DE GRUYTER
OPEN

LAW AND ADMINISTRATION
IN POST-SOVIET EUROPE

The Journal of Kolegium Jagiellonskie Torunska Szkola Wyzsza
Vol. I: 28–37

DOI: 10.2478/lape-2014-0003

Jacek Przybojewski
Kolegium Jagiellońskie Toruńska Szkoła Wyższa

Principle of decentralization of public power in Poland

Key words: Polish territorial division, local government, self-government, executive power

1. Introduction

The regard for width but also for effective way of exercising public power justifies placing centres of power in different configurations, also concerning the scope of formally determined territorial competences. It is in accordance with the logic of construction of institutional structure, comprising many decisive levels that have tasks, competences but also realization measures clearly determined. The aforementioned structure is formed basing on plain but the most often not directly hierarchical interdependencies. Such situation creates possibility of greater participation in exercising power by representatives of the Nation or local communities, chosen in general elections. Nevertheless, it remains a necessity to preserve balanced relations between state and local interests to ensure harmonious coexistence of constitutional rules of uniformity of the state – article 3 of the Constitution[1] – and decentralization of public power (article 15 section 1 of the Constitution), creating thereof finally an element that influences the quality of life of citizens advantageously[2]. Therefore, considerations pertaining to decentralization of power should be led with respect for the principle of uniformity of the Republic stating that on the territory of Polish state actually there are no entities that would have legally autonomous character. Within full scope, it affects legal situation of public authorities other than central ones that may not infringe legal order of the state within the framework of their activity. Recognition of decentralization of public power as a factor ensured by the territorial system of the Republic of Poland in the above-mentioned article 15 section 1 merges an order, directed to the legislator, constituting a ban on institutional concentration of imperious rights with a requirement of searching for optimal structural options. General constitutional (article 15 section 2) indication as for determination, by way of a statutory law, of basic territorial division of the state is signaling

[1] Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997r. (Dz. U. Nr 78, poz. 483 ze zm.) – The Constitution of the Republic of Poland of 2 April 1997 (J.L. No. 78, item 483, as amended).

[2] The need to determine borders of decentralization by the principle of uniformity of the state, additionally taking into consideration consequences of considering the Republic as common good of all citizens is pointed out by D. Dudek (ed), *Zasady ustroju III Rzeczypospolitej Polskiej*, Warszawa 2009, p. 256–257.

the need to take into account social, economic and cultural bonds that is assumed to ensure the capability of territorial units within the scope of exercising public tasks. Such formula, despite its general character, excludes potential arbitrariness at the side of the legislator with regard to creation of local government units precisely through the postulate to bear in mind numerous connections between residents of a given territory[3]. As a result, administrative bodies functioning at levels of territorial division, created while perceiving social, economic as well as cultural conditions, gain the capability of effective administration within statutory competences that therefore fulfills the citizen's right to good administration.

2. Territorial division of the Republic of Poland

Participation of local government units in exercising public power to which article 16 section 2 alludes, encompasses significant part of public tasks, performed by the local government on behalf of itself and on its own account. The Constitution does not include exhaustive determination of local government units; it restricts itself to differentiate the basic level, i.e. the commune (article 164 section 1), however, formulating a mandatory requirement to create, by way of a statutory act, other local government units (article 164 section 2). Reasons of such manner of regulation may be probably found in miscellaneous views on system of local government, expressed by powers dominating the political scene while works on the Constitution were pending. By virtue of the *Act of 24 July 1998 on introduction of basic three-tier territorial division of the state*[4] it was set forth that the units of division are communes, districts (poviats), provinces (voivodeships), the citizens of which create *ex lege* self-government communities, that is also stated in article 16 section 1 of the Constitution. The latter issue is repeatedly emphasized in acts concerning particular levels of local government units, i.e. in the *Act of 8 March 1990 on commune self-government*[5], *the Act of 5 June 1998 on poviat self-government*[6] and *the Act of 5 June 1998 on voivodeship self-government*[7]. Elements supplementing public administration in voivodeships is voivode, exercising power of general administration, as well as non-consolidated administration authorities, according to *the Act of 23 January 2009 on voivode and governmental administration in voivodeship*[8]. Thus, decentralization of public power means legally established transfer of chosen competences to local authorities, vested with means enabling them to realize tasks entrusted thereto. These bodies have formally guaranteed opportunity to act independently and free of interference of other entities; however, that does not mean abandoning supervision or appeal control in situations provided in law. Indisputable and already partially indicated value of decentralization of public power consists in transfer of part of decisive competences to the level near to the subject matter of decisions taken, being vested in persons that create the communities, most often being directly interested in shape thereof. Such connection of decisive centre with the matter decided fosters effectiveness of solutions adopted, first through objective significant knowledge of issues concerned, secondly as a result of subjective striving for rationality of actions the effects of which directly shape the situation of the community or some of its members.

3. Legal situation of local government authorities

Particular role of decentralization of public power which is formally enshrined in its determination in the first chapter of the Constitution, therefore, among solutions creating foundation of structural order of the Republic, finds its amplification and concretization in

[3] In the ruling of 8 April 2009, K37/06 (OTK–A 2009/4/47) the Constitutional Court pointed out obligation to consult with the residents solutions concerning to existence of the commune or its borders as the way of realization of the principle arising from article 15 section 2 of the Constitution.

[4] Ustawa z 24 lipca 1998 r. o wprowadzeniu zasadniczego trójstopniowego podziału terytorialnego państwa Dz. U. Nr 96, poz. 603 ze zm. [J.L. No. 96, item 603, as amended].

[5] Ustawa z 8 marca 1990 r. o samorządzie gminnym, t.j. Dz. U. 2001 r. Nr 142, poz. 1591 ze zm. [uniform text J.L. of 2001, No. 142, item 1591, as amended].

[6] Ustawa z 5 czerwca 1998 r. o samorządzie powiatowym, t.j. Dz. U. 2001 r. Nr 142, poz. 1592 ze zm. [uniform text J.L. of 2001, No. 142, item 1592, as amended].

[7] Ustawa z 5 czerwca 1998 r. o samorządzie województwa, t.j. Dz. U. 2001 r. Nr 142, poz. 1590 ze zm. [uniform text J.L. of 2001, No. 142, item 1590, as amended].

[8] Ustawa z 23 stycznia 2009 r. o wojewodzie i administracji rządowej w województwie, Dz. U. Nr 31, poz. 206 ze zm. [J.L., No. 31, item 206, as amended].

further norms, both of constitutional and lower level, determining the system of local government. It justifies differentiation of at least two fields of considerations belonging to the issue of decentralization of public power, i.e. constitutional determination of system of local government as well as surveillance thereupon. Apart from already aforementioned regulations concerning decentralization of public power, constituting the element of structural order of democratic state, seventh chapter of the Constitution includes a wide array of regulations identifying the local government. First issue included therein (art. 163) contains so-called presumption of competence of local government units. It consists in assuming that public tasks that were not reserved by virtue of the Constitution or statutory law for authorities other than local government are encompassed by competences of local government units. On the grounds of the Act on commune self--government that regulation is specified by assuming competences of the commune for public affairs having local significance unless they are legally assigned to other entities. Such formula allows for differentiation of the scope of binding force of the presumption indicated hereinabove jointly with the presumption of competence set forth in article 146 section 2 of the Constitution that encompasses matters belonging to the scope of the state policy not reserved for state authorities other than the government or, possibly, local government authorities. Arising from substance of the provision invoked the possibility to entrust matters pertaining to state policy to local government entities might raise doubts in case of lack of legally determined opportunities to encumber local government units with tasks of the scope of governmental administration.

In turn, article 165 differentiates three basic elements shaping legal situation of local government authorities at the level of communes, poviats as well as voivodeships. First of them is the attribute of having legal personality which means a possibility to be the subject of rights and duties. It directly influences the possibility of exercising ownership right and other patrimonial rights that self--government entities have by virtue of the norm indicated hereinabove. Way of acquiring and managing property of local government are determined in particular in acts on commune, poviat and voivodeship self-government. The need to lead economic activity within the scope of property of local government in order to perform public tasks, bearing in mind that the property of local government constitutes material security thereof, should be nevertheless underlined.

Already mentioned as a significant part of rule of decentralization of public power independence of local government units was emphasized in article 165 section 2 of the Constitution as a value subject to judicial protection[9]. The independence of local government units to a great extent is based on factors determined at the beginning of article 165 of the Constitution, i.e. legal personality and having ownership right and other patrimonial rights, constituting nevertheless a separate normative category, finalizing three-tier scheme of legal determination of self-government authorities. Such value should not be given an absolute priority[10] as it may be subject to statutory restrictions the scope of which may not, nevertheless, strike the essence of independence[11] but may shape it in a way corresponding with requirements of uniform state.

In turn, in article 166 section 1 and 2 of the Constitution a dualistic differentiation was made as to categories of tasks performed by local government units, determining them as own and mandated tasks. The first category differentiated regards public tasks that directly serve satisfying needs of self-government communities. The second category pertains to actions resulting from justified needs of the state, therefore, encompassing not only local communities but also collective interests of the society. Such way of determination of tasks of local government units is cohesive with regard to the aforementioned constitutional model reflecting participation of self-government in exercising public

[9] The right to court including both general as administrative jurisdiction may be deemed the most important guarantee of independence of self-government. Interpretation of the substance of article 165 section 2 of the Constitution should therefore directly lead to guaranteeing local government units that right. Within such scope P. Chmielnicki (ed.), *Konstytucyjny system władz publicznych*, Warszawa 2010, p. 177.

[10] From the point of view of the Constitutional Tribunal the independence of local government units shall be deemed as freedom from arbitrary external interference in all spheres of activity of those units; the domain of independence, protected by virtue of the Constitution, ends where constitutionally protected rights and interests of citizens start – the judgment of 29 October 2009, K 32/08, OTK––A2009/9/139.

[11] Criteria comprised by the essence of independence of local government units are, apart from legal personality and patrimonial rights, also lack of hierarchical subordination to other local government units as well as governmental administration or limitation of surveillance to premise of legality. Within this scope extended explanation in: W. Skrzydło, S. Grabowska, R. Grabowski, *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, p. 526.

power, encompassing both undertakings of local as well as general character. The latter may be mandated in statutory law, the determination of procedure and manner of performing mandated tasks being the same as to the legal form. For instance in the act on commune self-government a possibility is provided to impose on communes, by virtue of statutory law, the obligation to perform mandated tasks of the scope of governmental administration and organization of preparations as well as proceeding with general elections and referendums. Furthermore, in this act the agreement of commune with governmental administration authorities is indicated as possible basis for performing undertakings pertaining to the aforementioned administration. The agreements, but concluded with poviat as well as voivodeship authorities may also constitute a premise for realization by the commune of tasks subject to competence of those self-government units.

As execution of public tasks by local government units and governmental administration authorities may lead to competence disputes due to approximate character or even connection between scopes of competence, in article 166 section 3 of the Constitution it iss determined that such disputes shall be resolved by administrative courts. Statutory concretization of such norm constitutes *the Law on proceedings before administrative courts of 30 August 2002*[12] as therein the competences of these courts are comprised, to resolve competence disputes not only within the scope expressed in the Constitution, but also between authorities of local government units and between local government appeal courts.

Imposing on local government entities own as well as mandated tasks should, obviously, be connected with ensuring adequate resources for its realization. In principle there is stated in article 167 section 1 of the Constitution a guarantee of participation in public incomes, *pro rata* to tasks falling on local government units[13]. The acts pertaining to local government units provide for independence of communes, poviats and voivodeships within the scope of leading financial management, based on budget resolutions. In turn, article 167 section 2 and 3 of the Constitution sets forth incomes of local government units as their own incomes, but also general subventions and restricted grants, recognizing the requirement of determination of its sources by way of a statutory act. It is fulfilled basically by *the Act of 13 November 2003 on incomes of local government units*[14], in which, *inter alia,* rules of determination and transfer of general subvention and restricted grants are pointed out. The invoked act alludes, obviously, to constitutional solutions concerning incomes of local government entities, stating nevertheless that they also arise from participation in receipts from income tax from physical persons as well as legal persons. Additionally, other possible incomes are provided therein, for instance means from budget of the European Union. The presented issue is also taken into account in *the Act of 27 August 2009 on public finances*[15], differentiating, among budgetary expenses, means for restricted grants and general subventions, specifying destination of the former to financing or co-financing of mandated tasks or, possibly, current own tasks of local government units. Determination of requirement of definition in statutory form of sources of incomes of local government entities constitutes a situation in which the level of those incomes is possible to be described on the basis of such legal regulation. It leads to the need of inserting definite solutions, not blanket ones (therefore, delegating to secondary legislation). The rule of exclusiveness of statutory law should be referred not only to specify the sources of incomes, but also to other aspects of financial management of local government units, including determination of necessary expenses of these units. It is also legitimate in the context of article 216 section 1 of the Constitution which states that financial means destined to public aims shall be expended in the manner resulting from statutory law. Moreover, according to article 167 section 4 of the Constitution, changes as to tasks and competences of local government units are introduced jointly with corresponding changes within the scope of division of public incomes.

[12] Ustawa z 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. Nr 153, poz. 1270 ze zm. [J.L. No. 153, item 1270, as amended].

[13] The Constitutional Tribunal in judgment of 9 June 2010, K 29/07, OTK–A 2010/5/49 indicated contradiction of provisions of the act with article 167 section 1 of the Constitution in case in which general level of income of local government units makes it impossible to perform the entrusted tasks effectively.

[14] Ustawa z 13 listopada 2003 r. o dochodach jednostek samorządu terytorialnego, t.j. Dz. U. 2010 r. Nr 80, poz. 526 ze zm. [uniform text J.L. 2010, No. 80, item 526, as amended].

[15] Ustawa z 27 sierpnia 2009 r. o finansach publicznych, Dz. U. Nr 157, poz. 1240 ze zm. [J.L. No. 157, item 1240, as amended].

The Constitution in article 168 comprises determination of right to define by local government bodies, within the scope of statutory delegations, the amount of local taxes and local charges. Particular issues within the aforementioned area are regulated *by the Act of 12 January 1991 on local taxes and fees*[16], encompassing issues concerning real estate tax and tax on means of transport as well as market, local, health resort charges and charge arising from having dogs. Tax authorities competent in matters of aforementioned taxes and charges are, by virtue of the act, commune heads (mayors, presidents of towns/cities). Such constitutional standard of levy power of local government units excludes the possibility of abandoning the statutory model within the framework of creating local law pertaining to local taxes and charges.

Execution of tasks concretized statutorily by local government units from the level of commune, poviat and voivodeship requires organized institutional sphere. In article 169 section 1 of the Constitution a differentiation is made as to categories of legislative and executive bodies, being encumbered with a practical dimension of performing competence tasks, the first mentioned also underlining, within the scope of statutory acts, internal structure of local government units (article 169 section 4). The act on commune self-government indicates that organs of commune are the board and the commune head. The board of commune (the municipal board if its place of residence is in the city located on the territory of a given commune) is according to the act the legislative as well as controlling body in the commune. The scope of its legislative competences comprises in particular enacting the charter of the commune, its budget, economic programs, studies of conditions and directions of spatial development or resolutions on taxes and charges. Controlling competences are performed by the board through the audit committee which, *inter alia*, give its opinion concerning execution of budget of the commune and submit a motion to the board concerning acknowledgement or refusal to acknowledge fulfilment of duties. An appropriate resolution of the board of commune in this regard concerns the commune head (mayor, president of the town/city) which is an executive body of the commune. The aforementioned function is performed by the mayor when the place of residence of the commune is in the town/city located within the territory of that commune or by the president of the town/city if the town/city is domiciled by above 100,000 residents. The commune head (mayor, president of the town/ /city) as an executive entity directs current affairs of the commune and represents it externally, furthermore it realizes in particular tasks such as:

- preparation of drafts of resolutions of the board of commune,
- determination of the manner to perform resolutions,
- managing property of the commune,
- execution of budget,
- employing and dismissing heads of commune organizational units.

The statutory shape of organization of legislative and executive entities in poviats and voivodeships actually is based on the same assumptions as in case of the commune, within which the competence specificity should nevertheless be taken into consideration. Therefore, in Act on poviat self-government a board of poviat and governing body are indicated, respectively as legislative and controlling body and executive organ. Competences attributed to the board encompass in particular enacting local legal acts (including the charter), enacting the budget, adopting resolutions concerning acknowledgment of fulfilment of duties for the governing body or resolutions on property of the poviat. The controlling activity of the board is realized mainly through the audit committee and is aimed in particular at the assessment of the way of budget execution by the governing body, in connection with which the committee submits a motion to the board to acknowledge or refuse to acknowledge fulfilment of duties of the governing body. That organ jointly with the district governor (starost) is elected by the board and has, *inter alia*, the following tasks:

- preparation of drafts of resolutions of the board of poviat,
- execution of such resolutions,
- managing property of the poviat,
- budget execution.

The starost organizes works of the governing body, directs current affairs of the poviat and also represents the poviat externally. Moreover, the starost directs district governor's office and is a superior of poviat services, inspections and guards.

In turn, the Act on voivodeship self-government states that the legislative and controlling entity at that level is the provincial assembly. Competences of the

[16] Ustawa z 12 stycznia 1991 r. o podatkach i opłatach lokalnych, t.j. Dz. U 2010 r. Nr 95, poz. 613 ze zm. [uniform text, J.L. 2010, No. 95, item 613, as amended].

provincial assembly that have legislative character are in particular enacting local legal acts (also charter of the voivodeship and rules of management of property of the voivodeship), enacting strategies of regional development, area development plan, budget, adopting resolutions pertaining to acknowledgment of fulfilment of duties and in other matters concerning property of the voivodeship. The provincial assembly elects the governing body, including the marshall of voivodeship. The governing body as an executive organ is entitled to realize tasks belonging to voivodeship local government unless they are restricted to the provincial assembly or possibly voivodeship organizational self-government units. The governing body is subject to control of the provincial assembly, executed principally by the audit committee in the area of manner of budget execution. The aforementioned issue is examined in the opinion issued by the committee which also submits a motion on acknowledgment of fulfilment of duties of the governing body. Basic tasks imposed by the act on the governing body of the voivodeship are:

- execution of resolutions of the provincial assembly,
- management of property of the voivodeship,
- preparation of the draft and execution of budget,
- preparation of drafts of stategies of development of voivodeship, area development plan, regional operational programs.

The marshall is encumbered with the duties to organize works of the governing body, of directing current affairs of the voivodeship and its external representation and also directing marshall's office and performing a function of official superior over employees of the office and heads of voivodeship organizational self-government units.

The Constitution determines only general elements characterizing local government elections, stating (article 169 section 2) that they are general, equal, direct and are performed in secret voting. Such issues as rules and procedure of putting up the candidates, proceeding with the elections and conditions for its validity, pertaining to legislative entities, and also rules and procedure of elections and dismissal of executive bodies of local government units are left to be regulated by statutory acts (article 169 section 2 and 3 of the Constitution). At present, normative solutions determining in a detailed way the rules of elections for legislative bodies of local government units but also commune heads, mayors and presidents of towns/cities are included in *the Act of 5 January 2011 the Election Code*[17]. According to that act, active voting right is vested in persons satisfying criteria of age and citizenship within the scope identical as set forth in article 62 section 1 of the Constitution which means that the right to elect is granted to Polish citizens that are 18 years old at the day of voting at the latest. In elections to the board of commune also citizens of the European Union are entitled to vote, in accordance with the Election Code. Active voting right in elections to legislative local government bodies requires also residing permanently on the territory of the commune, poviat or voivodeship. Criteria determining right to elect to the board of commune are the same in case of election of commune head. Both the Constitution (article 62 section 2) as well as the Election Code indicate premises excluding right to elect, i.e. deprivation of public rights, incapacitation or deprivation of voting rights, all the aforementioned by virtue of final and legally binding rulings of courts or, possibly, the Tribunal of State in the last of the cases mentioned hereinabove.

Having active voting right influences the possibility of competing to be elected; however, the statutory act formulates here some restrictions excluding for instance persons convicted for deliberated offences prosecuted *ex officio*. Decreeing the elections belongs to the Prime Minister which does that having obtained the opinion of the National Electoral Commission, by way of a regulation. The validity of elections is decided by the regional court. It should be emphasized that the Code, apart from common provisions, contains also differentiation of those characteristic for elections of the given level.

Among executive bodies, general, equal, direct and performed in secret voting elections comprise merely commune heads (mayors, presidents of cities/towns). In poviat as well as voivodeship local government structures the election of governing bodies is made, as already mentioned, respectively by the board and assembly. Passive voting right as to candidates for the office of commune heads (mayors, presidents of towns/cities) is granted to Polish citizens that are capable of competing for the post of councilor (member of the board of commune) and are 25 years old on the day of voting at the latest (the candidate is not obliged to reside permanently on the territory of the given commune). The winning candidate is the one who obtains above half of valid votes.

[17] Ustawa z 5 stycznia 2011 r. – Kodeks wyborczy, Dz. U. Nr 21, poz. 112 ze zm. [J.L., No. 21, item 112, as amended].

Functioning of organs of local government, originating from general elections, legislative ones i.e. boards and assemblies as well as executive ones i.e. commune heads (mayors, presidents of towns/cities), supplemented at the level of poviats and voivodeships by the governing bodies, elected by the boards and assemblies does not exhaust the array of entities entitled to make decisions in matters pertaining to local government communities. It is decided by the article 170 of the Constitution in which the right of members of local government communities to resolve matters concerning those communities in referendums is established. Rules and procedure for attaining such solutions are comprised basically by the *Act of 15 September 2000 on local referendum*[18]. On the basis of the procedure indicated therein the will of members of local government communities as to resolving matters concerning tasks and competences of body of the given local government unit or in questions of recalling legislative bodies and commune heads (mayors, presidents of towns/cities) may be expressed. Expression of standpoint in referendum may consist in giving an answer to a question (questions) or possibly making a choice between proposed options. Referendum rights are granted to persons permanently residing on the territory of local government unit who are entitled to elect legislative body. Referendum is performed following the request of the legislative body or a group of residents (at least 10% in commune and poviat and 5% in voivodeship) but only residents may initiate referendum concerning recall of the entity chosen in elections.

The aforementioned procedure that may be of commune, poviat or voivodeship character is valid if there was participation of at least 30% of persons entitled to take part therein; if the procedure concerns recall of the organ, at least 3/5 of persons participating in its election. The result of the referendum is binding if for a given option over half of valid votes is given. Consequently, it obliges a competent body of local government to take promptly activities in order to execute will of voters.

Comparison between the substance of constitutional regulations determined in article 169 section 1 and 170 leads to disclosure of coexistence in structural order of two significant rules concerning exercising of power within the framework of local government units. As a rule, it is formulated that local government tasks ought to be executed through legislative and executive bodies, on the other hand, the rule of direct expression of will of residents in referendum with regard to issues pertaining to the community is expressed. Nevertheless, it is hard to perceive as justified, a direct execution by the residents, basing on referendum, of constant, repeating and institutionally attributed tasks as that would not only contravene the rule of article 169 section 1 but also would finally lead to organizational decisive inefficiency and generate unfounded costs. However, it does not exclude the possibility to resolve directly matters included in the scope of tasks, duties and competences of organs by the residents, even if such situations should rather be perceived as exceptional. Binding upon elective bodies, the standpoint of self-government communities should not entail actual abrogation of competences vested in those bodies. Thus, considering relations of power understood in direct and indirect way at the level of local government, it should be pointed out that none of them shall be perceived as confrontational with regard to each other; to the contrary, both forms should be recognized as supplementing each other in a coherent manner. Also, intervention of residents in decision-making processes should concern issues of primordial character which is enshrined by stating in article 170 of the Constitution that the referendum may concern for instance recall of the body of local government originating from direct elections.

Participation of local government in execution of public tasks, embodied in realization of own as well as mandated tasks, requires fulfilment of uniform criterion arising from the rule of legal state, which is lawfulness. It means the duty of unconditional observance of conformity to law, encumbering local government units, which is the fundamental criterion of assessment within the scope of propriety of comportment of a given institution. In article 171 section 1 of the Constitution a principle of surveillance over the activity of local government units in terms of lawfulness is formulated. Adopting such solution, being an exception to the above-mentioned rule of independence of local government entities, enables the Prime Minister, voivodes and, with regard to financial matters, regional accounting chambers to take appropriate, concretized in statutory law, surveillance activities (article 171 section 2 of the Constitution). The surveillance bodies are entitled to make evaluations solely within the scope of borders determined statutorily, taking into account the criterion of lawfulness which excludes admissibility of considerations for instance with regard to purposefulness of actions taken by the local

[18] Ustawa z 15 września 2000 r. o referendum lokalnym, Dz. U. Nr 88, poz. 985 ze zm. [J. L. No. 88, item 985, as amended].

government. The constitutional provisions indicated hereinabove, referred to directly for instance in the act on commune self-government, constitute the basis to enact detailed regulations. Therefore, the commune head is obliged to file with the voivode resolutions of the board of commune and to file with the regional accounting chamber a budget resolution, a resolution pertaining to acknowledgment of fulfilment of duties as well as other resolutions of the board and decrees of commune head encompassed by surveillance of the chamber. Act on commune self-government decides that resolutions and decrees of the organ of commune that contravene the law are, in their entirety or partially, invalid; they are declared as such by the surveillance body. That entity is also entitled, instituting the proceedings in this regard, to withhold the enforcement of the given resolution or decree, up to the moment when an appropriate decision is given, which shall not only consist of factual as well as legal reasoning, but also instruction as to the possibility to question it in administrative court. However, the aforementioned is not applicable if legal vices are insignificant as in such situation, according to the statutory act, the surveillance body should restrict itself to indication that the resolution or the decree was issued with infringement of law. Use by the legislator of the criterion of '…insignificant infringement of law…' which is fuzzy, ambiguous and as a result dependent on assessment, was probably introduced in order to exclude normative automatism for surveillance decisions; such automatism would lead to elimination of resolutions and decrees of local government entities even if these resolutions and decrees were imperfect only because of formal vices of objectively small significance. Therefore, noticing in the aforementioned expression a certain defect in terms of good legislative practice as to required unambiguity of the legal text, there should be underlined the flexibility achieved thereby, concerning consequences of reaction of surveillance bodies to noticing the fact of existence of normative vices. As a result of declaration of invalidity of resolution or decree of the organ of commune there is *ex lege* withholding of it execution as of the day of delivery of decision of the surveillance body which may be questioned in administrative court. Thus, possible legal dispute is subject to assessment by the entity functioning on the basis of criteria of independence which should lead to solutions free from non-substantial and non-formal factors.

4. Conclusions

Similar to presented hereinabove, surveillance mechanisms function also in the act on poviat self-government where an obligation to submit by the district governor to the voivode the resolutions of the board of poviat was established as well as in act on voivodeship self-government where a requirement to submit resolutions of provincial assembly was attributed to the marshall.

Legal instruments shaping the influence on formal transgressions in individual acts of local law does not ensure effective reaction in case of repeating infringements of the Constitution and statutory acts committed by bodies of commune, poviat or voivodeship.

It is understandable that such situations require procedures more far-reaching than those destined to eliminate acts of local law, that would be even repressive in their character. In article 171 section 3 of the Constitution there is generally determined the possibility of dissolution of legislative body of local government which glaringly infringes the Constitution or statutory acts, by the Seym following the request of the Prime Minister. The formula '…glaringly infringes…' used in the Constitution suggest serious, however not viable to be specified unambiguously, character of legal transgressions. Therefore, making intentions of the legislator understandable, it constitutes an example of a certain legislative awkwardness as every breach of law should be recognized as an culpable event which, however, does not justify purposefulness of making further evaluations on the basis of ambiguous, therefore, fully dependent on the assessment, criteria. Yet, it may be assumed that the constitutional expression concerns repeated infringement of law the analyzed provision refers to. Confirmation of the last thesis is the substance of norms of statutory acts concretizing article 171 section 3 of the Constitution. For instance, in act on commune self-government there is a competence of the Seym [lower house of Polish Parliament] determined to adopt, following the request of the Prime Minister, a resolution dissolving the board of commune in case of repeated infringement of the Constitution or statutory acts thereby. Thus, the legislator abandoned the constitutional rule, emphasizing gross character of infringements in favour of clear underlining of their multiple character. Application of the solution indicated causes coming into being at the side of the Prime

Minister of the duty to designate, upon the request of the minister competent for public administration matters, the person who will perform the functions of board of commune up to the moment of election thereof.

Other regulations of surveillance character, provided for in the invoked act, however, saying nothing of the substance of article 171 section 3 is a right of the voivode who may submit a request to the Prime Minister, demanding recall of the commune head as a consequence of repeated infringement of the Constitution or statutory acts thereby. Application of such procedure is possible after call directed by the voivode to the commune head to desist from infringements of law. The Prime Minister, after recall of the commune head, is obliged to designate, following the request of the minister competent for public administration matters, the person that will perform the function up to the moment of election of new commune head.

If the organs of commune turn out inefficient in execution of public tasks and if such state lengthens and does not hold promise for quick improvement, the Prime Minister, acting upon the request of the minister competent for public administration matters, may suspend the bodies of commune and establish a compulsory administration, maximally for the period of 2 years, however, no longer than up to election of the board of commune and commune head for the next term of office. The premise preceding such actions is presentation of reproaches to the organs of commune and calling them to prompt submission of a program for improvement of situation of the commune. The governmental commissioner, appointed by the Prime Minister following the request of the voivode, submitted through the medium of the minister competent for public administration matters, takes over execution of tasks and competences of bodies of commune as of the day of its appointment.

Surveillance decisions of the spheres determined hereinabove are subject to contestation to the administrative court, like in already mentioned cases of declaration of invalidity of individual acts of local law.

In acts on poviat and voivodeship self-government regulations very similar to those pertaining to bodies of commune are included. Thus, there are indicated the procedures leading to dissolution of the board of poviat or the provincial assembly as well as the governing bodies of poviat or voivodeship in cases of repeated infringement of law, also establishment of compulsory administration as a result of inefficiency in execution of public tasks demonstrated by organs of poviat or voivodeship. The legality of the aforementioned decisions may be subject to assessment by administrative court.

Recourse to court is also available to anyone whose legal interest or right was infringed by the resolution or the decree adopted by the bodies of commune, poviat or voivodeship. Conditions allowing for effective contestation of those decision are their subject, comprising matters within the scope of public administration as well as earlier call directed to the body adopting the resolution or issuing the decree to eliminate the infringement.

The surveillance over local government units, different forms of which have been determined hereinabove, constitutes an obvious consequence of normative adoption of the rule of uniformity of the Republic of Poland, excluding, in principle, functioning on the territory of the state of bodies enacting regulations contradicting Polish legislation. Legal formulas determining the scope of that surveillance are multidimensional, both within the subjective, as well as objective sphere, but, what is important, legality of their application may be subject to judicial control.

The remarks made indicate that, as it should be deemed, functioning of local government that nowadays constitute standard solution in legal orders of democratic states is to ensure broader area for realization of imperious function by the sovereign (the Nation i.e. totality of citizens of the Republic) on conditions determined by the rules of democratic legal state as well as division of power and check and balance principle. The substance of article 15 of the Constitution constitutes also a reflection of the rule of subsidiarity indicated in the preamble of the Constitution. The aforementioned rule is quite popular in legal and international realities and its consequence is the need to take imperious decisions possibly near the citizen. Public authorities, as a principle, should not only not act to the detriment of the rank-and-file initiatives but foster them within legally available forms[19]. It is also worth indicating the meaning of learning and understanding the notion of decentralization of public power in significant context of legal education creating views and attitudes the citizen's legal subjectivity consists of.

[19] To a broader extent on principle of proportionality for instance M. Grzybowski (ed.), *Prawo konstytucyjne*, Białystok 2009, p. 81–82.

References

LEGAL SOURCES

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. Dz. U. z 1997 r. Nr 78, poz. 483 [*Constitution of the Republic of Poland*, J.L. No.78, item 483].

Ustawa z 24 lipca 1998 r. o wprowadzeniu zasadniczego trójstopniowego podziału terytorialnego państwa, Dz. U. Nr 96, poz. 603 ze zm. [*Act of 24 July 1998 on introduction of basic three-tier territorial division of the state,* J.L. No. 96, item 603, as amended].

Ustawa z 8 marca 1990 r. o samorządzie gminnym, t.j. Dz. U. 2001 r. Nr 142, poz. 1591 ze zm. [*Act of 8 March 1990 on commune self-government,* uniform text J.L. of 2001, No. 142, item 1591, as amended].

Ustawa z 5 czerwca 1998 r. o samorządzie powiatowym, t.j. Dz. U. 2001 r. Nr 142, poz. 1592 ze zm. *[the Act of 5 June 1998 on poviat self-government,* uniform text J.L. of 2001, No. 142, item 1592, as amended].

Ustawa z 5 czerwca 1998 r. o samorządzie województwa, t.j. Dz. U. 2001 r. Nr 142, poz. 1590 ze zm. [*the Act of 5 June 1998 on voivodeship self-government,* uniform text J.L. of 2001, No. 142, item 1590, as amended].

Ustawa z 23 stycznia 2009 r. o wojewodzie i administracji rządowej w województwie, Dz. U. Nr 31, poz. 206 ze zm. *[the Act of 23 January 2009 on voivode and governmental administration in voivodeship,* J.L., No. 31, item 206, as amended].

Ustawa z 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. Nr 153, poz. 1270 ze zm. [*the Law on proceedings before administrative courts of 30 August 2002,* J.L. No. 153, item 1270, as amended].

Ustawa z 13 listopada 2003 r. o dochodach jednostek samorządu terytorialnego, t.j. Dz. U. 2010 r. Nr 80, poz. 526 ze zm. [*the Act of 13 November 2003 on incomes of local government units,* Uniform text J.L. 2010, No. 80, item 526, as amended].

Ustawa z 27 sierpnia 2009 r. o finansach publicznych, Dz. U. Nr 157, poz. 1240 ze zm. [*the Act of 27 August 2009 on public finances,* J.L. No. 157, item 1240, as amended].

Ustawa z 12 stycznia 1991 r. o podatkach i opłatach lokalnych, t.j. Dz. U 2010 r. Nr 95, poz. 613 ze zm. [*the Act of 12 January 1991 on local taxes and fees,* uniform text, J.L. 2010, No. 95, item 613, as amended].

Ustawa z 5 stycznia 2011 r. – Kodeks wyborczy, Dz. U. Nr 21, poz. 112 ze zm. [*the Act of 5 January 2011 the Election Code,* J.L., No. 21, item 112, as amended].

Ustawa z 15 września 2000 r. o referendum lokalnym, Dz. U. Nr 88, poz. 985 ze zm. [*Act of 15 September 2000 on local referendum* J. L. No. 88, item 985, as amended].

Wyrok Trybunału Konstytucyjnego z 8 kwietnia 2009 r., K37/06, OTK- A 2009/4/47 [Ruling of the Constitutional Tribunal of 8 April 2009, K37/06, OTK- A 2009/4/47].

Wyrok Trybunału Konstytucyjnego z 29 października 2009 r., K 32/08, OTK- A2009/9/139 [Ruling of the Constitutional Tribunal of 29 October 2009, K 32/08, OTK- A2009/9/139].

Wyrok Trybunału Konstytucyjnego z 9 czerwca 2010 r. K 29/07, OTK- A 2010/5/49 [Ruling of the Constitutional Tribunal of 9 June 2010, K 29/07, OTK- A 2010/5/49].

LITERATURE

P. Chmielnicki (ed.), *Konstytucyjny system władz publicznych* [*Constitutional system of public power*], Warszawa 2010.

D. Dudek (ed.), *Zasady ustroju III Rzeczypospolitej Polskiej* [*System foundations of the 3rd Republic of Poland*], Warszawa 2009.

M. Grzybowski (ed.), *Prawo konstytucyjne* [*Constitutional Law*], Białystok 2009.

W. Skrzydło, S. Grabowska, R. Grabowski, *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny* [*The Constitution of the Republic of Poland. Encyclopedic commentary*], Warszawa 2009.