



# LAW AND ADMINISTRATION IN POST-SOVIET EUROPE

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## Legal and economic aspects of the financial independence of communes in Poland

**Key words:** territorial self-government, Polish territorial division, public finances

### 1. Introduction

The commune (*gmina*) in Poland is a local unit of territorial self-government is determined by its particular location and possession of its own name. It is also associated with the social tradition, which is characterized by a tight-knit bond between its inhabitants, the identity of people inhabiting the area, as well as fulfilling basic needs within its boundaries. The territorial self-government of commune is entitled to make decisions concerning all the issues referring to local communities, except for the ones restricted for the state institutions or regional units<sup>1</sup>. The term referring to the institution of territorial self-government is not unambiguous. Colloquially self-government means self governing and managing one's own issues independently<sup>2</sup>. In legal regulations determining the system of state administration the term refers to free and independent performing of the state functions of administrative character by particular bodies<sup>3</sup>.

Historically formed division of tasks between the organs of the state and the units of territorial self-government is a complex legal, social, and economic issue<sup>4</sup>. The commune as a basic unit of territorial self-government was covered in the 7th chapter of the Constitution on the territorial self-government<sup>5</sup>. Because of the previous legislative regulations it is the only unit of the territorial self-government referred to directly in the Constitution, which at the same time refers to a common legislative regulations the establishing of other units of local and regional self-government.

The *Act on commune self-government*<sup>6</sup> comprises such fundamental rules of the system of commune as a unit of territorial self-government as:

<sup>4</sup> A. Strzelecki, *Podstawy autonomii i decentralizacji w systemie finansów samorządu terytorialnego*, (in:) Zarządzanie finansami lokalnymi, A. Kozuch, A. Mironczuk (eds.), Białystok 2005, p. 35.

<sup>5</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483). – The Constitution of the Republic of Poland of 2 April 1997 (J.L. No. 78, item 483, as amended).

<sup>6</sup> 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].

<sup>1</sup> A. Myna, *Rozwój lokalny. Regionalne strategie rozwoju. Regionalizacja*, „Samorząd Terytorialny” 1998/11, p. 31.

<sup>2</sup> L. Jędrzejewski, *Polityka finansowa jednostek samorządu terytorialnego*, Gdańsk 2004, p. 57.

<sup>3</sup> *Prawo Konstytucyjne*, Z. Witkowski (ed.), Toruń 1998, p. 122–123.

- determining it as juridical person,
- judicial protection of its independence,
- guarantee of its financial independence,
- transferring to commune the possession of communal property,
- granting in a bill basic types of its income,
- the right of the state to commission commune particular assignments, along with the appropriate financial means to fulfill them,
- the right to perform business activity determined in bills,
- the right to determine the level of taxes and fees within the limits set by a bill.

The own tasks of commune determined in the bill are as follows:

- performing territorial economy and taking care of spatial order as well as the protection of the environment,
- taking care of roads belonging to it, streets, bridges, squares, as well as the organization of traffic,
- providing water supplies, as well as construction and maintenance of sewage and drainage systems,
- maintaining order and sanitation facilities, rubbish dumps, discarding and utilizing waste,
- providing electricity and central heating,
- providing local communal transport,
- health care, providing social assistance, including care centres,
- organizing and maintaining communal flat building,
- organizing education, including: primary schools, kindergartens and other educational institutions,
- popularizing culture, including taking care of libraries and other institutions,
- popularizing sports, including organization and maintaining entertainment areas as well as sports facilities,
- organizing and maintaining communal greenery and tree planting,
- providing order and fire protection,
- maintaining buildings and amenities of public use, including markets and market halls, cemeteries.

As a representative of a local community territorial self-government also acts on the behalf of the state. Although it's still unclear what position the self-government has within the system of subjects performing public administration, territorial self-government can

in no way be placed in the opposition to the state<sup>7</sup>. It is a separated element of the state structure, in the broadest meaning, and the result of self-limitation of the state sovereignty for the local community's sake. As such, it means the structure that in relation to the state is both independent and autonomic, however only within the limits set by the state. State organs, then, may influence the activities of territorial self-government effectively, and the range or means of their influence may vary. The state's involvement shouldn't limit, however, the independence of the organs of self-government, since it is necessary to achieve creative activities of a local community. The state's influence on the administration of territorial self-government ought to be clearly determined by law. Therefore, the independence of self-government shouldn't be perceived as its entire autonomy from the state, but through precise determining when and on what conditions state administration has the right to interfere in the activities of territorial self-government<sup>8</sup>.

Within the decentralization process of the public finances sector in many units of territorial self-government one may spot the long-lasting phenomenon of a negative difference between the public spending and income, although in the model of the organization of authorities and public administration<sup>9</sup>:

- decisions are taken as close to the time of their realization as possible,
- assignments are done following the rules of rational and frugal managing of public financial means.

While realizing the legislative social assignments, both the basic ones at the level of commune as well as complementary ones at the level of county (powiat) and voivodeship (województwo), territorial self-government should be equipped with the attribute necessary to perform financial authority. Financial independence of self-government units, guaranteed by law, should be such an attribute. This independence ought to be present both when it comes to income, where their own sources determine the range of independence, as well as expenditure, as tools making it possible to realize the tasks.

<sup>7</sup> A. Wiktorowska, *Prawne determinanty samodzielności gminy, zagadnienia administracyjno-prawne*, Warszawa 2002, p. 192.

<sup>8</sup> Ibidem, p. 193

<sup>9</sup> L. Patrzalek, *Finanse samorządu terytorialnego*, Wrocław 2004, p. 15.

While making an attempt to assess legal and financial regulations determining the financial independence of territorial self-government, the question referring to the interdependence between the range of financial independence and possibility of realizing its activities for a local community should be answered. Inhabitants of commune as well as economic subjects on its territory, treated as the assets of commune, influence the level of its income. The property of commune, the level of industrialization, and the standard of life of local community depend on the economic development of commune.

Creating the conditions of economic development on the area of commune is also associated with the creation of local infrastructure, which either encourages or discourages potential investors to establish various kinds of enterprises. It requires equipping units of territorial self-government with necessary financial means or entitling them to organization of such means. Legal possibilities and organizational skills require such regulating activities, which would make each unit of territorial self-government strong when it comes to organization, and manned by competent, qualified and apolitical self-government officials, as well as equipped with the necessary level of financial independence.

## 2. The convergence of Polish regulations concerning the status of commune with the regulations of the European Union

The level of autonomy of territorial self-government and its independence in actions is determined by the influence of EU regulations, and their convergence with the Polish ones. The basic convention containing economic, social and cultural rights<sup>10</sup> is European Social Charter adopted in Turin on 16th October 1961<sup>11</sup>. In the first part of the convention 19 rules were

included, several of which are the assignments of the units of territorial self-government, and their realization depends on the financial ability of self-government and its independence in this matter. It is about the following legal standards:

- every person will have possibility of earning their life by doing a job they have chosen independently
- every person has the right for suitable facilitation as far as professional counseling is concerned in order to acquire assistance in selecting the job reflecting their personal predispositions and interests
- every person has the right to make use of all the means that can enable them to reach the optimal health conditions
- every person that doesn't have enough resources, has the right to get social and medical assistance
- every person has the right benefit from the help of social services
- family, as the basic unit of society has the right for suitable social, legal, and economic protection in order to be able to develop fully

In the second part of European Social Charter new significant rights were described:

- the right for the protection against poverty and social degradation
- the right for dwelling<sup>12</sup>.

The above presented European standards origin from the common historically formed legal cultural and religious traditions. They were included in the sources of international law, numerous resolutions and recommendations marking out the paths of the development of the European law, and which are common material for the internal legal orders<sup>13</sup>. These standards are also present in international treaties, e.g. European Charter of Local Self-Government, as well as recommended norms. Therefore the member states of EU should take the above mentioned rules into consideration in legal regulations in their systems of public administration.

In the content of European Charter of Local Self-Government<sup>14</sup> it was pointed out that local

<sup>10</sup> It was preceded by European Convention on Human Rights from 4<sup>th</sup> November 1950, along with the first additional protocol from 5<sup>th</sup> May 1988, the changing Protocol from 21<sup>st</sup> October 1991, the changing Protocol from 21<sup>st</sup> October 1991, II Protocol on the system of Collective Complaint from 9<sup>th</sup> November 1995.

<sup>11</sup> On 3<sup>rd</sup> May 1996 the revised European Charter of Local Self-Government was adopted. Poland became a side of European Social Charter in 1997 – s.f.: *Podstawowe dokumenty Rady Europy z dziedziny polityki społecznej*, Warszawa 1997, p. 49.

<sup>12</sup> J. Białocerkiewicz, *Organizacje europejskie i ich standardy prawne*, Włocławek 2003, p. 123–124.

<sup>13</sup> Ibidem, p. 127.

<sup>14</sup> European Charter of Local Self-government, J.L. of 1994, no. 124 item 607 [Europejska Karta Samorządu Lokalnego z 15 października 1985 r., Dz. U. z 1994 r. Nr 124, poz. 607].

communities make the foundations of the basis of the democratic system and the right of citizens to participate in managing public issues is one of the commonly accepted democratic rules. The sources of financing the actions of local communities structures as well as the rules determining them are a significant element of the functioning of these structures. In consequence the compatibility of regulations in EU law and Polish legislation are of great significance, particularly when it comes to the financial independence of regions. In some EU states the autonomy of regions is much broader than in Poland. For instance the Constitution of the Republic of Italy from 27th December 1947 guarantees regions of provinces and commune their own income as well as the share in taxes<sup>15</sup>, in this way providing them with the basis of financial authority.

The units of territorial self-government are legally obliged to address existential needs of local community as well as realization the tasks deputed by the state on their territory. Local authorities, meeting social needs, should also be creative and innovative, and provide competitive conditions in organizing and activating economic life. It means to encourage potential investors to allocate their means in the area of a given community. Legal status of territorial self-government in the system of democratic state, its enforcement and development, is determined by its legal, permanent and strong financial foundations. Stanisław Owsiak emphasizes this issue in an unambiguous way, „Self-government authorities without permanent income are disabled authorities, and their actions have little efficiency”<sup>16</sup>.

The division of tasks between the state and territorial self-government depends on numerous political, system, and economic factors. Neuralgic assignments from the perspective of the state, such as: national defense, diplomatic relations, as well as currency and customs ones, judiciary, should be performed by state organs. While the assignments considering basic, existential necessities, such as: water supplies, disposal of waste, local transport, maintenance of local road network are much more efficiently performed by lower level administrative self-government units – communes.

Some of the assignments can be fulfilled more effectively at higher level of powiat (county) or region. According to an economic criterion the best

solution is when particular assignments are performed by the territorial unit, which is capable of doing it most effectively. The economic criterion, i.e. the most effective way of fulfilling the assignment by an organizational unit of a territorial community, may however be modified by other factors, such as: the level of awareness and political culture of people, tradition, staff, technical, and technological possibilities<sup>17</sup>.

Following the rule of subsidiarity political affairs should be committed to the territorial community of a lower level, whose units are capable of performing as many assignments, as they are able to perform efficiently and effectively<sup>18</sup>. This solution brings performing social services closer to the inhabitants of a territorial unit who are directly interested in them and strengthens its political responsibility for its actions. However, if a higher level of territorial self-government is able to perform public assignments in a better way then it should overtake them.

The rule of subsidiarity was explicitly expressed in the preamble to the Constitution, in the statement: „... we are constituting the Constitution of the Republic of Poland as Fundamental Rights for the state, based on the respect of freedom and justice, cooperation of the authorities, social dialogue, and the rule of subsidiarity strengthening the rights of citizens and their communities”<sup>19</sup>. The postulate of subsidiarity, as it is understood nowadays (from the Latin word *subsidium*), appeared understood as permission as well as the highest necessity of the state's involvement in economy<sup>20</sup>. The social teaching of the Church determines subsidiarity as one of the rules, which should be followed by both the society and the state, which means that society shouldn't do anything that can be done better by an individual thanks to his own initiative and with the use of his own means<sup>21</sup>. The postulate of subsidiarity refers to the expediency of the division of activities and competence, and is perceived as a reasonable tendency to search optimal compromise and practical agreement on opposite objectives concerning the division of decisive

<sup>17</sup> A. Borodo, *Samorząd terytorialny, System prawno-finansowy*, Warszawa 2006, p. 18.

<sup>18</sup> Ibidem, p. 18.

<sup>19</sup> A. Wiktorowska, op. cit., p. 16.

<sup>20</sup> J. W. Tkaczyński, *Zasada subsydiarności w Traktacie z Maastricht o Unii Europejskiej*, „Samorząd Terytorialny” 1998, vol. 10.

<sup>21</sup> J. Majka, *Katolicka Nauka Społeczna*, Warszawa 1988; A. Dylus, *Idea subsydiarności a integracja Europy*, „Państwo i prawo” 1995, vol. 5, p. 52.

<sup>15</sup> *Finanse publiczne i prawo finansowe*, C. Kosikowski, E. Ruśkowski (eds.), Warszawa 2003, p. 398.

<sup>16</sup> S. Owsiak, *Finanse publiczne, teoria i praktyka*, Warszawa 1999, p. 333.

competences and the need of coordination of realized assignments within mutual responsibility<sup>22</sup>. The basic unit, which is the closest one to inhabitants is *gmina samorządowa* (self-governing commune). Subsidiarity is here a guideline, referring to the way assignments should be divided between territorial communities, following the efficiency of the realization of assumed objectives as well as economic calculation. It also strengthens the rights of citizens and their communities<sup>23</sup>, indicates the pursuit towards decentralization, and turns out to be its manifestation.

The system rule of the decentralization of the public authorities, as a constitutional category expressed in art. 15, par. 1 of the Constitution, decided on the direct relation of the decentralization of the public authorities with the institution of territorial self-government as the way of organization of the executive apparatus. In such an organization local territorial units are independent within the limits indicated in the bill, and the involvement in the independence may take place only on the basis of current law. The legislative forms of involvement in the activities of territorial self-government are possible solely within the state verification supervision, which is legally determined<sup>24</sup>.

The range of financial autonomy and decentralization depend on several objective as well as subjective difficulties. The objective ones reflect simply spatial differentiation of needs in relation to available means. It concerns the categorization of regions into poor and wealthy ones. Appearing here factors of the objective conditioning of affluence of particular communes, and counties (*powiaty*) make the state intervene when it comes to the allocation of financial means, no matter whether it is fair, just, ethical, or socially acceptable. Amongst the objective reasons one should distinguish the need to finance strategic tasks, concerning the whole of the country, such as: maintaining the central administration and the diplomatic services, handling the state budget, assignments associated with the state defense, judiciary, and supervision over the administration.

The difference between amount of public means at the disposal of particular units of territorial self-government and the needs are most clearly visible between poor and well-off regions. The EU postulate of leveling the differences between the communities

raises the concern of not only the theoreticians but practitioners as well. More affluent regions are most often not content with the duty that requires from them transferring their earned income to poorer regions. It is, however, not only about leveling the standard of life in the self-government units, but also paying by the state the costs of such public functions as: providing security and public order, national defense, central investments (e.g. building motorways and state road network), etc.<sup>25</sup>.

The state is required to provide a particular level of fulfillment of citizens' needs, no matter where they dwell. Thus, there is the need to apply the instruments levelling these disproportion and supporting the development of poorer units of territorial self-government. The mechanisms concerning the redistribution of inter-regional income are present in all democratic states. And so the differences between the richest *powiat* (county) and the poorest one, measured with the level of income coming from the share in personal income tax per one inhabitant are tenfold.

### 3. The basic premises of the financial independence of *gmina* (commune)

Financial independence of self-government is a vital part of it being an subject. This rule, however, doesn't mean such independence that would lead to the freedom in levying income and disposing of it. Within its financial activities *gmina* has as much freedom as is indicated in the bill<sup>26</sup>. The essence of the constitutional rule of the independence of self-government, including its financial independence, was expressed most comprehensively by *Tribunał Konstytucyjny* (the Constitutional Court) in the justification of adjudication from 23<sup>rd</sup> October 1996<sup>27</sup>. According to the adjudication commune performing public assignments on its own behalf and responsibility, participates in governing within the limits set by the legislator referring to holding political power, within the limits of independence, which is provided and protected by law.

All the units of territorial self-government (*gmina*, *powiat*, *województwo samorządowe*) are appointed

<sup>22</sup> A. Wiktorowska, op. cit., p. 16.

<sup>23</sup> Ibidem, p. 16.

<sup>24</sup> Ibidem, p. 22.

<sup>25</sup> E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 1999, p. 199. Compare with: A. Wiktorowska, op. cit., p. 49.

<sup>26</sup> W. Ziółkowska, *Finanse publiczne, teoria i zastosowanie*, Poznań 2002, p. 211.

<sup>27</sup> A. Wiktorowska, op. cit., p. 189.



to perform determined functions and tasks. They are realized in a variety of ways, i.e. by passing laws, making decisions, concessions, permissions and opinions, establishing offices, setting up and heading budget units and departments, disposing of property, coordinating, initiating, controlling, etc. To perform all the above mentioned tasks financial resources, which can cover the expenditure, are necessary. Financial resources of territorial self-government are created by acquiring income in form of taxes, customs, subsidies of income from the property and others. The division of public income between the state and territorial self-government conditions equipping units of territorial self-government in indispensable means to realize ascribed assignments.

The most important features in the field of public income that connect the state authorities with local ones are:

- public property and public funds which are indispensable for the realization of their system functions,
- a particular way of acquiring income, basing on the fact that both central authorities and local ones take advantage of the income of other subjects, since they don't produce their own.

According to the legislation included in art. 9 of European Charter of Local Self-Government the essence of financial independence of territorial self-government is guaranteed by, as presented in the literature on the issue<sup>28</sup>, legal guarantees phrased as indispensable standards or rules<sup>29</sup>. The following ones are determined as legal guarantees:

- possessing own sufficient financial resources as well as the right to dispose of them,
- the demand of financial independence in the mechanism of financial levelling,
- the right for the appropriateness of financial resources,
- an appropriate structure of its own financial resources,
- flexibility of financial system,
- necessity and duty of consulting the forms of granting the means from the redistribution of income with the local community.

To own its sufficient financial resources the financial means of commune ought to be sufficient, which means that the state is obliged to measure and settle both the power of income of e.g. gmina samorządowa (self-governing commune) (measured by its income acquired from particular sources), as well as the financial demand, by determining the criteria enabling the calculation of the costs of realized assignments. The right for independent, free disposing of financial resources is, however, neither absolute nor unlimited, but set within the frame of current legal order.

The requirement of financial independence means the duty to introduce the mechanisms of financial levelling, vertical, horizontal or in form of other financial instruments, into the system of local finances. This mechanism should at first be of replenishing character, and only afterwards leveling one<sup>30</sup>.

What is vital in the right to the appropriateness of financial resources<sup>31</sup> is preserving the proper balance between the level of financial resources and the range of performed powers. The transfer of new assignments to communes ought to be followed by the transfer of appropriate financial means. The means ought to be in suitable proportion to the amount of expenditure imposed on a commune.

An appropriate structure of own financial resources of commune ought to assume the participation of taxes and local fees in the basic part of the budget. The tax authority of a given unit of territorial self-government is required for the realization of this rule. It is based on the right to introduce and shape the tax income. The complete tax authority is the state's prerogative, whereas gmina, powiat, województwo samorządowe have the right to merely the part of it. Only gmina samorządowa has a determined in a bill range of tax authority.

The flexibility of financial system of a local community should be based on creating the system of various sources of income<sup>32</sup>. The legal guarantee of the financial stability of income of territorial self-government is of great significance<sup>33</sup>. Its own, legislatively guaranteed income as well as the unchangeable criteria of collecting increase the level of independence. The share of transfer income, in the forms of subsidies and subventions, is on the other hand based on the will of the central holder.

<sup>28</sup> OTK ZU 1996/5/38.

<sup>29</sup> W. Miemiec, *Europejska Karta Samorządu Terytorialnego, jako zespół gwarancji zabezpieczających samodzielność finansową gmin – wybrane zagadnienia teoretyczno-prawne*, „Samorząd terytorialny” 1997, vol. 10, p. 56; J. Białocerkiewicz, op. cit., p. 144.

<sup>30</sup> Compare with A. Wiktorowska, *Prawne determinanty samodzielności gminy, zagadnienia...*, p. 174.

<sup>31</sup> W. Miemiec, op. cit., s. 69.

<sup>32</sup> Basing on the European Charter of Local Self-government.

<sup>33</sup> Z. Gilowska, *Autonomia finansów lokalnych*, „Samorząd terytorialny”, 1992, vol. 5, p. 8.

The necessity and duty of consulting the forms of granting the resources deriving from the redistribution of income with local community is significant for the stability of financial system of the units of territorial self-government. It refers to the right of a local self-government community to express its standpoint in confrontation with the partner, i.e. the government administration.

In the system of market economy the access to the state's capital market for the needs of investment activity of territorial self-government is more and more important. It has significance in the question of diversification of internal sources of revenue, where the possibility of flotation of its own communal bonds is an alternative for bank loans.

Financial independence of units of territorial self-government means the right of these units to perform their financial management independently within the limits established by the rules of the constitution and bills. The independence is about legal transfer to units of self-government appropriate sources of income, applying objective generalized subsidies, setting up complementary role for the state subsidies on particular purposes. Within such understood financial independence there is the right to pass local regulations concerning the scope of taxes, fees, budget, and other financial matters. The precise shape of the financial independence derives from financial legislation referring to territorial self-government<sup>34</sup>.

The efficiency of self-government authorities as far as organizing and shaping budget economy is concerned derives from fulfilling the essential attribute of self-governing, i.e. independence, especially the financial one. This essential asset - independence, may be understood as a legal rule, or economic and legal postulate. The Constitution states in art. 165 par. 2, that the independence of the territorial self-government units is protected by law<sup>35</sup>.

In its ruling from 24<sup>th</sup> March 1998 and 4<sup>th</sup> May 1998 the Constitutional Court claimed the legal independence of territorial self-government to be the element of decentralization. It also adjudicated that the rule of independence refers to all the aspects of self-governing, including the financial one. According to the Constitutional Court, providing the units of territorial

self-government with income enabling realization of public assignments, freedom of expenditure as well as creating suitable formal and procedural guarantees in this field, is the essence of financial freedom<sup>36</sup>.

The above presented features of financial independence of territorial self-government reflect powers to perform financial management independently, are the right to collect income, as well as make expenditure. Art. 167, par. 3 of the Constitution may be treated as granting commune with the possibility of independent way of using financial means, and at the same time making expenditure and shaping tasks by them. If we excluded the existence of constitutional guarantee for the independence in expenditure, then the legislative guarantee of the sources of income, as well as of the independence in realizing assignments could prove illusory, since financial means transferred to commune could be taken away without any limitations. It doesn't incline the full autonomy when it comes to expenditure, determined in legislation, however without the absolute priority for its own assignments<sup>37</sup>.

Commune self-government has no possibility of imposing taxes, including self-taxation. The possibility of the latter one by the commune referendum should be understood according to art. 12 par. 1 of the act on commune self-government, exclusively as cumulating financial means by organs of territorial self-government in order to finance public aims significant for a local community<sup>38</sup>. However, no tax, understood as public levy with specific features (compulsory character, being non-repayable and unpaid, unilateral when it comes to levying, general character) can be introduced in this way<sup>39</sup>. It means that within financial managing the catalogue of income sources presented in legislative is closed, not open, which as a result limits this independence to legal regulations. It also limits the possibilities of self-government to establish its own income sources as well as taking advantage of other ones, not mentioned in legislative<sup>40</sup>. Understood in such way the financial independence isn't a sort of financial autonomy, but rather the form of financial decentralization<sup>41</sup>.

<sup>36</sup> Under Polish Constitution.

<sup>37</sup> OTK ZU 1998/2/12.

<sup>38</sup> A. Wktorowska, op. cit., p. 187.

<sup>39</sup> Uchwała NSA 25/95, ONSA 1996 /2/57.

<sup>40</sup> A. Kisielewicz, *Samodzielność Gminy (w orzecznictwie Naczelnego Sądu Administracyjnego)*, Warszawa 2002, p. 171.

<sup>41</sup> Ibidem, p. 189.

<sup>34</sup> *Budżet władz lokalnych*, S. Owsiak (ed.), Warszawa 2002, p. 258.

<sup>35</sup> A. Borodo, *Polskie prawo finansowe, zarys ogólny*, Toruń 2003, p. 27.

Sources of income of units of territorial self-government as well as their structure are significant when it comes to determining the range of financial independence in performing own economy and financial policy. If the income of territorial self-government is lasting and explicitly determined when it comes to the criteria of their collecting, the level of financial independence is high. On the other hand, if the share of so called „transfer income”, based mainly on decisions of state administration (subventions, subsidies) is high in the income of self-government, the level of the independence is relatively low<sup>42</sup>.

When it comes to the issue of decentralization of public finances of the units of territorial self-government the term of tax autonomy is of great significance. The extension of tax autonomy of the units of territorial self-government will always mean the extension of financial independence as well as the increase of the decentralization of public finance. Since it is unquestionable that the tax autonomy of territorial self-government refers to taxes and fees exclusively, one must state that definite tax autonomy is the right of only communes and townships with the status of a county (powiat). It doesn't concern, according to the present legal regulations, powiat and województwo<sup>43</sup>.

#### 4. Social and economic conditioning of the commune independence

Plural society, representing participant, partner and interactive democracy, is the domain of territorial self-government. It is associated with social dialogue and striving for social consensus between self-government administration and the component of citizens' society<sup>44</sup>. Furthermore, it is worth referring here to the rule, expressed in art. 4 of the Constitution, of the Nation's authority which reflects the postulate of proper arrangement of relations between the sovereign the Nation, and the ones in power, holding

public authority<sup>45</sup>. This rule is a determinant of the independence of commune, which guarantees the functioning of direct democracy.

The level of the efficiency in realizing the own and deputed assignments by territorial self-government is determined by the assumption of a particular criterion of an objective to be achieved and the financial means allocated for its realization. Assuming a set amount of the means, achieving the best social effect by fulfilling a set assignment is the objective. On the other hand, when fulfilling a set assignment becomes the aim, it is being fulfilled with the greatest austerity when it comes to expenditure, i.e. costs are rationalized<sup>46</sup>.

The involvement of inhabitants as well as economic entities plays a significant part in the development of commune. The participation of social partners, however, depends on establishing the institutional forms of cooperation by self-government authorities. The necessity of social participation in local self-government is essential. It should concern the participation of inhabitants, economic entities and other social partners in taking better decisions, which would foster the materialization of forwarded social initiatives, the rationalization of the ways in which resources are used, as well as assembly of financial means and organization of financial resources possessed by other social partners, including European Union<sup>47</sup>.

The economic development of territorial self-government is determined by the state of local and regional economic basis and its structure. The basis is made up of all the economic subjects, no matter what sort of property they represent, how they are organized, or what their organizational or capital subjecting is. Apart from economic infrastructure the local economic basis consists of a complementary banking and insurance infrastructure, as well as various types of financial intermediaries. It should be added in this place that there is mutual dependence between the infrastructures since bank, insurance, brokerage institutions more often share their services with each other.

<sup>42</sup> Wyrok Trybunału Konstytucyjnego z 23 października 1996 r., K 1/96, OTK ZU 1996/5/38.

<sup>43</sup> M. Jastrzębska, *Dochody gmin, powiatów i województw*, „Samorząd terytorialny” 1999, vol. 10, p. 19.

<sup>44</sup> E. Ruśkowski, *Autonomia podatkowa samorządu terytorialnego a decentralizacja władzy publicznej*, (in:) *Regulacje prawno – podatkowe i rozwiązania finansowe „Pro publico bono”* (Księga jubileuszowa Profesora Jana Głuchowskiego), Toruń 2002, p. 235–237.

<sup>45</sup> J. Erbel, *Budżet partycypacyjny. Teraz w Warszawie!*, 14.09.2012 „Krytyka Polityczna”, <http://www.krytykapolityczna.pl/Serwis Miejski/ErbelBudzetpartycypacyjnyTera-zwWarsawie/menuid-113.html>, [14.09.2014].

<sup>46</sup> L. Garlicki, *Polskie prawo konstytucyjne, zarys wykładu*, Warszawa 2012, p. 52.

<sup>47</sup> H. Zalewski, *System zamówień publicznych w Polsce*, Gdańsk 2002, p. 63.



The best economic measure enabling to assess the economic basis of a particular local community is GDP, which appears as financial resources. The size of these determines the potential strength of a given region and should translate into financial strength of a particular self-government unit through the mechanism of shaping its income and the possibility of realizing expenditure. This mechanism is feedback, hence such driving forces as: enterprising spirit, creativity, innovation, etc. depend on the level of its autonomy and decentralization<sup>48</sup>.

Since territorial self-government cannot act as an entrepreneur, apart from concentrating on the tasks concerning the public utility, it has to take actions aiming at the creation of conditions for investment in the area of commune by both local and external economic entities. Besides the creation of conditions attracting large investors, small local enterprises are of great significance too, since it is them who generate employment and are the main moving spirit of economic development. They contribute to the stabilization of economy, make fewer employees redundant in times of recession, and moreover they are characterized by great territorial stability. Territorial self-government ought to take care of maintaining the high level of enterprising atmosphere, by limiting consumption strategy in budget realization for investments in providing the areas belonging to commune with infrastructure and encouraging business people to purchase them<sup>49</sup>.

Providing the units of territorial self-government with appropriate income and their structure are vital to determine the range of financial independence in their own management and financial policy<sup>50</sup>. The income of territorial self-government ought to be permanent and explicitly determined when it comes to the criteria of collecting, which increases financial independence to great extent. If, on the other hand, in the income of self-government there is the large share of so called transfer income, subventions and subsidies, based mainly on granting them based on the discretion of the state administration, the level of independence is low. Therefore, permanent or relatively permanent

sources of financing are the foundation of the financial independence of the local community authorities<sup>51</sup>.

In each rural commune there is another division meant to support, i.e. sołectwo (a subdivision unit of a commune). An urban commune, urban-rural one may establish borough and estate units of assistance. In many cities, even the small ones there are estates of inhabitants, traditionally as the estates of housing cooperatives, and nowadays more frequently as various kinds of communities of inhabitants. In numerous cities estates originate from the past, as well as tradition, of extending urban agglomeration. They function as territorially separated groups of inhabitants not only in minds of the inhabitants but also of the awareness of public units, as well as city authorities. The estates are frequently the elements of the factual administrative division of a city, no matter whether city authorities have established it formally or not.

The units of assistance are trying to get involved in the issues concerning the management and functioning of estates, influencing the quality of lives of its inhabitants positively<sup>52</sup>. It often occurs that an established unit of assistance becomes an indispensable necessary element of local democracy, serving inhabitants well and assisting in solving by commune organs problems concerning functioning of estates<sup>53</sup>. When it comes to legal regulation of units of assistance, providing them with financial means and efficiency in actions Kraków can be set as an example for all the bigger cities in Poland<sup>54</sup>. In kujawsko-pomorskie district, in two biggest, considered metropolitan, cities: Bydgoszcz and Toruń, many appointed estate and borough councils get involved in vital issues concerning their inhabitants and along with organs of commune participates in managing work. In smaller towns appointed units of assistance encounter various problems concerning the efficiency of their actions, and even their functioning. The involvement of citizens in making the functioning

<sup>48</sup> A. Ignasiak-Szulc, K. Kiljan, *Partycypacja społeczna w procesie budowania strategii rozwoju regionalnego lokalnego, Zapiski Kujawsko-Dobrzyńskie T. 17: Gospodarka (XX – początek XXI wieku)*, Włocławek 2002, p. 92.

<sup>49</sup> A. Strzelecki, *Rozwój innowacyjności i przedsiębiorczości w Województwie Kujawsko-Pomorskim*, „Studia z zakresu prawa, administracji i zarządzania”, vol. 4, Bydgoszcz 2013, p. 146.

<sup>50</sup> Ibidem.

<sup>51</sup> A. Strzelecki, *Podstawy autonomii i decentralizacji...*, p. 46.

<sup>52</sup> W. Ziółkowska, *Finanse publiczne, Teoria i zastosowanie...*, p. 205.

<sup>53</sup> A. Strzelecki, *Samodzielność jednostek pomocniczych samorządu terytorialnego*, „Zarządzanie Publiczne” Zeszyty Naukowe Instytutu Spraw Publicznych Uniwersytetu Jagiellońskiego, 4(12)2010, Kraków 2011, p. 170.

<sup>54</sup> A. Strzelecki, *Zaangażowanie kapitału ludzkiego rad dzielnicowych i osiedlowych w zaspakajaniu potrzeb mieszkańców*, (in:) *Gospodarka regionalna Polski wobec globalnego kryzysu gospodarczego*, Z. Strzelecki (ed.), Warszawa 2011, p. 652.

more efficient reflects the factual support of this basic, the furthest reaching form of local self-governing by commune authorities. Factual, not formal, status of a given unit of assistance in a commune is a significant element of this form of direct democracy that is situated on the lowest level.

Real, and not formal participation in authorities embodied by legislative organs of commune, reflects the actual status of an appointed unit of assistance. Transferring legislative competences to realizing material assignments to estate and district councils, ought to be accompanied by transferring an appropriate proportion of means for their realization<sup>55</sup>. The lack of this proportion in the appointed assignments as related to the means for their realization results in the significant limitation of the possibility of activity of the units of assistance. The lack of such an instrument as a special (sołecki) fund in rural communes is a barrier in substantive activities for many units of assistance<sup>56</sup>.

The inhabitants of commune should have a chance to get involved in managing the issues concerning commune as well as organization of cultural, educational life in it, and social care. The shaping of citizens' society, ought to be achieved not only by appropriate legal regulations, but most of all by suitable promotion and the organizational activities of mayor, president, commune council and its members. The technical backup (the own seat of a unit of assistance, and its communication appliances) participation of councilors, president, mayor in sessions of the council or board of an estate, meeting with inhabitants of an estate, organizing competitions for estates, etc., are just some elements of significance that contribute to activating inhabitants in the process of extending the self-government of an estate.

Taking into consideration the interests of inhabitants depend on the will of commune authorities when it comes to the form of either the decentralizing assignments and means for their realization and grant them to the council of a borough (or an estate), or the form of passing a citizens' budget, or a special (sołecki) fund. Citizens of a given local community have actually got the status of a „petitioner”, i.e. a customer asking organs of a local authority to take their group interests

into consideration (e.g. of a particular street, estate, borough, professional, social, cultural, or patriotic group, etc.) This part of a budget which is set down by proposals of citizens is considered „participation budget”<sup>57</sup>.

Participation budget the furthest reaching form of the realization of a local self-government. It is citizens as pluralistic society of a city who acquire the direct opportunity of deciding the use of public money from the city budget. The authorities assign a funding pool the use of which is decided by citizens, by voting or through non-government organizations. Unlike social consultations, in case of participation budget proposals forwarded by citizens, within passed regulations, or other act of local law settling the institutions of citizens budget, ought to be legally binding.

Cities that have no right to take advantage of sołecki fund may introduce participation budget on the basis of the regulations on social consultations, referring to art. 5a the bill on commune self-government, according to which, „In cases mentioned in the bill as well as other situations of significance for a commune consultations with the inhabitants of commune may be carried out.”

The possibility of control by local communities is the factor of an effective use of public means. Inhabitants of communes and counties are the people who know best their decision-makers. In case of centralization of management the anonymity of decision-makers makes it more difficult to supervise and control effectively how assignments are performed, and means are spent.

Besides the factor of social control, the supervision of the state over self-government is the factor determining the independence of self-government, including its financial aspect. The supervision means on the one hand the limitation of independence, whereas on the other securing it<sup>58</sup>. On the other hand, dependence between the supervision of state over territorial self-government and the independence of the latter one is inverse, which in fact means that the broader the supervision the narrower the independence of self-government, and vice-versa. Undoubtedly, the supervision of state over territorial self-government aims at securing the interests

<sup>55</sup> A. Strzelecki, *Samorządność w dzielnicach i osiedlach*, „Wójt i jego gmina” 6(49) 2010, p. 30.

<sup>56</sup> A. Strzelecki, *Ograniczenia w samodzielności jednostek pomocniczych samorządu terytorialnego*, (in:) *Administracja od samorządu po organizację międzynarodową*, A. Zaborowska (ed.), Toruń 2010, s. 151–151.

<sup>57</sup> A. Strzelecki, *Zaangażowanie mieszkańców miast Województwa Kujawsko-Pomorskiego w ramach jednostek pomocniczych w zarządzaniu wspólnotą lokalną*, (in:) *Przeszłość i teraźniejszość samorządu terytorialnego w Europie Środkowej*, Zbigniew Bukowski, Sławomir Kamosiński (eds.), Bydgoszcz 2013, p. 218.

<sup>58</sup> <https://mac.gov.pl/budzet-partycypacyjny/04%2009%202013> [11.05.2014].

of the state as the common good as well as serves the protection of citizens' interests against potential illegal involvement of self-government authorities<sup>59</sup>.

Units of territorial self-government, possessing certain competences giving them possibility to organize professional staff, and equipped with necessary means to perform their functions, should present appropriate diligence in acquiring any external funds, in order to be able to realize ascribed social assignments resulting from the expectations of both local community and legal regulations. Social initiatives are here indispensable since only then the real chances to acquire new sources of income appear, in the situation when the financial independence of self-government budget is not sufficient as for now.

The means from the funds originating from the EU budget make significant complementary external sources of financing self-governmental social initiatives. However, this source of financing cannot be perceived as an attribute of the financial independence of territorial self-government. Moreover, such means cannot be spent on some undetermined or unclear goals, because they are allotted to realize the aims determined in the budget of the Union. Therefore, Polish regulations referring to these means have a complementary, executive, controlling, technical-financial roles, whereas the directions of spending them are determined by the EU<sup>60</sup>. The basic regulations when it comes to aid programs, which are not always published, are international agreements of a specific administration and legal character. Such agreements are of executive character for the Union regulations and additionally may be considered as commonly binding regulations<sup>61</sup>.

## 5. Conclusions

Financial independence in a form of decentralized system of income and financial autonomy of expenditure is the condition of appropriate realization of assignments by units of territorial self-government, including the social activities inscribed in both Polish and EU law. The development of self-government ought to be based on the strong subjectivity of a unit of territorial self-government, whose financial independence is

the foundation of all social activities. Sources of own income of territorial self-government units as well as the structure of the income are of significance for determining the range of the financial independence in performing its own economy and financial policy.

If the income of territorial self-government is lasting and explicitly determined when it comes to the criteria of their collection, the level of financial independence can be described as high. On the other hand, if the share of subventions and subsidies, which are mostly based on subjective decisions, in the income is high then the level of financial independence is relatively low. The amount of the self-government income is the foundation for the creation of self-government budget, which is either sufficient or not to realize assignments imposed by the states as well as the planned own ones.

According to the current legal regulations, financial resources which are come into existence from tax sources are barely sufficient to realize legislative own assignments and the ones imposed by the government administration, however insufficient to establish on their basis the financial foundation to create and fulfill all the basic needs of a local community. It ought to be mentioned at this point that having at hand repayable income sources like a bank loan self-government ought to pay more attention to such sources of investment as long-lasting communal bonds, or the means from external funds. Taking advantage of EU funds is the factor determining the autonomy and independence of self-government. It happens within the government administration regulations, where the administration is responsible for their appropriate redistribution to self-government units. The amount of means from EU acquired by communes is increasing and influences the investing abilities of communes in positive way.

The involvement of citizens in improving the way a local community functions reflects the actual support of this furthest reaching form of local self-government by commune authorities. Establishing units of assistance in commune and actual, including financial supporting their activities is a significant element of this lowest level form of direct democracy. It is even more significant since estates, boroughs, (subdivision of communes) *sołectwa* are perceived not only by inhabitants, but also by public units, and town authorities, as territorially separated concentration of inhabitants. Regardless whether the town authorities will appoint a given unit of assistance, such units are frequently the element of an actual administration subdivision of a town.

<sup>59</sup> A. Wiktorowska, *Prawne determinanty samodzielności gminy, zagadnienia...*, p. 193.

<sup>60</sup> Ibidem, p. 194.

<sup>61</sup> A. Borodo, *Polskie Prawo Finansowe...*, p. 385.

Establishing the institution of participation budget is an important process strengthening the independence of commune. It is a particular „social agreement” made between inhabitants and the organs of territorial self-government, especially in the situation when it isn't in the opposition with the Polish law, and therefore can be legally introduced in communes. For the genuine citizens' budget and its realization it is necessary for councilors as well as the representatives to undertake initiative, and encourage the involvement of local community. They should devote time, exchange ideas at meetings with citizens, as well as provide local community with the access to electronic ways of communication with the representatives of authorities.

In conclusion it is worth mentioning, however, that legislation created by the parliament, which regulates the organization and functioning of territorial self-government units, and in consequence their independence, is the expression of the Nation as the sovereign and not local community. It means that setting proper proportions between the decentralization and centralization of financial means, as well as between their concentration and de-concentrating, is the prerogative of the parliament working on the behalf of the sovereign, and not organized local community. The members of a given community (e.g. commune) may only demand taking into consideration their interests within legislative range of tasks, or the ones included in the statute, and only influence considering them in the budget. Therefore, it will depend on commune authorities whether citizens' interests will be taken into account in form of either de-concentration of assignments and means for their realization and granting them to a borough (estate) council, or in the form of citizens' budget, or sołectwi fund. In democracy, however, the ideal image of self-governing society is the one in which the functions of authorities are maximally reduced, and their organs perform merely administrative functions. In democratic system *sui generis* the authority may not be above the society. It is obliged to perform its functions.

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