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Concepts of local government in the Polish constitutions of the interwar period (1918–1939)

1. Introduction; 2. The March Constitution and local government; 3. Legislative work on local government acts; 4. Local government in the April Constitution; 5. Conclusions.

1

As is well known, the idea of “modern”, i.e. public-law local government originated during the proliferation of the ideas of the French Revolution. The partitions of Poland, however, prevented the development of modern and indigenous local government during the 123 years of Poland’s loss of independence. During the partition period, different local government institutions were established on Polish territories, based on foreign legislation: Russian, Prussian and Austrian.

With the restoration of Poland’s independence in 1918, an opportunity arose to form its own local government institutions, the most difficult element being the attempt to systematise and integrate local government at the level of the whole country.¹ The key role in defining the legal framework for the existence and functioning of local government in the interwar period was played by the Constitutions, i.e. the most important normative acts in the system of sources of law.

¹ The issue of local government and local government thought in the Second Polish Republic is the subject of many academic studies, mainly of a review nature. Apart from the studies taken into account in this article, one may also indicate for example: L. Bar, *Samorząd terytorialny w II Rzeczypospolitej*, “Rada Narodowa – Gospodarka – Administracja” 1978, vol. 6, no. 20; H. Izdebski, *Samorząd terytorialny w II Rzeczypospolitej*, [in:] *Samorząd terytorialny. Zagadnienia prawne i administracyjne*, eds. A. Piekara, Z. Niewiadomski, Wydawnictwo Prawnicze, Warszawa 1998, pp. 69–89; S. Wójcik, *Samorząd terytorialny w Polsce w XX wieku*, Wydawnictwo KUL, Lublin 1999; M. Grzybowska, *Decentralizacja i samorząd w II Rzeczypospolitej (aspekty ustrojowo-polityczne)*, Oficyna Wydawnicza Abrys, Kraków 2003; A. Bosiacki, *Od naturalizmu do etatyzmu. Doktryny samorządu terytorialnego Drugiej Rzeczypospolitej 1918–1939*, Liber, Warszawa 2006; A. Tarnowska, *Z dziejów unifikacji administracji II Rzeczypospolitej. Rola przepisów pruskich*, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2012.

The development of the local government was determined by the provisions of the Constitution of the Republic of Poland of 17 March 1921, the first constitution in reborn Poland.² It had an enormous impact on shaping the concept of broad-based local government. A completely different, and in a way even opposite, concept of Polish self-government could be found in the next Constitution adopted in the inter-war period, i.e. the Constitutional Act of 23 April 1935.³

This article is an attempt at a comparative analysis of these Constitutions, in order to show the legal foundations that formed the basis for the concept of local government in the first two decades of the reborn Polish State.⁴ It definitely does not aspire to a comprehensive discussion of the legal basis for the organisation and functioning of local government in this period. If it refers to matters related to this problem, it does so only to provide a background for a broader presentation of concepts of local government and for a better understanding of them.⁵

The legal status of local government at the moment when Poland regained independence was extremely complicated, it even included many regulations dating back to the 19th century. Each part of the Republic of Poland which previously belonged to a different partitioning power used different legal norms concerning the local government's structure, organisation, naming, tenure, scope of rights, and supervision over it, and even election rules. In addition, local government was not a universal institution, because in the Prussian and Austrian partitions there were so-called manor areas, where local government bodies did not operate. They were exempt from payments to the *gmina*,⁶ and administrative power was exercised by the owners of estates or their proxies.⁷

² Konstytucja Rzeczypospolitej Polskiej z 17 marca 1921 r., Dz.U.R.P. [Journal of Laws of the Republic of Poland] 1921, no. 44, item 267.

³ Ustawa konstytucyjna z 23 kwietnia 1935 r., Dz.U.R.P. 1935, no. 20, item 227.

⁴ Due to a different research aim, this article is an expanded and modified version of the article: P. Cichoń, *Wpływ Konstytucji Rzeczypospolitej Polskiej z dnia 17 marca 1921 r. na kształtowanie się samorządu terytorialnego w II Rzeczypospolitej* [The impact of the Constitution of the Republic of Poland of March 17, 1921 on the formation of local governments in the Second Polish Republic], "Krakowskie Studia z Historii Państwa i Prawa" 2021, vol. 14, no. 4, pp. 495–510.

⁵ Because of the limited length, this article omits a detailed description of the origins, political and doctrinal conditions as well as legal circumstances of the creation and enactment of the 1921 and 1935 Constitutions. For the same reasons, a detailed overview of the local governmental thought of the interwar period had to be omitted. These issues have been presented in varying degrees of detail in the academic studies indicated in the bibliography of this article.

⁶ A *gmina* – often translated as 'commune' – is the basic unit of territorial division in Poland.

⁷ R. Szwed, *Samorząd terytorialny w Drugiej Rzeczypospolitej (1918–1939). Zarys problematyki*, [in:] idem, *Samorządowa Rzeczypospolita 1918–1939. Wybór rozpraw i artykułów*, Wydawnictwo Wyższej Szkoły Pedagogicznej w Częstochowie, Częstochowa 2002, p. 10.

During the first few months of the rebirth of Polish statehood, a number of legal acts concerning rural and urban *gmina*, *powiat*⁸ and even voivodeship local government were issued, democratising the existing self-government institutions, but regional differences and the lack of uniform legal bases in this field persisted until 1933. In the opinion of many historians, in no sphere of public life of the reborn State were the differences between regions as pronounced as in the field of local government.⁹ Unfortunately, the adoption of the March Constitution in 1921 and its entry into force did not solve this problem.

Regaining independence by Poland assigned to the central authorities the ambitious task of shaping their own local government institutions on new bases which would be systematised and unified at the level of the whole country. There was a favourable atmosphere for this since during the activity of the Legislative Sejm there was a consensus on the need to introduce wide-ranging and highly independent local government, and to increase its political significance. Most political parties, despite the fact that they had polarised views at the time, unanimously declared the necessity to decentralise public power and treated local government as a legal instrument securing civic freedom and a guarantee of State democratisation.¹⁰

2

The tangible result of the legislative work and the breakthrough act for the institutional consolidation of the existence of local government in Poland was precisely the adoption of the March Constitution in 1921.¹¹

The Constitution introduced the model of a legal unitary state based, *inter alia*, on the tripartite division of power, decentralisation and dualism of public administration, as well as other democratic and liberal principles.

⁸ A *powiat* – often translated as ‘county’ – is the second level of territorial division in Poland, usually subdivided into *gminy*.

⁹ On the legal regulations concerning local government in the Second Polish Republic, see e.g. P. Cichoń, *op. cit.*, pp. 496–497.

¹⁰ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, pp. 24–35, see e.g.: idem, *Kształtowanie się założeń programowych i taktycznych Polskiej Partii Socjalistycznej w zakresie samorządu terytorialnego po odzyskaniu niepodległości Polski*, [in:] idem, *Samorządowa Rzeczpospolita 1918–1939...*, *op. cit.*, pp. 75–102; R. Szwed, *Spółeczny czy państwowy. Walka o samorząd terytorialny w II Rzeczypospolitej*, [in:] idem, *O samorządzie terytorialnym w Polsce w XIX–XXI wieku. Zbiór rozpraw i artykułów*, Wydawnictwo Taurus, Radomsko 2014, pp. 125–138; M. Sidor, *Samorząd terytorialny w myśli politycznej II Rzeczypospolitej Polskiej*, Wydawnictwo Adam Marszałek, Toruń 2010, p. 417.

¹¹ Konstytucja Rzeczypospolitej Polskiej z 17 marca 1921 r., *op. cit.*; A. Ajnenkiel, *Polskie konstytucje*, Wydawnictwa Szkolne i Pedagogiczne, Warszawa 1991, p. 236.

This Constitution was the result of a compromise – not so much an ideological compromise as a political one, determined by the position and military successes of Józef Piłsudski, and, on the other hand, by the predominance of the right wing, including the National Democracy (*Endecja*) in the Legislative Sejm. At the same time, it was an expression of Poles' aspirations for independence, with a desire to secure broad civil liberties and participation in public life.

This was the first normative act of this rank in independent Poland which contained articles directly or indirectly referring to the system of local government. It specified a general concept of local government, based on modern views on its essence and role. Most of the local government theorists who justified its widespread introduction invoked concepts derived from the naturalist school.¹² Although a separate chapter was not devoted to local government, unlike in the case of the present-day Constitution of the Republic of Poland of 2 April 1997 (Chapter VII),¹³ the constitutional provisions secured an extensive scope of activities for local government and regulated the principles of its cooperation with the government administration within the framework of constitutional law in force.

The constitutionalisation of local government emphasised its important role in the exercise of public power. At the same time, it guaranteed its stable place in the constitutional legal order. Certainly, the perception of the role of local government as one of the pillars of public power was significantly influenced by the provisions of Articles 1 and 2, contained in Chapter I of the Constitution: “1. The Polish State is a Republic”, “2. Sovereignty in the Republic of Poland belongs to the Nation...”. They pointed to the principle of the republican form of government and the principle of the sovereignty of the nation making the latter the source and bearer of sovereign power. Interestingly, in this definition of a ‘nation’, the Constitution took the position adopted by the French legal learning, which considered the nation to be a political collectivity of all citizens of the State, irrespective of their ethnicity.¹⁴

Local government was thus a legal instrument allowing the nation to make citizens active in local public life.

The constitutionalisation of local self-government took place at two levels:

1. in Article 3, which is found in Chapter II: “Legislative Power”, and
2. in Articles 65, 67, 69, 70, which are found in Chapter III: “Executive power”.

¹² R. Stawicki, *Samorząd terytorialny w II Rzeczypospolitej – zarys prawno-historyczny*, Kancelaria Senatu, Warszawa 2015, p. 8.

¹³ Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r., Dz.U. 1997, no 78, item 483, as amended.

¹⁴ A. Ajnenkiel, *op. cit.*, p. 238.

Of fundamental importance was Article 3 of the Constitution, which declared the principle of broad decentralisation of public power as a counterbalance to government administration. It thus assigned a significant political role to local government, which was to constitute the basic structure of the State political system resulting from decentralisation and a separate pillar of public power in the State.

This provision also gave broad powers to local government, but the space and limits of decentralisation were defined by the enigmatic phrases “broad local government” and “proper domain of legislation”. The Constitution did not resolve these issues, leaving their development and interpretation to ordinary legislation.¹⁵ This constituted a shortcoming that was later played out politically, ultimately in the direction of limiting decentralisation. Due to the corporate nature of local government, the above provision can also be read as a declaration of the citizens’ broad right to local government, expressed in the delegation of the right to enact legislation to local authorities of all levels and their representative bodies. For the process of the reconstruction of local government in the Second Polish Republic, this was an essential provision, as it applied equally to all three levels of local government, i.e. the *gmina*, *powiat* and voivodeship. Thus, it did not limit the important role of the social factor in administration only to the level of the *gmina*, which already from the moment of regaining independence enjoyed the widest range of tasks across the whole territory of Poland.

It is significant that in the light of Article 3, local government was not only to perform the typical administrative functions, but also to exercise – within the scope defined by statute – legislative powers.¹⁶ In this way, local governments, when granted the power to enact legal regulations within the scope specified by the national legislation (especially in the fields of administration, culture and economy), were elevated to the role of territorial autonomies.¹⁷ And it was

¹⁵ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, p. 15.

¹⁶ For a more extensive discussion of the concepts of the cooperation between the State Administration and local government and the scope of supervision of the local government presented between 1922 and 1926, see: M. Gałędek, *Rola samorządu w strukturach państwa polskiego w świetle prac publikowanych na łamach “Gazety Administracji i Policji Państwowej” w latach 1922–1926*, [in:] *Samorząd w polskiej myśli politycznej XX wieku*, ed. G. Radomski, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2006, pp. 199–206.

¹⁷ Maurycy Jaroszyński emphasised that the constitutionally-defined independence of local government units made it possible to recognise local government as a separate system of public power in the State: “[...] today, in view of the fact of the existence of the Polish State, the first thing that comes to the fore is [...]: local government as the basic form of the organisation of internal State life and one of the most important in the mechanism of internal State administration”, as cited in: M. Łapa, *Sto lat samorządu. Sto lat niepodległości*, Wydawnictwo Narodowego Instytutu Samorządu Terytorialnego, Łódź 2018, p. 54.

precisely this direction of the development of local government in Poland that the March Constitution laid out.¹⁸

The place of local government in the constitutional legal order was defined in Chapter III, indicating that the bodies of the local government in the tripartite division of power constitute an element of executive power. The March Constitution explicitly indicated three levels of local government (rural and urban *gminas*, *powiats* and voivodeships), corresponding to the already existing units of the fundamental administrative division of the State (Article 65).¹⁹ Thus, the Constitution nominally sanctioned the existing territorial division and local government at the level of *gmina* and *powiat* as well as at the level of some voivodeships. It is worth emphasising that the Constitution did not leave any doubts in this respect in terms of interpretation, nor did it leave this issue to be regulated by later ordinary legislation. In this way, it defined the basic constitutional attribute of local government – its three-level nature. At the same time, it did not determine whether *gmina* were to consist of single villages or whether they were to be collective. This is an important detail, as political parties active in the interwar period were not unanimous on this issue.

The March Constitution allowed for the possibility of local government units to join together in public law association, but only under separate laws, in order to pursue common goals and tasks that were within the scope of local government activities. These associations – while taking into account only the constitutional declaration – could be made up of both *gminas* and *powiats*, and even of voivodeships. The right of association of local government units was thus relative and was to be regulated by statute (Article 65).

The Constitution granted individual local government units the right of self-determination and independent decision-making in matters within their sphere of activity (Article 67). It thus guaranteed the participation of citizens in the implementation of administrative tasks. Detailed decisions were to be made by “elected councils”. This determined the corporate nature of local government units, a collegial composition of the local government legislative body, and the election of its members.²⁰

¹⁸ A. Warzocha, *Samorząd terytorialny w II RP – w drodze ku własnemu państwu*, “Prace Naukowe Akademii im. Jana Długosza w Częstochowie. Res Polticae” 2012, special issue, p. 357.

¹⁹ J. Behr, *Ewolucja gminy w Rzeczypospolitej Polskiej – zarys problematyki*, “Folia Iuridica Universitatis Wratislaviensis” 2015, vol. 4 no. 1, pp. 291–292; M. Kotulski, *Samorząd terytorialny w dwudziestolecu międzywojennym*, “Acta Universitatis Wratislaviensis. Prawo” 2019, no. 327, pp. 147–148.

²⁰ A. Ajnenkiel, *op. cit.*, p. 244.

The Constitution also introduced the principle that the executive activities of voivodeship and *powiat* local governments were to be carried out by joint bodies representing local government and representatives of the State administrative authorities, under the chairmanship of the latter (Article 67).

The Constitution also declared a guarantee of financial independence and autonomy of local government units, which were to be ensured by sources of revenue defined and assigned by statutes, separately for the State and local governments (Article 69).

The independence of local government was limited by State supervision (Article 70). The supervision provided for in the Constitution was to be exercised, in the first place, through the executive departments of higher-level local government, which shows that local government was a multi-level (three-tier) structure based on a certain hierarchical dependence. This supervision was also to be partially delegated by statute to administrative courts. The Constitution also announced that, as an exception to the rule, decisions of local government bodies might require approval by supervisory bodies (superior local government organs or by ministries).²¹

The legal framework which the March Constitution set for local government was thus indicative of a far-reaching democratisation of this local government. However, the legal framework very broad, general and “too vague”.²² The actual contents of the constitutional provisions depended to a decisive extent on ordinary legislation, which was to make them more specific. They gave room for broad and even biased interpretation, which, depending on the composition and views of the parliamentary majority, could lead to legislative changes both favourable and unfavourable to local government. Further course of development exposed the consequences of such generality of constitutional norms.

3

The entry into force of the March Constitution on 1 June 1921 did not automatically mean the removal of the distinctions in the organisation and scope of activity of local government in different areas of the Polish State.²³ It thus did not put

²¹ The Constitution also provided for the possibility of appeals from local government decisions to one superior body (Article 71), as well as judicial-administrative control of local government administrative acts (Article 73).

²² R. Szwed, *Samorząd terytorialny...*, *op. cit.*, p. 16; A. Warzocha, *op. cit.*, p. 358.

²³ As of that date, provisions contrary to the Constitution, the replacement of which did not require the enactment of special statutes, ceased to be in force. However, other provisions that were contrary to the Constitution ceased to be binding on the day of the entry into force of the respective statutes, the enactment of which depended on the decision of the *Sejm* itself.

an end to the legal and organisational chaos in local government. Therefore, the provisions which had regulated its functioning in independent Poland in the years 1918–1921 were still in force. Compared to the constitutional standard, the most prominent was the lack of universal voivodeship local government as well as the lack of legal regulations granting local government participation in law-making.

The provisions of the Constitution presented above remained *de facto* a “dead letter of law” until special regulations were introduced. After the Constitution was adopted, it was expected that the Legislative Sejm would soon adopt a framework law on local government. However, this did not happen.²⁴ The Sejm of the first and second terms of office also failed to pass regulations unifying local government. This does not mean that no attempts were made to regulate these issues. They were undertaken with great difficulty, but unfortunately with little success. It was not until 1933, i.e. 15 years after the regaining of independence, that uniform local government regulations were issued for the whole country, unfortunately already in the changed political reality, which directly affected the adopted legal solutions.

In my opinion, the quintessential implementation of the constitutional provisions on local government in ordinary legislation moving in the direction of broad decentralisation of the state was the Act of 26 September 1922 on the Principles of General Voivodeship Local Government and in particular that of the Voivodeships of Lwów, Tarnopol and Stanisławów.²⁵ This Act directly referred to constitutional provisions (Article 65, 67). Unfortunately, the regulations contained therein were not implemented, mainly due to political differences, *inter alia*, on the issues of nationality, plural electoral law, and the system of local government bodies.²⁶ Nonetheless, they show the direction and way of interpreting constitutional provisions towards the implementation of a very broad concept of local government.²⁷

The Constitution also introduced the principle (it had the nature of a declaration, not a legal norm) that all legal rules and institutions inconsistent with its provisions would be submitted within a year to the *Sejm* in order to be brought into harmony with the Constitution by legislation, A. Ajnenkiel, *op. cit.*, p. 255.

²⁴ As the three-year term of office of local government bodies was coming to an end in March 1922, the Sejm adopted a law extending the term of office of councils and boards until a new law was passed.

²⁵ Ustawa z 26 sierpnia 1922 r. o zasadach powszechnego samorządu wojewódzkiego, a w szczególności województwa lwowskiego, tarnopolskiego i stanisławowskiego, Dz.U.R.P. 1922, no. 90, item 829.

²⁶ M. Kotulski, *op. cit.*, p. 144.

²⁷ This Act was called an “export act”, as it was passed in order to win the favour of the Entente States for the acceptance of Poland’s eastern border. It was therefore of a political nature. Also dictated by political motives were the activities of the Polish government and J. Piłsudski, undertaken in the years 1921–1922 and aiming at granting autonomy to the “Vilnius Land”, after

As it was pointed out above, the specification of constitutional provisions required their development in ordinary statutes. Therefore, following the European model, in which special committees were established to prepare administrative reforms, special commissions were also set up in Poland to unify and heal the administrative system. This took place in 1923, when the Commission for the Reform of Administration was established under the chairmanship of the then Prime Minister Władysław Sikorski.²⁸ The Commission also dealt with the preparation of local government of all three levels, according to the principles introduced in the March Constitution.²⁹ A particularly important achievement of this Commission was the development of guiding principles for local government, which confirmed the desire to build broad local government characterised by independence and autonomy.³⁰

The Commission also drafted bills on voivodeship and *powiat* self-governments, the organisation of rural and urban *gminas*, and appropriate electoral laws

its planned incorporation into Poland. The draft of the Statute of the Vilnius Land, drawn up in the Ministry of Internal Affairs, referred to the systemic solutions concerning the political system which were set out in Article 3 and Article 67 of the Constitution. The government's plans to introduce the aforementioned autonomy, on the other hand, had no connection with the implementation of another constitutional directive contained in Article 109, according to which the Polish State was obliged to guarantee national minorities "the full and free development of their national characteristics by means of autonomous minority associations of a public-legal nature, within the associations of the general local government". Ultimately, attempts to introduce autonomy in the Vilnius region failed, mainly due to the loss of international interest in its creation. For more on this subject, see: M. Gałędek, *Ustrój administracji ogólnej na Wileńszczyźnie w okresie międzywojennym*, Wydawnictwo Historyczne Tabularium, Gdansk 2012, pp. 36, 13–128; idem, *Autonomia ziemi wileńskiej w inkorporacyjnym programie polskiego rządu na przełomie 1921 i 1922 roku*, "Imponderabilia. Biuletyn Piłsudczykowski", 2013, no. 5, pp. 71–91; W. Kozyra, *Z dziejów regionalizmu europejskiego w XX wieku: działalność delegata rządu na Ziemię Wileńską w dziedzinie samorządu terytorialnego (1922–1925)*, "Rocznik Stowarzyszenia Naukowców Polaków Litwy", vol. 19, 2019, pp. 138–140.

²⁸ J. Przygodzki, *Samorząd terytorialny w pracach Komisji dla reformy administracji z 1923 roku*, [in:] *Samorząd i samorządność w przeszłości i teraźniejszości*, ed. M.J. Ptak, Kolonia Limited, Wrocław 2013, p. 97; J. Przygodzki, *Komisje dla usprawnienia administracji publicznej w II Rzeczypospolitej. Studium historycznoprawne*, Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocław 2019, pp. 85–113; W. Wytrążek, *Samorząd terytorialny w XX wieku w Polsce*, Wydawnictwo KUL, Lublin 2009, p. 42.

²⁹ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, pp. 18–19; J. Przygodzki, *Samorząd terytorialny w pracach...*, *op. cit.*, pp. 97–99, 100–101.

³⁰ J. Przygodzki, *Samorząd terytorialny w pracach...*, *op. cit.*, pp. 100–101; idem, *Komisje dla usprawnienia...*, *op. cit.*, pp. 91–92.

for their bodies.³¹ In 1924, Władysław Grabski's Government submitted a package of those bills to the *Sejm* (with the exception of the Act on Voivodeship Local Government).³² As it turned out, attempts to pass them failed.³³

There were many obstacles that hindered the implementation of the constitutional concept of local government and the unification of self-government law at the level of the whole country. First of all, there was a lack of political will in the Parliament and in subsequent Governments to complete the local government reform. Another obstacle was the resistance of the then representatives of local government authorities, who were attached to the previous particular legal solutions. Political tensions between the eastern and western voivodeships and the "tone of 'civilisational' superiority" of the western voivodeships perceived in debates also made it difficult to reach a consensus.³⁴ In addition, *ad hoc* problems in local government were solved by appointing commissar boards to replace the former *gmina* and *powiat* authorities. In the end, the view of the need for a strong State authority and the maintenance of a uniform government policy within local authorities prevailed.

Not even the first decade of independent Poland had passed, when in 1926 the May *coup d'état* took place, which determined the further history of local government. The process of rebuilding local government towards ceding power to local communities slowed down. Kazimierz Bartel's new Government withdrew from the *Sejm* the drafts of all bills on local government, arguing that they overlapped with a number of proposed new statutes, and therefore had to be reformulated with regard to the background of the entire system of State administration.³⁵

The central executive power was being gradually strengthened, while the independence and importance of local government was being limited, as a consequence of the implementation of the *Sanacja* (authoritarian) concept of govern-

³¹ Idem, *Samorząd terytorialny w pracach...*, *op. cit.*, p. 101; idem, *Komisje dla usprawnienia...*, *op. cit.*, p. 92.

³² M. Gałędek, *Rola samorządu...*, *op. cit.*, pp. 196–197.

³³ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, pp. 18–19; J. Przygodzki, *Samorząd terytorialny w pracach...*, *op. cit.*, pp. 102–103; idem, *Komisje dla usprawnienia...*, *op. cit.*, pp. 104–113; W. Wytrązek, *op. cit.*, p. 42; A. Warzocha, *op. cit.*, p. 359; R. Stawicki, *op. cit.*, p. 12; T. Bojarowicz, *Pomiędzy decentralizacją a omnipotencją. Stosunki samorządu terytorialnego i administracji rządowej w II i III Rzeczypospolitej*, "Polityka i Społeczeństwo" 2020, vol. 18, no. 2, p. 15.

³⁴ J. Behr, *op. cit.*, p. 292.

³⁵ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, p. 19; idem, *Samorząd terytorialny w Polsce po przewrocie majowym*, [in:] idem, *O samorządzie terytorialnym w Polsce w XIX–XXI wieku...*, *op. cit.*, pp. 139–150.

ance.³⁶ In the opinion of members of the Piłsudski camp, local government was supposed to introduce society to the process of practical nationalisation. It was to have the same goals as the State, so the interests of the local government and Government administrations were treated as identical. They ruled out any opposition from the self-government in State. Piłsudski's supporters also aimed to make local government non-political and non-partisan. *Sanacja's* view of the nature of local government was therefore based on the naturalistic-state theory, which *Sanacja* regarded as the most realistic and optimal in the Polish reality.³⁷ It was argued that:

under the conditions of the Polish reality, with the immaturity of the State and with the known geopolitical situation, with the scarcity of public revenue, the State cannot renounce its due influence on the course of local government administration. The central Government, which upholds the most general interests of the State and its citizens, such as defence, Treasury and foreign policy, must, in relation to the representation of local interests, be given the possibility of intervening and coordinating in the event of any contradiction by way of supervising both these interests.³⁸

A significant weakening of local government in connection with the strengthening of territorial government administration took place under the Regulation of the President of the Republic of Poland of 19 January 1928 on the organisation and scope of activity of general administrative authorities.³⁹ It established a general competency clause in favour of the government administration authorities, and not the local government, which as a consequence could only act in matters expressly delegated to it (Article 67).⁴⁰ This was a clear step away from the constitutional concept of broad local government

In 1930, having secured a parliamentary majority in the new election, the *Sanacja* Government began to draft its own version of regulations reforming local government. It abandoned the idea of enacting extensive acts regulating the local government system in a comprehensive manner, instead opting for an act regulating only the most essential issues from the point of view of the interests of the State as a whole.

³⁶ W. Wytrążek, *op. cit.*, p. 78; T. Bojarowicz, *op. cit.*, p. 14. For more on this topic see also: W. Paruch, *Samorzady w autorytaryzmie. Piłsudczykowska koncepcja samorządności (1927–1939)*, [in:] *Samorząd w polskiej myśli politycznej XX wieku*, *op. cit.*, pp. 151–178.

³⁷ R. Stawicki, *op. cit.*, p. 17.

³⁸ As cited in: *ibidem*.

³⁹ Rozporządzenie o organizacji i zakresie działania władz administracji ogólnej z 1928 r., Dz.U.R.P. 1928, no. 11, item 86 as amended; consolidated text: Dz.U.R.P. 1936, no. 80, item 555.

⁴⁰ M. Kotulski, *op. cit.*, p. 145; L. Górnicki, *Idea samorządu w konstytucji kwietniowej z 1935 r.*, [w:] *Samorząd i samorządność w przeszłości i teraźniejszości*, *op. cit.*, p. 133.

The Commission for the Improvement of Public Administration, operating from 1928, started working on a draft of such an act in 1931.⁴¹ As a result of its activities, a draft act was submitted to the *Sejm* a year later. Work on it was finalised on 23 March 1933, when the Act on the Partial Change of the Local Government System was adopted.⁴² Despite its modest name, the Act comprehensively and essentially uniformly (except for the Silesian Voivodeship) regulated the organisation of local government of rural and urban *gminas* and *powiat* self-government associations and, as a result, it was called “the Integration Act”. Undoubtedly, it contributed to the unification of principles of local government operation, introduced identical procedures and nomenclature. It made it possible to abolish the remnants of the local government legislation of the partition period, partially modified in the first years of independence.

The Act rejected the liberal doctrine of separating the government and local administrations, and took the view that local government was only a substitute, auxiliary institution in relation to the State administration. Interpreting the constitutional provisions in the spirit of the *Sanacja* concept of government (the Polish version of authoritarianism), the Act significantly limited the powers of the legislative bodies by introducing the principle of a presumption of competence of executive bodies and their chairpersons. In addition, the Integration Act provided for the possibility of appointing for long terms professional heads of *gminas*, who had the nature of bureaucratic rather than local government bodies. It also significantly limited the independence of local government, which was subjected to thorough State supervision.

4

The culmination of the weakening position and independence of local government, as well as the departure from the principles laid down in the March Constitution, were the provisions of the Constitutional Act of 23 April 1935 (the April Constitution). The Constitution rejected the previous mechanisms of governing the State based on a tripartite division of power, and replaced them with a uniform and indivisible State power, concentrated in the person of the President. Consequently, local government was no longer located among the bodies of executive

⁴¹ W. Wytrązek, *op. cit.*, p. 81.

⁴² Ustawa o częściowej zmianie ustroju samorządu terytorialnego z 23 marca 1933 r., Dz.U.R.P. 1933, no. 35 item 294; E. Sokalska, *Organy samorządowe miast niewydzielonych w świetle ustawy “scaleniowej” z 23 marca 1933 r.*, “Studia Prawnoustrojowe” 2004, no. 3, pp. 154–160; M. Łapa, *op. cit.*, p. 61–63; A. Warzocha, *op. cit.*, pp. 359–360; R. Szwed, *Samorząd terytorialny...*, *op. cit.*, pp. 13–15; W. Wytrązek, *op. cit.*, pp. 82–90.

power, as was the case under the March Constitution. In line with the idea of the supremacy of the State, the life of the community was to rest upon and form itself within the framework of the State (Article 4). As regards local government, it consolidated and strengthened the provisions of the 1933 Integration Act. Therefore, the concept of local government in the new Constitution was different from that in the March Constitution, as its role in the State and its functions were perceived differently.

The constitutionalisation of local government in the April Constitution, like in its predecessor, also took place at two levels:

1. in Article 4, which is contained in Chapter I: “The Republic of Poland” and
2. in Articles 72, 73 and 75 which are contained in Chapter X: “The State Administration”.

Already in the so-called Decalogue, i.e. Chapter I, local government was considered to be an integral part of State power, which was established for “participation in the accomplishment of the tasks of collective life” (Article 4). This was a clear departure from the idea of local government as a systemic principle declared in the March Constitution. In this context, it is worth noting that the draft Constitution passed by the Sejm on January 26, 1934 mentioned in Article 3 that all State bodies were subordinate to the President, and specifically this referred to: the Government, the *Sejm*, the Senate, the Armed Forces, the Courts of Justice, the State Control, territorial and economic self-government. During the debate in the Senate, local government was deleted from this list. The reason for this was that the Integration Act abandoned the principle of the tripartite division of power understood in a traditional way, as well as the previous dualism of public administration, taking the position of the unity of State administration (Article 72).⁴³ This was equivalent to a rejection of the fundamental principle of the March Constitution on the independence of local government and on the dichotomy of public administration.

This approach to the role of local government was emphasised in particular by the inclusion of the essential provisions concerning it in Chapter X: “The State Administration”. In Article 75 local government was directly included in the State administration (it was identified with it), which constitutionally limited its role.⁴⁴ Three-tier local government was thus an extension and supplement to the tasks of Government administration “within the scope of local needs” (Article 75(1)). The State retained supervision over local government institutions, and certain acts and activities of local government were subject to the procedure of approval by State

⁴³ L. Górnicki, *op. cit.*, p. 128.

⁴⁴ *Ibidem*; A. Warzocha, *op. cit.*, p. 361.

bodies. The Constitution still allowed for the possibility of uniting self-governments into associations for the performance of specific tasks, which, by virtue of a statute, could be given a public law personality.

It is also worth emphasising that the territorial division of the State was no longer intended to serve decentralisation, but served “purposes of general administration” (Article 73). Local government also lost its exclusivity in the area of satisfying the needs of local or regional communities, as the competence of Government administration bodies was the rule (Article 25). The legal solutions that were introduced, as well as their justification, testified to a departure from the assumptions of the naturalistic theory, or even the naturalistic-state theory, and drifted towards a pure state theory of local government.⁴⁵ The State and the law made within the framework of the State retained a creative significance both for the creation (existence) of the institution of local government and for the determination of its tasks, spheres of activity, powers and forms of public activity. The theoreticians of the time who justified the concept of State self-government argued that this self-government was but “decentralised State administration” subordinated not only to higher-level self-government bodies, but also to Government administration.⁴⁶ The systemic position of local government was thus decidedly different from the one it had been given by the March Constitution.⁴⁷

The concept of “local government legislation” contained in Article 3 of the March Constitution was eliminated from the constitutional regulations. The new Constitution also lacked statements on the electability of legislative bodies, as well as the provisions relating to the internal structure of local government bodies.

According to the new constitutional concept, local government was to be seen as a kind of link between the territorial communities of citizens and the State – more precisely as a link between society and State administration.

The outbreak of the Second World War in 1939 and the several years of German and Soviet occupation resulted in the elimination of Polish local government.

⁴⁵ R. Stawicki, *op. cit.*, p. 9; L. Górnicki, *op. cit.*, p. 133.

⁴⁶ T. Bojarowicz, *op. cit.*, p. 15.

⁴⁷ The laconic nature of the provisions on local government which characterised the 1935 Constitution was due to the fact that it was drafted in secret and in a great hurry, as a result of which the particular institutions of the political system were described in too general, imprecise or even defective terms. Despite various reservations, the April Constitution expressed a coherent concept of the State and society, in whose ideological structure local government should also be embedded. In addition, it is worth noting that the weakening role of local government was counterbalanced by a significant expansion of economic self-government, “for individual areas of economic life [...] comprising chambers of agriculture, industry and commerce, crafts, liberal professions and other public-law associations”. For more on this subject, see e.g. L. Górnicki, *op. cit.*, pp. 132–142.

The territorial administration was based on the rules defined by the occupying powers. It was of an extremely centralised nature. After the end of the War, local government and the dual model of territorial administration were reactivated. This took place under the Decree of the Polish Committee of National Liberation of 23 November 1944, which referred to the concept of local government resulting from the March Constitution. However, by virtue of the Act of 20 March 1950 on local organs of uniform State authority,⁴⁸ there was a complete abolishment of local government for the next 40 years.

5

There is no doubt that both Polish Constitutions of the inter-war period, although they guaranteed the existence of local government at three levels⁴⁹ (within the basic territorial division of the Polish State), expressed a different concept of its place, role and function in the State. This resulted from different axiological foundations on which the political reality was built. The March Constitution was based on progressive views which laid the foundations for the unification of local government on the scale of the whole State. It gave territorial corporations a broad legal framework and an extensive scope of activity, emphasising the principle of decentralisation and stressing their fundamental importance for the building of the system of the Polish State, as well as ensuring significant legal autonomy of local government units vis-à-vis the State. Local government was to be one of the pillars of the new State, and thus a counterbalance to the previously concentrated and centralised administrative system of the partitioning powers.⁵⁰ It was also to be the proof and embodiment of the transfer of power to citizens, who could take part in the governance of the State. Strong emphasis was also placed on the fact that local government was expected to meet the needs of local communities, which was to be the basis for their functioning. The constitutional solutions also favoured mutual cooperation between the central administration and local government. After 1926,

⁴⁸ Ustawa z 20 marca 1950 r. o terenowych organach jednolitej władzy państwowej, Dz.U. 1950, no. 14, item 130.

⁴⁹ During the interwar period only the Pomeranian and Poznań Voivodeships had the status of self-governing voivodeships. The Silesian Voivodeship was an autonomous region – established by the Constitutional Act of the Legislative Sejm of 15 July 1920 (Organic Statute of the Silesian Voivodeship). Silesian *Sejm* legislated on all matters concerning the region with the exception of foreign policy, military policy and certain matters relating to the judiciary and the administration of justice, Ustawa konstytucyjna Sejmu Ustawodawczego z 15 lipca 1920 r. zawierająca Statut Organiczny Województwa Śląskiego, Dz.U.R.P, 1920, no. 73, item 497.

⁵⁰ R. Szwed, *Samorząd terytorialny...*, *op. cit.*, p. 15.

however, centralist concepts prevailed, aimed at strengthening the omnipotence of the State, which in practice also meant weakening local government. As a result, in 1933, under the formally still binding March Constitution, the Act on a Partial Change of the Local Government System was adopted, which was based on an interpretation of the provisions of this Constitution, which went in the direction of limiting the participation of the citizens' factor in exercising power. As a result, the provisions of the March Constitution were among the last declarations concerning the expansion of local government.

The April Constitution, while remaining in the spirit of the Integration Act, strengthened the domination of Government administration over local government bodies. Unlike its predecessor, it did not provide for public administration, but only for State administration. Thus, the previous dualism of public administration disappeared, as in the new concept of the political system of the State, local government became only a supplementary and supporting element of State administration. It should be noted, however, that its role was not limited to this since it was also to have its share in the work for the State understood as the "common good", which was the supreme value. And consequently in its activities the local government had to maintain the priority given to the "common good" over the interests of local communities.

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*Concepts of local government in the Polish constitutions
of the interwar period (1918–1939)*

The article outlines concepts of local government based on the provisions of the Constitution of the Republic of Poland of 17 March 1921 (the March Constitution) and the Constitutional Act of 23 April 1935 (the April Constitution). In the first place, the assumptions of the March Constitution concerning the political system in relation to local government are presented, and then its influence on the formation of this local government in the Second Polish Republic is shown. The author outlines challenges and difficulties accompanying the attempts to adopt statutes on local government in line with the spirit of the March Constitution and outlines the legal basis for the organisation and activity of local government in Poland during the interwar period (1918–1939). Attention is also drawn to the changes in the approach of those in power to the role of local government which followed the May Coup in 1926 and were introduced in the Act of 23 March 1933 on the Partial Change of the Local Government System. The author also presents the legal position of local government in the April Constitution and indicates the ideas that underlay the creation of constitutional concepts of local government and how they were externalised in the specific political conditions. The article also provides a comparative analysis of the concept of local government resulting from the Constitutions mentioned above.

Key words: local government, Second Polish Republic, the March Constitution 1921, the April Constitution 1935

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*Koncepcje samorządu terytorialnego w polskich konstytucjach
dwudziestolecia międzywojennego (1918–1939)*

Artykuł przedstawia w ogólnym zarysie koncepcje samorządu terytorialnego oparte na przepisach Konstytucji Rzeczypospolitej Polskiej z 17 marca 1921 r. (konstytucji marcowej) oraz Ustawy konstytucyjnej z 23 kwietnia 1935 r. (konstytucji kwietniowej). W pierwszej kolejności przedstawiono założenia ustrojowe konstytucji marcowej odnoszące się do samorządu terytorialnego, a następnie ukazano jej wpływ na kształtowanie się tego samorządu w II RP. Opisano wyzwania i trudności towarzyszące próbom uchwalenia ustaw samorządowych zgodnych z duchem konstytucji marcowej. Wskazano na podstawy prawne organizacji i działalności samorządu terytorialnego w Polsce w dwudziestolecu międzywojennym (1918–1939). Zwrócono również uwagę na zmiany w podejściu rządzących do

roli samorządu terytorialnego, które nastąpiły po zamachu majowym w 1926 r. i zostały wprowadzone w ustawie z dnia 23 marca 1933 r. o częściowej zmianie ustroju samorządu terytorialnego. Następnie przedstawiono pozycję prawną samorządu terytorialnego w konstytucji kwietniowej. Wskazano też idee, które legły u podstaw tworzenia konstytucyjnych koncepcji samorządu terytorialnego i to, w jaki sposób zostały uzewnętrznione w konkretnych warunkach politycznych. W artykule dokonano także analizy porównawczej koncepcji samorządu terytorialnego wynikających z ww. konstytucji.

Słowa kluczowe: samorząd terytorialny, II Rzeczpospolita, konstytucja marcowa 1921 r., konstytucja kwietniowa 1935 r.