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## **What are the limits to local government's competences? Polish municipalities between the grasping central government and unsympathetic administrative courts**

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### **Abstract:**

Local government reform has been acknowledged to be one of the biggest successes of political transformation in Poland. Municipalities (gminy) gained strong powers and are now responsible for many public services of crucial importance to local communities. Their autonomy was guarded by legal, institutional and financial guarantees and strong local leaders. Carefully designed institutional framework of local and regional government seemed to be permanent and durable, guaranteeing strong decentralization and providing local authorities with substantial decision-making powers and responsibilities for vast majority of public services. Such a broad field for the functioning of the local government does not remain without interpretation problems. The consecutive central governments were finding common ground in their instrumental approach to local authorities' independence. It was convenient for the state to decentralize problems and challenges, while keeping control over finance and other resources, as well as looking for ways to increase supervisory powers over local government.

Meanwhile, the entire line of administrative court judgements assumes, that the public task is only what has been positively and specifically defined in specific provisions, and the activities of a commune without such a provision are deprived of a legal basis. It turns out, therefore, that the liberation of municipalities from the mechanisms of top-down decisions and the adoption of narrow supervision based on the criterion of legality quickly began to move towards purposefulness, which makes the independence of municipalities de facto fictional. The paper aims at showing the Polish local government's struggle both to resist the recentralisation tendencies, as well as the conservative approach of the administrative courts to the scope of its competences. This case study brings back the important question of the limitations to the local autonomy and core local government's competences, which are relevant to the contemporary challenges of "illiberal", or even authoritarian, shifts in some of the European countries. The result is a critical analysis of the attribution of competences and legal protection of local government's activity.

**Points for Practitioners:** The analysis might prove useful to local government's authorities in order to protect their autonomy in legal disputes with central government and administrative courts.

**Keywords:** Local government put in European comparative perspective, bottom line of local government's competences given by European legal acts; local government as a part of multi-centered governance

## **Introduction**

This paper analyses the local government's competences and provides a description of legislative framework and practical features of Polish local self-government in the context of its relations with central governments and administrative courts. It argues that the understanding of local government's decision-making competences needs to be widened, in order for the local government to achieve substantial autonomy and prevent growing recentralization tendencies. It also explains that the narrow interpretation of legal basis of local government's actions by the supervisory bodies and administrative courts serves as a limitation to the effectiveness of Polish municipalities.

The structure of the paper is as follows. In the first part the concept of decentralization is analysed, with special focus on its understanding as the right of local communities to govern themselves (bottom-up approach) in the European Charter of Local Self-Government. Secondly, the historical approach to local government competences is presented, addressing the most important debates (naturalist vs etatist) in the period after regaining independence by the Polish state in 1918, which are crucial to understand the modern problems with limiting local government's tasks and competences. Then the history of local government restoration and reform in Poland is examined, as well as the legal framework and most important legal principles (the 1997 Constitution and acts of parliament) to present the degree of local autonomy for the territorial units. Subsequently, the practical aspects of local government's functioning are analysed, given the context of constant tensions between recentralization and local autonomy. The important research problem is the establishment of the scope of supervision over local government's actions, and the degree it might be counterproductive to ensure the correct exercise of municipal competences.

The main argument of the paper is that the understanding of local government's decision-making competences is often too narrow and needs to be re-evaluated in order for the local government to achieve substantial autonomy and prevent growing recentralization tendencies. It is suspected that the narrow interpretation of legal basis of local government's actions by the administrative courts serves as a limitation to the effectiveness of Polish municipalities, which, together with tensions with central government relating to the scope of their activities, might serve as a threat to the essence of local governance.

## Decentralization

The concepts of decentralization and local self-governance are inextricably linked. A non-transferable feature of local self-government is that it can only exist in a decentralized state in which citizens are granted the right to make their own decisions, taken in accordance with their interests. The local government is an emanation of the interests of these citizens - a public law corporation, that is, a public administration entity equipped with administrative authority. Its indispensable element is obligatory membership "by virtue of the law itself", clear rules of belonging (residence in the local government unit) and existence regardless of the number or change of members. This is the most comprehensive "micro-democracy", where the state transfers part of its administrative functions and equips with legal personality - public administration tasks are performed by the citizens or their groups, equipped with specific competences and administrative powers. This is connected with the obligation to perform the delegated functions and the exclusive fulfilment of this obligation, additionally guaranteed by legal provisions that, apart from the designated scope of supervision, the state can not interfere with its activities. The principles of subsidiarity and decentralization are most fully implemented by the self-government.

Therefore, the local government has a significant and non-transferable characteristic - it means the right to settle the local community's affairs in accordance with their own interests and their identification. This right includes the assumption that a given community may behave differently in some matters than others. Decentralization ensures that minorities' rights are recognized in their own decisions and choices, even if they are not always accurate. Activities under the local community's own tasks should not (and, under applicable law, can not) be assessed in terms of purpose or reliability, because it interferes with local government autonomy and always means the application of criteria assessed for self-employed activities. Legality therefore remains the only criterion for supervision over the activities of local government as part of its own tasks<sup>1</sup>. Nowadays, decentralization does not depend only on independence in the "imperious" sphere, but it is the basis for independent management of public affairs primarily in economic terms, in a network system, not hierarchy, by achieving social and economic benefits on a local or regional scale. Self-governance is implemented by

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<sup>1</sup> However, the decision-making autonomy of the local government is not always unconditional or uncontroversial. Problems may arise, for example, in standardized public services, such as education or health care. The decentralization of public authority can not be in contradiction with the constitutionally guaranteed equality of citizens in access to public services.

acting for the development of a given local government unit, organizing the delivery of public services, as well as cooperation and competition with other local governments and participation in supra-local and supra-regional markets<sup>2</sup>.

In order to understand the present problems with defining the scope of local government's activities, it is necessary to see it in the historical discourse, with two different, most prominent approaches to local government's competences: natutalist and etatist<sup>3</sup>. As part of the first approach, the local government is treated as a formula of civic self-organization, an element of civil society architecture, form of expression of local community's interests. It is based on the principle of subsidiarity and the legal formula for its actions is "within the limits of the law". In the second approach, the self-government is a formula for the decentralisation of public administration, i.e. an element of state architecture that limits the former centralized system of public authority. The principle of decentralisation understood in this way means emphasizing the uniform character of the state, recognizing the common good and common interest as a good of a national dimension (not European and not regional or local) and, in fact, treating self-government as the exception to the rule by the central government, and thus searching for all of its activities on "specific statutory legal basis".

### **Restoration and reform of Polish local government**

The restoration of Polish local self-government in 1990 (and the deepening of decentralization in 1998) radically changed the system of the state, focusing on building a framework in accordance with the principle of subsidiarity. Between the assumptions of the functioning of local authorities in the Polish People's Republic (PRL) and the Third Republic of Poland (after 1989) there was an evident dichotomy, which concerned not only the issue of organization and functioning of the state, but above all the distribution of public authority at the national and local level. The complexity, multilevelness, intersection of various divisions

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<sup>2</sup> M. Kulesza, *Ile decentralizacji w centralizacji, czyli o nawykach uczonych administratywistów*, „Samorząd Terytorialny” nr 12/2009.

<sup>3</sup> T. Bigo *Związki publiczno-prawne w świetle ustawodawstwa polskiego*, Warszawa 1928, M. Jaroszyński *Rozważania ideologiczne i programowe na temat samorządu*, Warszawa 1936, J. Panejko *Geneza i podstawy samorządu europejskiego*, Wilno 1934, H. Izdebski *Doktryny polityczno-prawne. Fundamenty współczesnych państw*, Warszawa 2012, A. Bosiacki *Od naturalizmu do etatyzmu. Doktryny samorządu terytorialnego Drugiej Rzeczypospolitej 1918-1939*, Warszawa 2006

of special administrations and strongly centralized administration were inherited after the socialist system, which was based on ministerial (vertical) connections, both in the decision-making and financial aspects. After political changes and the termination of the communist party's leading role, the premise of centralism in government has been eliminated, and it has become an obstacle in the construction of the administration of a democratic state.

The restitution of self-governing local government was one of the necessary conditions for the shift to the democratic system in Poland and building a civil society. Without independent local government - that is, transferring the real part of public authority to the level of local communities - and without social involvement, it would be impossible to develop the country as a result of citizens' work. In the PRL, cutting off local communities from decision-making blocked the initiatives and activities of people. Only the creation of appropriate conditions for free action of residents of municipalities (*gmina*) and districts (*powiat*) gave the opportunity for local authorities to play a significant role in economic development<sup>4</sup>.

The year 1990 had undoubtedly the most important, even revolutionary, significance for the Polish administration, in which the local self-government was restored after 40 years of non-existence. The overriding objective of this reform was to hand over tasks to local government and cut off the current management of local affairs from the national level. The principle of uniform state authority and ownership was broken, and much better conditions for the development of local communities were created, which facilitated the processes of their empowerment. Regional competition has been strengthened, while providing better instruments for management of public services.

Another important aspect of decentralisation was the very narrow supervision from the central government and the control of independent administrative courts. The judicial form of supervision was supposed to prevent any bias in the management of, sometimes inevitable, conflict between the central and local government bodies. The administrative courts were also supposed to serve as impartial guardians of local government's competences.

After restoring local self-government, a significant strengthening of the state's capacity for efficient functioning was expected. It was a necessary systemic change, as without it there was a threat of maintaining a system programmed for state centralism and a lack of

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<sup>4</sup> J. Regulski, *Samorząd a model państwa*, Infos, Biuro Analiz Sejmowych, 20 maja 2010, p.2.

democratic control over the decision-making processes in the administration. In 1998, another stage of the decentralization reform was undertaken, transferring to the Polish local government yet another large degree of shared responsibility for governing the state and competences previously reserved for government administration<sup>5</sup>. An important assumption was the lack of hierarchical subordination between individual local government units and the condition that citizens should have equal access to local administration bodies and influence on their institutions. The reform was also intended to enforce public finance reform, with far-reaching decentralization of planning and settlement of public expenditure<sup>6</sup>.

Democratization of the system consisted of the introduction on the next two levels of self-government bodies being elected by universal and direct elections. The district council (*rada powiatu*) has acquired specific competences, including to decide local law, choose and dismiss the management board, determine the direction of the executive's activity, adopt the budget and adopt resolutions on the county property matters. The regional assembly (*sejmik województwa*) was granted the power to adopt a regional development strategy, spatial development plan, regional budget, appointment and dismissal of the management board (executive) and adoption of resolutions on property matters of the region/voivodship.

In the adopted model, the council had not only an acceptance role, and through the majority of votes it was to provide a "political umbrella" to the executive, which was competent mainly to execute council resolutions, prepare draft resolutions, manage property and implement the budget. Having a mandate coming from general and direct elections, the council had a position to authenticate and account for the activities of the collective management board (executive). The further stage of the reform, i.e. the introduction of direct elections of one-person executive bodies of the commune, delegated part of this responsibility to the hands of voters, strengthening the position of the municipal executive. The commune head (mayor, president of the city) as a single-person body has more possibilities of action, especially when it has a direct election mandate and does not necessarily share the political

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<sup>5</sup> In surveys of support for the reform of state administration, only 21% of respondents rated it as unfavorable, cf. for example up to 55% of opponents of health care reform. After: *Cztery reformy w opinii społecznej: poinformowanie i ocena. Komunikat z badań Centrum Badań Opinii Społecznej*, Warszawa 2000. Another study: the reform of administration was considered necessary by a total of 50% of respondents, 37% was the opposite (after: B. Gądomska, *Opinia publiczna wobec reform decentralizacyjnych*, in: A. Piekara (ed.), *Cele i skuteczność reformy administracji publicznej w RP w latach 1999-2001*, Warszawa 2003, p. 573.

<sup>6</sup> It did not quite work out: W. Kieżun, *Struktury i kierunki zarządzania państwem*, in: Kieżun W. i Kubin J. (ed.), *Dobre państwo*, Wydawnictwo WSPiZ, Warszawa 2004, p. 8-9; E. Chojna-Duch, *Cele i skuteczność reformy administracji publicznej w latach 1999/2001. Aspekty finansowo-prawne oraz funkcjonowanie*, in: A. Piekara (ed.), *Cele i skuteczność reformy administracji publicznej w RP w latach 1999-2001*, Warszawa 2003, p. 144-145.

system dominant in the council, and has its own significant competence. The choice by the council of the collegial executive, on the other hand, means that the political factor depends to a certain extent on it, making it more susceptible to political pressure.

The continuation of local government reforms was also closely aligned with Poland's efforts to join the European Union, preparing for new challenges in the field of multi-level public management, absorption of European funds, participation in European programs, and even decision-making on European matters, putting a strict division between tasks of the national and local government.

The main assumption of the reform was undoubtedly the decentralization of state power, as well as the continuation of changes initiated in 1989 and 1990. To achieve this, the competence between the central and local government had to be re-established, and local responsibilities defined together with equipping the local units with legal and financial means to address them. Another goal was to organize the territorial structure of the state in the form of a more transparent and understandable division and rationalization of administrative structures. An important consequence of introducing two successive levels of local government, was that it created another level appeared for establishing local elites to lead further democratization of the country and the combat against the legacy of the PRL. The mechanisms of local democracy gained a strong legal instrument in the form of civic control of local government authorities. An important consequence of the reform was also the assumed reconstruction of the public finance system and an impulse for more effective financial management at all levels of the administration.

The foundations of the new administrative system proved to be permanent and were strengthened over the years, despite the inevitable corrections in the administrative division. The reform was intended to reconstruct civic awareness and establish new division of competences between the national and local government. These changes have undoubtedly modernized and improved the state, allowing for more effective governance and addressing new challenges. At the same time, they strengthened the processes of democratic control over the authorities, joint responsibility of the citizens for the state, and a stronger sense of participation in public affairs. Thanks to this reform, the Polish local government can be considered one of the most modern, especially in this part of Europe.

In a comparative perspective, it is even clearer that local government reforms were necessary. There were no alternative ways of modernization in Central and Eastern Europe - in other post-communist countries, no such in-depth reforms were implemented. The most far-reaching changes took place in Poland. In most of other countries in the region, only "nomenclature" changes were introduced (eg by renaming the soviets to city councils), free elections were added to the old system, however, they were carried out under the conditions of a single, centralized state machine. In most Central and Eastern European countries, therefore, the local government reform consisted of only two modifications: carrying out free municipal elections and changing the naming of local authorities; however, no specific powers were delegated to the local government. The difference between the real and the apparent reform can be judged by looking at the effects - the introduction of democracy without reconstruction of the administration and guaranteeing independence for local government units did not leave any of the substantive competences to the local level.

### **Constitutional framework of Polish local government**

The work on the Polish Constitution of 1997 has lasted since the early 1990s and took place with full awareness of the fundamental importance of the principle of subsidiarity, decentralization and independence of local government. The so-called "Little Constitution"<sup>7</sup> of 1992 defined the local government as "the basic form of organization of local public life" (Article 70 paragraph 1) and granted territorial units legal identity and competences in public matters<sup>8</sup>. Earlier, the title of Chapter 6 was changed in the Constitution of 22 July 1952 from "Regional authorities and state administration" to "Local government", with the first provision of this chapter situating local government as the basic form of public life.

The Constitution of April 2, 1997 devotes to the local government the whole Chapter VII (Articles 163-172) and - fundamental to the legal basis of the functioning of the local government - articles 15 and 16, declaring the principle of decentralization of public authority, taking into account social, economic or cultural ties in territorial division, creating *ex lege* of the local government community by the population of the territorial units. Another important provision is that the local government participates in the exercise of public

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<sup>7</sup> Constitutional Act on mutual relations between the legislative and executive power of the Republic of Poland and on local self-government of October 17, 1992, Dz.U. 1992 No. 84 item 426.

<sup>8</sup> H. Izdebski *Samorząd terytorialny. Podstawy ustroju i działalności*, LexisNexis Warszawa 2009, p. 80 *et seq.*



authority, and performs public tasks on its own behalf and on its own responsibility. The Constitution includes, first of all, the foundations of the political system on which the system was based after 1989:

- the principle of a democratic state of law,
- the principle of political pluralism,
- the principle of decentralization,
- the principle of subsidiarity,
- the principle of autonomy of the municipality (*gmina*),
- presumption of competence for the municipality (*gmina*),
- the principle of legalism.

The municipality, constitutionally recognized as the basic unit of the territorial division of the country, had in the new administration structure a legitimate constitutionally leading position in relation to other units of territorial division - it served the presumption of tasks and competences not reserved for other local government units. The district and the self-governmental voivodship were to exercise competences reserved for them in statutes. In Chapter VII, the Constitution clarifies the basic character of the commune (Article 164 par.1) and the presumption of competence (Article 164 par. 3), at least the two-tier structure of local government (Article 164 par. 2). It accepts the existence of regional self-government as well as direct elections to all bodies constituting the local government. The provision of art. 163, contains an important presumption of competence in the performance of public tasks for the benefit of local government. Article 165 protects the property rights and legal personality of local government units, while Article 166 emphasizes the role of local government in satisfying the needs of the local community. An additional guarantee of the subjectivity of the community of inhabitants is granting them in art. 170 the rights to decide by way of a referendum, while in art. 171, the limits of supervision over the local government were limited and clarified.

The sum of the provisions of the Constitution (and the earlier Law on Local Government<sup>9</sup>) meant a radical break with the tradition of PRL's "national councils" and opened the door for further decentralization. Emphasizing the separate legal identity, performing public tasks "on own behalf and on its own responsibility" (Article 16 paragraph

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<sup>9</sup> Law on Local Government from 8th March 1990

2) and limiting the administrative duality to the regional (voivodship - *województwo*) level emphasizes the role of self-governance in the exercise of public authority. An additional significant feature is also the lack of hierarchical subordination of local government units, each of which is a fully independent local community, with a democratic structure of internal organization, is separated from other institutions in order to decentralize the implementation of a substantial part of local public administration tasks, with the right to use the legal forms of public administration authority.

### **Judicial limitations to local government's autonomy**

Such a broad field for the functioning of the local government, however, does not remain without interpretation problems. Nowadays, the greatest controversy of the limit of modern local government's actions arises from the article derived from constitutional art. 7 - the principle of legalism, providing for the operation of public authority on the basis of and within the limits of the law, i.e. the possibility of making only such decisions and acts of authority, which are expressly permitted or ordered by law. However, the narrow interpretation in supervisory and judicial decisions of administrative bodies, administrative courts and the Constitutional Tribunal results in this clause extending to "non-imperious" activities of local government (eg social activities). Meanwhile, as repeatedly pointed out by M. Kulesza<sup>10</sup>, the contemporary activity of local government goes far beyond the classical sphere of order and regulation (*imperium*), concentrating broadly on satisfying collective social needs and managing development. These spheres rely mainly on the use of non-commanding activities and the use of public property (*dominium*). In these situations, the legal basis of the administration's operation is much more relaxed than the classically applied principle to act only "on the basis of and within the limits of the law". Meanwhile, the entire judicial line of administrative courts assumes that the public task is only what has been positively and specifically defined in specific provisions, and the activities of a commune without such a provision are deprived of a legal basis<sup>11</sup> - somehow in isolation from the provisions of art. 163 in conjunction with art. 164 par. 3 and art. 165 par. 2 of the Constitution

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<sup>10</sup> M. Kulesza M. *Ile decentralizacji w centralizacji, czyli o nawykach uczonych administratywistów*, „Samorząd Terytorialny” nr 12/2009.

<sup>11</sup> „The public task is to be only what has been positively and specifically defined in the detailed regulations”; „Without the detailed regulation, the local government action is devoid of legal basis – both as a task and as a base for public funding”.

of the Republic of Poland<sup>12</sup>. It turns out, therefore, that the liberation of municipalities from the mechanisms of top-down decisions and the adoption of narrow supervision based on the criterion of legality might move towards purposefulness, which would make the independence of municipalities *de facto* fictional.

The fundamental difference lies between what can be called "statutory own tasks" (normalized in detail, and sometimes too detailed in statutory provisions), and what can be taken as the term "own tasks" of municipalities, ie tasks undertaken in a general way, not necessarily in substantive law provisions, and thus within the limits of the law, within available resources, including financial resources<sup>13</sup>. The difference between the sphere of imperious activity (peremptory), in which a specific, and therefore substantive, statutory legal basis is required and there is no place for the presumption of competence, and non-imperious sphere (including the activities of the "administration as the provider" and ownership activities, in the sphere of *dominium*), in which the general authorisation of the act may suffice, as long as the action takes place within the limits of the law, while the general authority for the municipality may also be the presumption of its tasks within the territorial self-government.

In practice, the decisions of supervisory bodies and administrative courts supporting them, as well as, to a significant extent in Constitutional Tribunal rulings, the etatist approach seem to prevail, and is also present in large part of the doctrine. The civic and social dimension of self-government is often not taken into consideration. The self-government is above all a special union form of legal entities, and the territorial self-government has a special union organization of the inhabitants of individual units of the basic territorial division of the state corresponding to the existing social, economic or cultural ties. That is the essence of the regulations of both the Constitution of the Republic of Poland as well as the European Charter of Local Self-Government.

It is however not always, how in practice the administrative courts understand it: "Municipal territorial self-government is authorized to settle local public affairs, which have been included in the scope of its statutory activities, as well as to facilitate such tasks and competencies, which the Acts did not transfer to any entity and which fall within the scope of

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<sup>12</sup> M. Kulesza, op. cit.

<sup>13</sup> H. Izdebski *Domniemanie zadań samorządu terytorialnego i domniemanie zadań gminy w obrębie samorządu terytorialnego – klauzule generalne dotyczące zadań samorządu*, Samorząd Terytorialny 1-2/2015

local government tasks and competences local character. However, the public tasks can not be freely created by the municipal authorities, and only those public tasks that are objectified, that is, they find a legal basis, but no explicitly indicated subject to their interpretation by the legislator."<sup>14</sup>.

The preliminary research of administrative court judgements capture yet another tendency. This is a matter of application of the provisions of local government laws. The judgements state that an annulment may be approved only if it is passed in a manner contrary to the law, which is "obvious and direct". According to this opinion, significance of the infringement or rights apply to par. 156 § 1 point 2 of the Administrative Code. Nevertheless, most of the analysed judgements state only the "ordinary", not "significant" breach of the law, where repeal might be disputed as a too harsh consequence.

The main problem to be addressed is therefore whether deciding on the limits of local autonomy should be based only on the constitutional principles by the legislative acts, whereas supervision should be strictly limited, to the assessment of actions in the imperious sphere (based and limited by the law) and agreement with constitutional principles (non-imperious sphere). The most important issue in this respect is to develop a convincing theoretical and methodological framework for guarding the independence of local government and to provide the best legal possibilities to serve the local citizens' interests. Simultaneously, the regard to the constitutional values needs to be preserved, as well as the necessity to draw the distinction line between the central and local government responsibilities, as well as enabling the effective control of the authorities by the local community.

### **The practice of Polish local government functioning**

One of the basic problems in the functioning of local government was from the beginning an incorrect understanding of its essence, which in Poland often focused on determining this as local authorities – head of the municipality (*wójt*) / mayor (*burmistrz*) / city president (*prezydent miasta*) or council. The essence of self-government is, however, rather different: it is the right and the ability to manage your affairs by the local community. Local authorities are institutions that - as history shows - do not have to be self-governmental.

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<sup>14</sup> Ruling WSA Poznań 12.06.2008 (IV SA/Po 146/08), LEX No. 566760.

The definition of territorial self-government in the European Local Government Charter indicates that it is "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 the local population" (art. 3 par.1). This definition of the essence of local self-government emphasizes the subjective aspect - its axis is not the local government unit, but the local community, and the basis of local governance is recognized as the subjective right of local communities to exercise public authority. It is only later that the Charter states that "this right shall be exercised by councils or assemblies composed of members freely elected by secret ballot, on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute".

The real local government can develop only in a decentralized state with civil society<sup>15</sup>. This is an indispensable element of the democratic system - where the actual and continuous participation of citizens in public life and exercising power, and not just participation in elections, is at the heart of political life<sup>16</sup>. The system must, therefore, enable citizens to participate in the management of the state, and not only participate in the electoral process. The practice of the functioning of Polish local government is not free from problems, specific "diseases of local government authority". The most important of them include the apparent character of representative democracy (weakness of councils, especially in relations with the executive of the commune), lack of transparency and openness of local government bodies, as well as quite an archaic formula of civic participation and resistance of local elites against wider admission of residents to decide on local matters. These problems should be discussed and solutions should be sought - however, *toutes proportions gardées*, it must be remembered first of all that the restoration of the local government has modernized and improved the Polish state, allowing for more efficient governance and meeting new civilization challenges, as well as strengthened democratic control over the authorities, joint responsibility of citizens for the state and triggered a stronger sense of participation in public affairs.

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<sup>15</sup> Although different views are also present: Anthony Levitas argues that Poland's success is the product of a remarkably self-conscious strategy of institution building by a group of policy makers who shared a specific vision of what the local government reform was about, instead of direct civic participation (with the absence of civil society): Levitas A. *Local Government Reform as State Building: What the Polish Case Says About „Decentralization”*, St Comp Int Dev (2017) 52:23-44, p. 25.

<sup>16</sup> J. Regulski *Samorząd a model państwa*, *op.cit.*, p.4.

The decentralization of public authority primarily allowed the state to give up the responsibility for the current management of public affairs, transferring these competences to the hands of local governments<sup>17</sup>. Only then it was possible to complete the reconstruction of the state's political and administrative centre, with emphasis on handling strategic matters. As a result, a clearer division of public authority functions was introduced between the three main segments of the state system: local government (in municipalities and counties), responsible for meeting the collective needs of local communities, regional self-government (in voivodships), responsible for regional development policy, and state government and their administration (central and local), responsible for matters of a national nature, as well as for compliance with law and supervision over local government (province governors – voivods, *wojewodowie*). The reform did not only change the administrative division of the country, but also lead to the reconstruction of the administration and a more effective division of competences and responsibilities.

The functioning of local government can be considered one of the greatest successes of the Polish transformation. However, the practice of government administration indicates an instrumental approach to local governments, while decentralization often means transferring tasks and problems without accompanying financial resources<sup>18</sup>. As a result of decentralization reforms, the central administration has lost a large part of its competences and impact on current public affairs. New tensions between the national and local government were born, and in the long-term perspective, there were growing recentralization tendencies on the national level. Initially, the problem concerned in particular the issue of management and distribution of EU funds allocated for regional development (regional funds)<sup>19</sup>, in which the central authority from the beginning played a major role. To this end, new structures appeared, with specific naming and tasks, applying strictly to EU documents. At the head of the national system, as the Managing Authority, there was the minister competent for regional development who was responsible for coordination of the use of funds from foreign sources, including from the European Union budget, designated for co-financing operational programs.

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<sup>17</sup> Local government controls over a third of all public expenditures and a remarkable 70% of public investment, delivering the goods, transforming environmental infrastructure, transport systems, urban spaces and public schools: Levitas A. *Local Government Reform as State Building*, *op.cit.*, p. 24.

<sup>18</sup> This is evident, for example, in education, where funds transferred to the local government in the form of educational subsidies are not sufficient and most municipalities must pay extra to maintain schools drawing on their own resources, at the expense of other tasks: <http://www.wspolnota.org.pl/rankingi/ranking-oswiatowy/subwencja-oswiatowa/>

<sup>19</sup> M. Kulesza, *Słowo końcowe, Pełnomocnik i polityka*, in: J. Milewicz, A. Wolek, *Reformatorzy i politycy. Gra o reformę ustrojową 1998 roku widziana oczami jej aktorów*, wyd.1 Warszawa 2000, p. 230.

The next level consisted of Intermediate Bodies, ie public administration bodies or other units of the public finance sector, which were entrusted by agreement with the Managing Authority with part of tasks related to the implementation of the operational program. Below this level of administration, there were Implementing Institutions - public or private entities entrusted with the implementation of tasks relating directly to the beneficiaries of European funds.

The recentralization tendencies that have been visible for a long time have been intensifying, gradually depriving local government of control over successive areas of tasks and tightening supervision over the local government. Further actions that limit the ability of local governments to act effectively may even bring it down to the role of the contractor of the centre's commands, deprived of political independence and its own competences. After 1999 many changes were introduced that were unfavourable for local governments, including issues related to participation in income taxes (PIT and CIT), tightening central control over resources in the health care system, disregarding the subjectivity of local governments when changing communal boundaries, attempting to over-extend the competences of supervisory authorities over the local government, or failed approaches to the introduction of metropolitan governance. In recent years, there has been a centralist acceleration, visible both in the form of educational reform, centralization of environmental protection funds and environmental protection administration, planned centralization of employment agencies, attempts to radically expand supervisory competences of the Regional Audit Chambers (RIO), as well as the central form of the housing program "Mieszkanie +", entering the field performed so far by local governments within the framework of municipal construction. If the direction of change is maintained, in a short time the local government could become a structure devoid of real independence and own competence, enabling independent functioning. Without the formal winding-up of local government, it may turn out that the structure of public authority is inevitably heading towards the centre, taking up, in a bit, the competences previously arranged in a logical manner at particular levels of local government units.

The antidote for centralizing tendencies, however, can not only be the defence of the *status quo*, especially because many accusations are formulated against the actions of local government bodies. The one-man leadership of commune heads, mayors and city presidents is often based on an idealized concept of a strong leader who understands and satisfies the needs of the inhabitants best - while such an authoritative approach seems to be less and less valid. In the face of the wider entering of the idea of governance, co-management and the popularity

of participatory budgets, urban movements and various forms of social consultations, alternative leadership models are being sought, based on open communication, codecision and communityship<sup>20</sup>. What is also lacking in Polish local government is in many cases the effective cooperation between the local authorities and societies, as well as consecutive control over local decision-making by the citizens.

## Conclusions

Polish local government is the main functional component of a broad system of public administration, responsible for the vast majority of day-to-day public services. Decentralization served both as a tool for dismantling the communist state and as the foundation of broader state-building strategy, with purposeful division of powers between the central and local government. Poland avoided the fragmentation and apparent character of reforms conducted in most other Central European countries, providing local authorities with democratic mandate from popular vote, legal identities, independent budgets, property rights, control over their personnel and substantive competences in the field of public services. Independence of local government is seen both as public administration reform and democratic empowerment in order to build a stronger state. On the other hand, Poland's success in restoring local government seems to have been diminished by creeping recentralisation and continuous efforts from the central government to conform the local authorities and to a wider control and dependence.

One would expect that, especially in the light of the permanent rivalry between the central and local government, the administrative courts will serve as the impartial factor and guardians of the constitutional presumption of tasks and competences for the local government. It is not always the case, and in many instances the judgments apply a narrow logic of the public administration actions based only and within the limits of strict legal regulations. However, a modern local government very often acts outside the imperious sphere and limiting its actions in the organizational and development fields, might go against the interests of local community.

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<sup>20</sup> H. Mintzberg, *Rebalancing Society: Radical Renewal Beyond Left, Right, and Center*; Berrett-Koehler Publishers. 2015.



There is no reason to suppose that taking over the competence of the self-government by the center will give better results in performing public tasks, because experience indicates so far that central government is not more effective than local government (eg decentralized municipal services or education in contrast to centralized health protection). An alternative to limiting local government and growing control of central government may be a stronger empowerment of local communities, which not only observe and oversee the actions of local authorities, but have real instruments of co-deciding and accounting for local government bodies for all shortcomings or failures. Therefore, the most important evaluating role in relation to the actions of local authorities should belong to the inhabitants of local government units.

For that reason, the debate on the future of the local government should focus on strengthening the local government in relations with the centre and redefining the understating of local competences by supervisory bodies and the administrative courts. What is also needed is establishing the legal definitions of the foundations and limitations to local government's tasks and competences, by addressing the incorrect application of the constitutional provisions by the supervisory bodies and administrative courts. On the other hand, the degree of local autonomy needs to be addressed and it cannot have unlimited boundaries. The particular instruments for the citizens' control over the local authorities actions should be indicated, as well as the more general issue of limits to "tasks satisfying collective needs of local community". Another controversy arises from non-legally binding statements of the local councils, supporting certain ideological positions. It should be discussed, to what extent the local government should engage in this kind of activities, having especially in mind the possible infraction of constitutional values.

If one wants to truly counterbalance the recentralization attempts, one needs to find ways to convince the administrative judges that the interests of local communities are best guarded their local representatives, as well as engage the citizens in the decision-making process. The only way to build a genuine local community, as opposed to top-down/enforced local cooperation, is making this project attractive to the people. Recentralization is not a solution to the current problems of the local government, but rather a recipe for deepening the existing problems and creating new, related to the deficiencies of effectiveness of central government.

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