).

⁶ A. Babczuk, *Kierunki ewolucji samodzielności finansowej samorządu lokalnego w Polsce*, "Finanse Komunalne" 2009, no. 6, p. 8.

Art. 167 of the Constitution directly determined the relations existing between the duties and competences of units of the local government and their revenues. In accordance with item 1 art. 167 of the Constitution, communes are ensured public funds adequate for the performance of the duties assigned to them. On the other hand, item 4 of that article adds that changes in the scope of tasks and competences of units of local government are made in conjunction with corresponding changes in their share of public revenues. This conjunction of a commune's tasks and competences with the corresponding share in the division of public revenues expresses the principle of adequacy of tasks and competences and the capacity to finance them, considering the constitutional status of the commune and the fact that the latter participates in the exercise of public power, acting in its own name and on its own responsibility⁷. In other words, the principle of adequacy of the means of financing to the tasks and competences is constitutionally based and it determines the model of behaviour both for the law making bodies (including, in principle, the parliament) and the bodies applying the law (including, in principle, the Constitutional Tribunal and the courts). This happens because of the normative character of constitutional provisions which is connected with the rule of direct application of the provisions of the Constitution (art. 8 item 2 of the Constitution). Art. 167 item 1 gives a guarantee to the units of local government that while deciding upon the division of public revenues, the parliament will secure them a share adequate for the performance of the duties assigned to them⁸. A properly shaped system of budgetary incomes of a commune is necessary for its functioning within the frameworks of decentralized public administration and hence decentralized public finances.

The financial autonomy of the units of local government proclaimed in art. 167 of the Constitution is one of the key features of the local self-government. It enforces a kind of "weighing" of the revenues and tasks on the constitutional level. As confirmed by the Constitutional Tribunal⁹, the es-

⁷ Verdict of the Constitutional Tribunal from 8 April 2010, ref. number P 1/08, OTK ZU no. 4/A/2010, item 33 and jurisdiction indicated there.

⁸ J. Jagoda, *Granice samodzielności finansowej jednostek samorządu terytorialnego*, "Finanse Komunalne" 2014, no. 1–2, p. 16.

⁹ Verdict of the Constitutional Tribunal from 26 June 2014, ref. no. K 13/12, OTK ZU no. 6/A/2014, item 66.

sence of this autonomy is reflected in assuring the units of the local self-government the revenues allowing them to realize the tasks assigned to them, leaving them freedom in determining their expenditures (considering the legal requirements) and in establishing the proper formal and procedural guarantees in this sphere. The financial independence of the units of local government should follow from the legislator establishing stable sources of their own revenues whose acquisition is of permanent character. Art. 167 item 1 of the Constitution includes a guarantee which is supposed to assure the units of local government public funds adequate for the performance of the duties assigned to them by law. Therefore, the point of reference to determine the share of communes in public revenues is the scope of tasks for them to perform. Establishing the proper level of revenues for the units of local self-government is regarded by the Constitutional Tribunal to be one of the most complicated problems of the financial policy¹⁰. On the one hand, it is not possible to precisely estimate the costs of particular tasks of the local self-government, which is due to the number of changeable economic and social factors which affect the realization of particular tasks. On the other hand, the law maker, as responsible for all spheres of the state's activity, must take into consideration the whole sector of public finances.

At the same time, the Constitutional Tribunal applies the principle of adequacy of tasks and competences of communes relative to their share in the division of public revenues. It emphasizes that the legislator is entitled to considerable freedom in determining the sources of revenues of the units of local self-government but also their level¹¹. An assessment whether the proper proportions between the share in public revenues and the scope of duties assigned to the communes is left to the parliament and its competences. However, the Constitutional Tribunal emphasizes at the same time that the principle of adequacy following from art. 167 item 1 is a guarantee that

¹⁰ T. Dębowska-Romanowska, *Prawne i pozaprawne uwarunkowania skuteczności gwarancji wynikających z art. 167 ust. 1 i 4 Konstytucji*, [in:] *Finanse komunalne a Konstytucja*, eds. H. Izdebski, A. Nelicki, I. Zachariasz, Warszawa 2012, p. 19; verdict of the Constitutional Tribunal from 26 June 2014, ref. no. K 13/12, OTK ZU no. 6/A/2014, item 66.

¹¹ Verdict of the Constitutional Tribunal from 26 September 2013, ref. no. K 22/12, OTK ZU no. 7/A/2013, item 95; decision of CT from 26 June 2014, ref. no. K 13/12, OTK ZU no. 6/A/2014, item 66.

a part of the public revenue at the disposal of the units of local government will be sufficient to realize the tasks assigned to them and the Tribunal must decide – on the basis of the evidence presented by the participants of the proceedings – whether the expenditures necessary for the realizations of those tasks do not limit the essence of the financial autonomy of the units of local government, thus reducing it to a superficial (seeming) notion¹².

The constitutional principle of the commune's autonomy in performing the tasks assigned to it is binding to the parliament. Because the frameworks of the activity of the units of local government are established within the laws, the limitations in the sphere of the autonomy belonging to them, including the financial independence, must also meet the procedural requirements and hence they must be determined by the laws. Besides, limitations to the principle of the autonomy of the units of local government must also fulfill material (content-related) requirements resulting from the principle of proportionality. Therefore, they must find their justification in constitutionally established goals and values. At the same time, they cannot be excessive, which means they should not exceed the limits necessary for the protection of the public interest¹³. In the light of the jurisdiction of the Constitutional Tribunal, non-conformity with art. 167 item 1 of the Constitution would take place if it was proved that the questioned legal regulation in an obvious manner deprives the communes of the share in public revenues "adequate" to their tasks¹⁴ and – at the same time – as a result of bearing expenditures for a definite purpose, the communes' freedom in decision-making concerning the shaping of the expenditure policy was ended or marginalized. Such evidence would have to include an overall analysis of all sources of budgetary revenues and expenditures¹⁵. The Constitutional Tribunal is of the opinion

¹² Verdict of the Constitutional Tribunal from 24 November 1998, ref. no. K 22/98, OTK ZU no. 7/1998, item 115; Verdict of CT from 6 September 2005, ref. no. K 46/04, OTK ZU no. 8/A/2005, item 89.

¹³ Verdicts of the Constitutional Tribunal from 20 March 2007, ref. no. K 35/05, OTK ZU no. 3/A/2007, item 28; 26 September 2013, ref. no. K 22/12, OTK ZU no. 7/A/2013, item 95.

¹⁴ See: Verdict of the Constitutional Tribunal from 31 May 2005, ref. no. K 27/04, OTK ZU no. 5/A/2005, item 54.

¹⁵ Verdict of the Constitutional Tribunal from 7 June 2001, ref. no. K 20/00, OTK ZU no. 5/2001, item 119, decision of the Constitutional Tribunal from 26 June 2014, ref. no. K

that the fact itself of a given units of local government realizing public tasks is a sufficient proof that it has a sufficient amount of resources¹⁶.

In principle, communes should perform their own tasks basing on their own revenues. This is the essence of the principle of the financial autonomy of the units of local government¹⁷. These can be – and actually are – supplemented by, for example, appropriated allocations from the national budget which are also intended for the realization of their own tasks. The means obtained within appropriated allocations can be expended on strictly established tasks and the authorities of the commune cannot use them in a way different from that determined by the entity granting the subsidy.

Art. 167 item 4 of the Constitution, on the other hand, places an obligation on the legislator to make proper alterations to the share of public revenues in a situation when the scope of duties and competences of local government is altered. Nevertheless, it should be emphasized that the fact itself of modifying one of the sources of revenues in the system of financing without increasing the scope of duties of the units of local government does not determine the unconstitutionality of such a regulation if the existing sources of revenues make it possible to perform all public tasks. What is of key importance in the Constitutional Tribunal understanding of the principle of adequacy is that the Tribunal perceives it through the state of the national finances. As decided in the sentence from 16 March 1999, the principle of adequacy cannot be understood as the basis to ensure the units of local government definite revenues irrespective of the financial situation of the whole state¹⁸. Neither can it result in depriving the governmental administration of the means to perform its duties.

Art. 167 item 1 of the Constitution expresses the directive determining the way of dividing the financed means between the governmental administration and the local government as well as the directive determining the way

13/12, OTK ZU no. 6/A/2014, item 66.

¹⁶ J. Wiśniewski, *Rola i znaczenie zasady adekwatności z perspektywy orzecznictwa Trybunału Konstytucyjnego*, "Samorząd Terytorialny" 2015, no. 1–2, p. 84.

¹⁷ Decision of the Constitutional Tribunal from 26 June 2014, ref. no. K 13/12, OTK ZU no. 6/A/2014, item 66.

¹⁸ Cf. Verdict of the Constitutional Tribunal from 16 March 1999, ref. no. K 35/98, OTK ZU no. 3/1999, item 37.

of dividing these means between particular levels of the local government. When the parliament divides the revenues, it must also consider the scope of public tasks performed by the governmental administration, and especially the duty to realize the tasks following from particular constitutional provisions. The accessible financial means should be divided between the aforementioned entities relative to the scope of the public tasks assigned to them. At the same time, securing definite sources of revenues to the units of local government cannot prevent realization of public tasks which – in accordance with the binding law – belong to the governmental administration¹⁹. The Tribunal's consent to extend the duties imposed on the self-government, without equipping the latter with additional means of financing to realize them, may result (and that is the practice) in limiting the self-government financing other tasks. When the new tasks are of obligatory character, the legislator makes the local self-government limit the expenditures in other non-obligatory spheres of activity, including above all the capital spending, or increase the debt, which is followed by increased costs of debt servicing.

In the sentence from 31 January 2013 the Constitutional Tribunal stated that there is no need to absolutize the principle of adequacy of revenues to the duties assigned to the communes. It decided that the constitutional duty to secure the adequate share in public revenues is formulated in such a general manner that specifying it encounters obvious problems. The assessment concerning what size of means is adequate cannot be unequivocal taking the fact into account that the Constitution does not determine a catalogue of tasks belonging to the local self-government or the standard of performing them. On the statutory level, it is not always possible, either, to establish such a standard as it is relative. Relativity of the standard of realizing the local tasks gives rise to the problem in determining the adequate level of resources for the units of the local government. Although the Constitutional Tribunal does not question the normative nature of art. 167 of the Constitution of the Republic of Poland, it accepts the statement that the norms included in art. 167 items 1 and 4 of the Constitution are only general directives²⁰. It emphasized that the legal norm expressed

¹⁹ Verdict of the Constitutional Tribunal from 31 January 2013, ref. no. K 14/11, OTK ZU no. 1/A/2013, item 7.

²⁰ Verdict of the Constitutional Tribunal from 31 January 2013, ref. no. K 14/11, OTK ZU no. 1/A/2013, item 7.

in art. 167 item 1 of the Constitution is a directive for the parliament, which decides upon the division of public revenues between the organs of public authorities. The only binding prohibition following from the provisions quoted above refers to the shaping of the financial means on such a level which makes it impossible to realize the tasks of the units of local government. According to the Tribunal, the principle of adequacy should be understood in such a way that the incomes from their own revenues, subventions and subsidies should secure all local self-governments the possibility to realize – at least on the minimal level – the tasks that are imposed on the local government by law and obligatorily²¹. However, extending the duties performed by communes does not always have to be connected with increasing the means assigned for them. According to the interpretation adopted by the Tribunal, the Sejm has the right to decide that the new duties can be performed by way of economizing, rationalizing the commune's expenditures or by obtaining new means (EU resources or public private partnership). The objective interpretation of reconciling increased duties without a simultaneous adequate increase of the means of financing them arouses doubts since it is based on the assumption that communes have actual possibilities to find new resources by way of economizing, that they do not rationalize their expenditures or that there are certain sources of financing the expenditures that the communes do not make use of. The assumption adopted by the Tribunal of the commune's ability to independently obtain the means to realize the new tasks was not proved by the Tribunal. In this sphere it is also hard to find any confirmation for such an assumption in official documents or in the doctrine. On the contrary, they point to the increasing debt of the communes and an increase in the excessive debt of the communes.

The Constitutional Tribunal emphasizes that the issue of establishing the means necessary for the performance of tasks belonging to the local self-government is one of the particularly complicated problems since it is frequently not possible to estimate or precisely calculate the costs of realizing specific tasks²². The Tribunal states that it is not competent to independently establish

²¹ Verdict of the Constitutional Tribunal from 25 July 2006, ref. no. K 30/04, OTK ZU no. 7/A/2006, item 86.

²² Verdict of the Constitutional Tribunal from 31 January 2013, ref. no. K 14/11, OTK ZU no. 1/A/2013, item 7 in relation to the sentence of the Constitutional Tribunal from 8 April 2010, ref. no. P 1/08, OTK ZU no. 4/A/2010, item 33.

the correctness of the parliament's realization of the principle of adequacy. It is also difficult for the Tribunal to evaluate the evidence presented in a specific case because this is connected with the necessity of measuring whether the revenues established by the parliament are sufficient to realize the concrete tasks of a specific unit of the local government, which hardly belongs to the competences of the Tribunal. This results from the lack of regulations in the Constitution concerning the performance of particular tasks. The Constitutional Tribunal is of the opinion that it cannot determine the "proper" or "optimal level of their performance and hence, state clearly what level of the resources would be adequate/proper. Except for an obvious and striking disproportion between the sources of revenues and the assigned public duties (which happens very rarely), it would be difficult to study the actual realization of guarantees following from art. 167 item 1 of the Constitution²³. However, in accordance with art. 19 item 1 of the law on the Constitutional Tribunal, during the proceedings before the Constitutional Tribunal, the latter should examine all significant circumstances with the aim to explain all aspects of the matter. To decide on the compatibility of a legal norm with the Constitution, the way in which it is applied should not be disregarded. To this aim, the Constitutional Tribunal *ex officio* should allow the evidence which it considers useful to explain the matter. In particular, there is no ban on analyzing the financial consequences of the binding of the controlled legal regulation.

As rightly stated in the jurisdiction of the Tribunal, not each will of the law maker can be the law. The principles guiding the state of law include the statement that the parliament should shape the legal norms in such a way that they should be the most effective measures to achieve the assumed goal of the legislative activity. The choice of measures aimed to realize the goal chosen by the legislator should be made in accordance with the assumptions of the rational creation of law. The adopted solutions are to be adequate to the goal of passing the law assumed by the parliament. In particular, the parliament should make the assessment of the consequences of the regulation in the context of the goal to be achieved²⁴.

²³ Verdict of the Constitutional Tribunal from 31 January 2013, ref. no. K 14/11, OTK ZU no. 1/A/2013, item 7.

²⁴ Verdict of the Constitutional Tribunal from 20 November 1996, ref. no. K.27/95, OTK 1996, part II, item 43; sentence of the Constitutional Tribunal from 17 May 2005, ref.

Characteristically, when the Constitutional Tribunal raises the issue of problems with estimating and calculating the costs of the performance of specific tasks of the local government precisely, it does not relate it to the assessment of the consequences of the regulation. It is assumed that in the process of law establishment, the Sejm should make an assessment whether and if so, in what extent the proposed legal regulations mean imposing additional tasks or they will affect limitations to the commune's revenues. However, the motif of confronting the undertaken legal solutions with the assessment of their consequences, as a duty placed on the parliament in the legislative process, is underestimated by the Constitutional Tribunal. The process of deciding on the compatibility of the provisions of law with art. 167 of the Constitution lacks the analysis of the test concerning the rationality of the binding law or a comparison of the assumptions of the law included in the enclosed reasons, with the legal and actual consequences of the binding of the law. As decided by the Constitutional Tribunal in another case, however, irrational legislation cannot be regarded as proper even if it satisfies all the formal criteria of correctness²⁵. The Constitutional Tribunal minimizes the importance of the consequences following from the fact that when undertaking a legal regulation, the parliament is obliged by law to establish all legal and actual consequences of the binding of the legal regulation. This includes a reliable determination of the sources of financing it. If, on the other hand, it is difficult to estimate and calculate the costs of performing concrete tasks of the local government precisely, this should be indicated in the assessment of the consequences of the regulation, together with the reasons why it is not possible to calculate the financial consequences of the binding of the legal regulation. Detailed and correctly conducted analyses of the economic consequences on activities, both direct and indirect ones, are extremely important for the establishment of law. Meanwhile, it happens in many cases that the consequences of the adopted legal regulation are not recognized, either in the process of the creation of law by the parliament and in the process of deciding upon the compatibility of particular legal regulations with the Constitution.

no. P 6/04, OTK ZU no. 5/A/2005, item 50.

²⁵ Verdict of the Constitutional Tribunal from 17 May 2005, ref. no. P.6/04, OTK ZU no. 5/A/2005, item 50. Cf. J. Zaleśny, *Zasady prawidłowej legislacji*, "Studia Politologiczne" *Oblicza polityki*, eds. J. Błuszkowski, J. Zaleśny, 2009, vol. 13, pp. 13–14.

In the light of the jurisdiction of the Constitutional Tribunal, the condition of the national finances should be treated as a matter of key importance when the Sejm passes the laws concerning the units of local government. The Sejm's decisions depend on the permanent crisis in the national finances, the deepening debt of the state, increasing costs of servicing the national debt and problems with not crossing the constitutional barriers of excessive debts (art. 216 item 5 of the Constitution: the national public debt cannot exceed $\frac{3}{5}$ of the value of the annual gross domestic product). If, in the understanding of the Constitutional Tribunal, the principle of adequacy cannot be interpreted separately from the financial situation of the whole state, this means that the parliament is competent to interpret it through the prism of searching for the ways to keep the national public debt at the level below $\frac{3}{5}$ of the value of the annual gross domestic product and transferring the public duties to the communes, without equipping them with the proper means to perform the tasks assigned to them in an effective way. To perform the public duties which are not related to equivalent revenues, the communes use up their own revenues at the cost of losing the capacity to perform the tasks which they consider a priority and at the cost of passing unbalanced local budgets. This process is increasing. The result of the reasoning approved by the Constitutional Tribunal is that permanently unbalanced finances of the state negatively affect the condition of the local finances and increase the lack of balance. Transferring public expenses onto the units of the local government does not only negatively affect self-governments but it also causes negative consequences for the public finances. As a result of the activity of the organs of the state authority, the units of the local government are forced to take credits, loans and emit bonds or sell their property. At the same time, the deficit of public finances and the public debt is increasing.

In Poland no precise criteria which would be useful in assessing the degree in which the principle of adequacy of the resources to the tasks is realized have been developed. The process of standardization of the performed public tasks does not proceed in a uniform way in reference to their particular kinds. Standardization of realizing the tasks pertaining to education and social welfare is considered most advance, which does not mean that when the parliament assigns tasks to be performed by the communes it at the same time equips them with the means adequate to their effective per-

formance. The typical examples from this sphere include the statutory introduction of housing allowances, increased salaries for primary and secondary school teachers or the statutory compulsory preschool education for 4-year-olds (since 2015) and 3-year-olds (since 2017). This kind of a statutory increase of the expenditures borne by the commune was not accompanied by the statutory increase of revenues to realize those duties. According to what Z. Gilowska and W. Misiąg established, not even one instance of the governmental administration transferring the tasks onto the units of the local government was followed by an adequate growth of their own revenues, while transfers from the central budget to realize them sometimes occurred in the successive years²⁶. The mechanism of the parliament imposing the following tasks to be realized by self-government, granting privileges to the workers of the local government (often in the course of the budget year) without transferring any means from the central budget could be called the “childhood disease of decentralization” if it did not change into a permanent mechanism with pathological features²⁷.

Each case always requires considering the adequacy of revenues in a broader context, including the possible rationalization of public expenditures²⁸. There is no doubt, on the other hand, that violation of the principle of adequacy can take the following forms:

- imposing new duties without securing new financial means to realize them,
- extending the scope of duties or imposing the way of realizing them without securing new financial means to realize them,
- limiting the sources of revenues,
- changing interpretation of law in the process of applying it.

The essence of the constitutionally ensured autonomy of the communes is expressed in securing the units of the local government a system of rev-

²⁶ Z. Gilowska, W. Misiąg, *Dostosowanie dochodów jednostek samorządu terytorialnego do norm konstytucyjnych i standardów europejskich*, Warszawa 2000, pp. 74–76.

²⁷ M. Grzybowska, *Polska reforma samorządowa – założenia i rezultaty*, [in:] *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska. Księga jubileuszowa dedykowana profesorowi Jackowi Czajowskiemu*, eds. M. Grzybowski, G. Kuca, P. Mikuli, Kraków 2013, pp. 651–652.

²⁸ Verdict of the Constitutional Tribunal from 31 January 2013, ref. no. K 14/11, OTK ZU no. 1/A/2013, item 7.

enues creating guarantees for the performance of the public tasks assigned to them and – at the same time – leaving them political freedom in shaping the expenditures²⁹. The problem is not only that the means accessible to the commune should be adequate to the tasks realized by it (making it possible to realize them effectively) but also that on the basis of those resources the communes could independently manage their own matters in their own name and on their own responsibility. This independence can be limited by law but only on condition that these restrictions are justified from the point of view of constitutional values which have priority in relation to the autonomy of the local government. This priority cannot be accidental. It should be indicated by the parliament within the frameworks of the assessment of the consequences of the regulation. The parliament has an obligation to prove that in a given situation priority should be given to another constitutional value and not the adequacy of the financial means to realize the tasks.

A characteristic feature of the commune as a unit of the local government is that it solves local tasks independently, within the frameworks of all national legal regulations. Art. 167 of the Constitution serves the establishment of proper formal and procedural guarantees in this sphere. There is no doubt that these must be the guarantees “adequate” to the tasks assigned to the commune understood as a unit of the local government, and not as an element of the state’s territorial division within a centralized system, modeled after the communist system of national councils. The idea of self-government is realized through the proper connection between the duties and the financial means to perform them. Without it the local government loses its character and starts to resemble the organs of the state local administration.

“Self-government” of an autonomous commune should also be analyzed through the prism of the structure of budgetary revenues of the commune. Without revenue autonomy, one can hardly speak of independent activity of a unit of the local government. Referring to the revenue of the budget, in Poland the authorities of the local government are not autonomous. In particular, they cannot introduce new taxes and their competences in the field of the tax assessment and local tax collection are limited by law.

²⁹ Cf. R.P. Krawczyk, *Nadzór i kontrola nad samorządem terytorialnym – aspekty konstytucyjno-ustawowe i faktyczne*, [in:] *Samorządy w Konstytucji RP z 2 kwietnia 1997 roku*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2013, p. 102.

The structure of budgetary revenues of the commune should promote the development of the activity of local organs and it should not create the conditions for unjustified interference of the state into the activity of those organs. According to art. 167 item 2 of the Constitution, the revenues of units of local government consist of their own revenues as well as general subsidies and specific grants from the state budget. The way of calculating the sources of the commune's revenues used in the Constitution, which consists of clear separation (through the use of a conjunction "and") between the communes' own revenues and general subsidies and specific grants indicated that the will of the authors of the Constitution was that the communes' own revenues should be of major importance. In the context of the assumption that a commune is a self-government, this is a logical assumption since it makes the commune independent of the state transfers which – naturally – express the state's policy and not the policy of local self-governing communities. The high share of the communes' own incomes in the structure of revenues promotes independence in making decisions and a rational local budget policy. It makes it possible to satisfy the local needs and has a positive effect on the activity of self-governing organs in the direction of increasing their autonomy. The constitutional assumptions do not find confirmation in the provisions of the binding laws. In the light of the analysis of the regulations referring to the revenues of the local government – with limited sources of the communes' own revenues – a system of developed subsidies and specific grants is applicable which – according to the constitutional assumption – should be of supplementary importance in relation to the communes' own revenues. This results in limiting the financial independence of self-governments, making them depend on the parliament and limiting the fundamental feature of self-government, namely autonomy of acting in their own area. There is an increasing tendency to make the local governments carry out the decisions taken by the central authorities. After including the revenues and expenditures determined by the policy of the government in the budget of the commune, there is little place left for the local policy, which should be the essence of the local government.

In the context of the principle of adequacy, another constitutional principle should be mentioned, namely that of budget balance. There is no doubt that both the balance of the national budget and the budget balance of par-

ticular units of the local government are constitutional values. Securing the budget balance is a constitutional value since the capacity of the organs of public authority to solve different social problems depends on it. The principle of the budget balance limits the legislative freedom of the Sejm. On the constitutional level, it cannot pass the laws resulting in excessive expenditures from the budget and whether it is the state's budget or the budget of the units of the local government is of no greater importance. Together, they compose the sector of public finances. The state's budget should be balanced and so should the budget of the units of the local government. An attempt to limit an excessive deficit of the state's budget by transferring expenditures to the units of the local government should be treated as an attempt on the part of the Sejm to find a way around the principle of the budget balance.

Characteristically, the parliament notices the problem of the excessive debt of the units of the local government and to prevent this phenomenon it introduced proper legal regulations, first of all in the form of the principle of balanced revenues and current expenditures of the units of the local government. Art. 242 of public finance act from 27 August 2009 is supposed to enforce the financial discipline of the units of the local government³⁰. According to it, since 2011 the planned and incurred current expenditures cannot be higher than the realized current revenues increased by the budget surplus from the previous years and the free resources, which means that the operational part of the budget must be balanced.

A thesis might be posed that the process of decentralization of public tasks (expenditures) takes place in Poland without adequate decentralization of the financial resources³¹. The effect of the deepening disproportion between the communes' revenues and expenditures is the crisis of local finances, a symptom of which is an increasing debt of the units of the local government. Decreasing investment expenditures to realize the tasks enforced by the parliament is also of importance. A lack of their own means to satisfy the local needs makes the communes depend on the external finances. Hence

³⁰ The uniform text in the Journal of Laws from 2013 item 885 with amendments.

³¹ K. Surówka calculates the increase of expenditures inadequate to the increase of revenues and poorer possibilities of servicing the debts, in: *Ograniczenia faktyczne samodzielności finansowej jednostek samorządu terytorialnego – regresja samodzielności finansowej*, "Finanse Komunalne" 2014, no. 1–2.

the popularity of the government's projects directed to the units of the local government (which assume the financing of local investments from governmental and local resources) or the popularity of the European Union funds. For a considerable part of communes they are a fine opportunity to carry out some investments which are not necessarily urgent or fully rational. In this way the communes become dependent on the external finances, which leads to the process of financial recentralization of the public administration. Therefore, paradoxically, the longer time passes after the proclamation of an autonomous commune in Poland in 1990, the less financially autonomous it is and the more it becomes a form to realize the state's policy locally.

Inadequacy of the means of financing to the duties performed causes that in recent years a significant increase in the debt of the units of the local government has taken place³². A particular dynamics in the increase of the debt of the units of the local government was observed in the years 2008–2011. Compared to the previous year, the debt increased by 3.7% in 2007, by 11.2% in 2008, by 40% in 2009, by 36.7% in 2010 and by 19.4% in 2011³³. A higher level of debt determines higher costs of servicing it. More and more Polish communes experience problems with servicing the debt while a few percent of the Polish communes have lost the financial liquidity, the phenomenon being on the increase.

The average debt of the self-governing units in 2011, as shown in the relation between the debt and the revenues, was higher by 4.6% than in 2010 and equal to 38.4%. In 2011 the percentage of the units of the local government where the debt ratio exceeded 40% grew (25.3% in 2010, 32.5% in 2011). So did the number of units which crossed the 60% limit of debt, from 70 in 2010 to 135 units in 2011³⁴.

It should be clearly emphasized that the increasing level of debts of local governments does not only result from excessive public duties imposed

³² Ibidem, p. 30; J. Zawora, *Uwarunkowania wykorzystania funduszy Unii Europejskiej wynikające z sytuacji finansowej jednostek samorządu terytorialnego*, "Finanse Komunalne" 2015, no. 1–2, p. 51.

³³ Data quoted after: Krajowa Rada Regionalnych Izb Obrachunkowych, *Zadłużenie jednostek samorządu terytorialnego, przestrzeganie ustawowych limitów zadłużenia i jego spłaty*, Łódź 2014, p. 7.

³⁴ Ibidem, p. 7.

on them, without secured additional resources of financing them, but also from the participation of local governments in using the European Union resources in the financial perspective of 2007–2013. It caused a considerable increase of the debt level in the units of the local government. Decisions to take credits were determined by the requirement binding in the European Union related to co-financing the expenditures from the communes' own resources and those of the Union. A significant number of the units of the local government realized the investments which were not adjusted to their financial potential.

Problems that communes have with repaying the credits result in transferring significant amounts of burdens to successive years (many years' grace period in repaying the capital), which is connected with increased costs of servicing the debt. Postponing the repayment of the debt in time coincides with a new financial perspective of the European Union (2014–2020). In view of the fact that using the European Union resources requires their own contribution means that since 2015 an increased level of debt in the units of the local government must be assumed. At the same time, however, due to the continuously high level of debt in the units of the local government some communes might not be able to gather their own resources and thus they will not be able to realize the investments co-financed from the resources of the European Union³⁵. Spreading the payment over time for the existing debt may limit the ability to contract new debts as well as to prepare and pre-finance projects which could win the support of the European Union.

In addition to transferring significant amounts of financial burdens of communes onto the successive years, another technique of lowering their debt, can be observed. Self-governing legal entities, e.g. community partnerships run into debt. In part, they take over the debt of the units of the local government. Economically, however, this debt burdens the self-governing units³⁶.

³⁵ This kind of risk is broadly discussed by M. Czekaj, *Sytuacja samorządów u progu nowego etapu finansowania 2014–2020 – występujące ograniczenia*, "Finanse Komunalne" 2015, no. 1–2, pp. 30 ff.; M. Dylewski, *Potencjał finansowy jednostek samorządu terytorialnego u progu nowej perspektywy finansowej*, "Finanse Komunalne" 2015, no. 1–2, pp. 25 ff.

³⁶ Krajowa Rada Regionalnych Izb Obrachunkowych, *Zadłużenie jednostek samorządu terytorialnego...*, p. 41.

A considerable scope of revenue and expenditure autonomy of communes strengthens the possibility of building strong local communities which are responsible for their own development. On the other hand, when the commune's duty is mainly to perform the tasks appointed by the central authority, within the financial limits set up by that authority (and only supplementary realization of locally established tasks), the local communities lose their importance. They do exist, but mainly to carry out the parliament's will. This is the phenomenon that we observe in Poland nowadays. The scope in which the communes do what they are forced to do by the parliament is increasing while the scope of tasks they realize because they consider it proper is getting smaller.

Literature

- Babczuk A., *Kierunki ewolucji samodzielności finansowej samorządu lokalnego w Polsce*, "Finanse Komunalne" 2009, no. 6.
- Czekaj M., *Sytuacja samorządów u progu nowego etapu finansowania 2014–2020 – występujące ograniczenia*, "Finanse Komunalne" 2015, no. 1–2.
- Dębowska-Romanowska T., *Prawne i pozaprawne uwarunkowania skuteczności gwarancji wynikających z art. 167 ust. 1 i 4 Konstytucji*, [in:] *Finanse komunalne a Konstytucja*, eds. H. Izdebski, A. Nelicki, I. Zachariasz, Warszawa 2012.
- Dylewski M., *Potencjał finansowy jednostek samorządu terytorialnego u progu nowej perspektywy finansowej*, "Finanse Komunalne" 2015, no. 1–2.
- Gilowska Z., Misiąg W., *Dostosowanie dochodów jednostek samorządu terytorialnego do norm konstytucyjnych i standardów europejskich*, Warszawa 2000.
- Grzybowska M., *Polska reforma samorządowa – założenia i rezultaty*, [in:] *Ustroje. Historia i współczesność. Polska – Europa – Ameryka Łacińska. Księga jubileuszowa dedykowana profesorowi Jackowi Czajowskiemu*, eds. M. Grzybowski, G. Kuca, P. Mikuli, Kraków 2013.
- Jagoda J., *Granice samodzielności finansowej jednostek samorządu terytorialnego*, "Finanse Komunalne" 2014, no. 1–2.
- Krajowa Rada Regionalnych Izb Obrachunkowych, *Zadłużenie jednostek samorządu terytorialnego, przestrzeganie ustawowych limitów zadłużenia i jego spłaty*, Łódź 2014.
- Krawczyk R.P., *Nadzór i kontrola nad samorządem terytorialnym – aspekty konstytucyjno-ustawowe i faktyczne*, [in:] *Samorzady w Konstytucji RP z 2 kwietnia 1997 roku*, eds. Z. Witkowski, A. Bień-Kacała, Toruń 2013.
- Surówka K., *Ograniczenia faktyczne samodzielności finansowej jednostek samorządu terytorialnego – regresja samodzielności finansowej*, "Finanse Komunalne" 2014, no. 1–2.

- Wiśniewski J., *Rola i znaczenie zasady adekwatności z perspektywy orzecznictwa Trybunału Konstytucyjnego*, "Samorząd Terytorialny" 2015, no. 1–2.
- Zaleśny J., *Zasady prawidłowej legislacji*, "Studia Politologiczne" *Oblicza polityki*, eds. J. Błuszkowski, J. Zaleśny, 2009, vol. 13.
- Zawora J., *Uwarunkowania wykorzystania funduszy Unii Europejskiej wynikające z sytuacji finansowej jednostek samorządu terytorialnego*, "Finanse Komunalne" 2015, no. 1–2.