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TERRITORIAL SELF-GOVERNMENT DURING POLAND'S TRANSFORMATION – THE SIGNIFICANCE, EVOLUTION AND CONCLUSIONS DE LEGE FERENDA

Modern territorial self-government in the form of a decentralised form of public (i.e. state-managed) administration has been a feature of political systems in Poland. This form of self-governance was not an alien feature and occurred from 1918 to 1939, as well as in a limited form from 1944 to 1950. However, in 1950 territorial self-government was completely eliminated from the Polish political system¹.

As self-government was not meant to be in a country of real socialism, the only chance to restore it lay in changing the political system. The process of transitioning from a non-democratic system to a democratic one was started at the end of the 1980s and quite commonly is referred to as the transformation. However, this transformation was holistic in its nature and went beyond changes to the political system. It affected all spheres of state action as well as all individuals.

The event that gave birth to a new political system was the parliamentary elections held on 4 June 1989, which resulted in a landslide victory of the Citizens' Committee 'Solidarity'. The opposition, which had not long before been considered illegal, won most of the seats available to it in the Sejm, Poland's parliament. This allowed the Sejm to elect the Committee's candidate as a prime minister. At this point, it became possible to restore territorial self-government.

Despite the political changes, for a whole year afterwards, until June 1990, the local authorities comprised the people appointed by the Polish United Workers' Party and its satellite parties. Citizens' Committee 'Solidarity' pressed hard to start the processes of taking over the local governments, even though the national

¹ Local State Administration Act of 20 March 1950, published in *Dziennik Ustaw* (Journal of Laws) No 14, pos. 130, with subsequent amendments (*Ustawa z dnia 20 marca 1950 r. o terenowych organach jednolitej władzy państwowej*).

councils were to remain in office until 1992. On account of the ongoing changes and the legislative process in Parliament, commune self-government was established in 1990. However, serious doubts arose as to whether the timing for establishing self-government and for the election was right and whether it influenced the communes' operations in any way².

In spite of the arguments, on 27 May 1990, the elections to the self-governing communes took place and became one of the most important events in modern Polish history. For the first time in 50 years, Poles could take part in fully democratic elections. Local communities could choose their representatives for a decision-making body, or the commune's council. Electoral law diversified the communes: the ones of up to 40,000 residents were single-member districts with a winner-takes-all feature, while elections in bigger ones were held under a proportional representation system, in which 5–10 councilors were elected.

Although the turnout was just a little over 40%, which meant that local communities were rather modestly interested in the very first free and democratic elections, the Solidarity circles achieved their aim. They won 48.60% of the vote. Other parties and groups took merely 7.5%, including Social Democracy of the Republic of Poland (SdRP) – 1%, the Democratic Party (SD) – 2.1%, Polish People's Party (PSL) – 4.3%, the Confederation for an Independent Poland (KPN) and Christian National Union (ZChN) 0.1% each. Social, professional and self-governing organisations took 5.9%, while the coalitions took 9.8%. Over 24% of votes were cast for citizens' group organizations³. An astounding fact was that almost 80% of councilors came into their seats for the first time⁴. The outcome of the elections on the local level was, *de facto*, a repetition of the parliamentary elections of 4 June 1989.

The next phase of the exchange of local political elites was elections to executive bodies of local governments, boards and their chairmen. These included community heads, mayors and presidents. Interestingly, a positive image of the new authorities was not confirmed in later studies⁵. New arguments and competition – most frequently between the mayor and a council chairman – heated up the councils.

Restitution of self-government met with limiting the significance and the influence of state administration on the local level. State administration was not allowed to appoint territorial self-government bodies and its supervision was lim-

² See: A. T. Kowalewski, *Trudne początki samorządu terytorialnego*, "Samorząd Terytorialny" 1991, no 1–2, p. 95 et seq.

³ J. Mordwiłko (ed.), *Ewolucja prawa wyborczego i wyborów do samorządu terytorialnego w latach 1990–2000* [in:] *10 lat demokratycznego prawa wyborczego Rzeczypospolitej Polskiej (1990–2000)*, F. Rymarz (ed.), Warszawa 2000, p. 170.

⁴ E. Łojko, *Samorządność lokalna. Mit czy szansa*, "Samorząd Terytorialny" 1991, no 11–12, p. 73.

⁵ *Ibidem*, including bibliography.

ited to legal issues. Nonetheless, the top-level authorities were given a lot of typically local powers, to the chagrin of many politicians. Regional offices were the symbol of 'opposition' to the administrative centre on the local level. Thus, from the beginning of the whole process, an entity appeared in stark contrast to the idea of self-government reform and became an original sin of the decentralisation of power in Poland. It is now difficult to determine if establishing administrative regions was the result of concerns over whether the communes would cope with their new responsibilities or a result of the state authorities' fear of losing a part of their powers.

In 1990 a new category of ownership came into existence. Municipal ownership was an addition to the state's, and the prevailing type in the former political system. Most of the state-owned properties were handed over to the communes, which became the owners of many companies and a good deal of real estate. Nearly all the commerce and services were taken out of the state's hands and privatised (though the limited cooperative ownership was kept unchanged). Along with terminating the supply barriers typical of a socialist economy, local government lost its regulative and controlling function.

The reactivated self-government was given tasks such as those usually carried out by the modern self-governments of western European democratic countries. All of them concerned public matters on the local level. However, specifying which public matters are of a local type and which are not is difficult and raises numerous questions. Polish legislators detailed a set of steps for the communes to carry out in the areas of municipal infrastructure (water supply and sewage systems, waste-water treatment plants, roads, sidewalks, transportation, building industry, power industry, gardening), social infrastructure (kindergartens, schools, health care, welfare, recreational facilities), public safety and urban planning.

The communes started their own fiscal management based on a budget developed on an annual basis. Paradoxically enough, the question of the communes' budgets – so important for the self-governments – was not ultimately resolved until after the first stage of legislative decisions in December 1990. The sources for the communes' income from then on included local taxes and fees, a share in state taxes, income-producing properties, and state subsidies and grants. Nevertheless, since the establishment of activities of self-government in Poland, rules governing its funding have been of the utmost concern. This issue received a lot of criticism, especially from self-government circles and scientists and researchers working in the field. Unfortunately, the solutions were only provisional, so commune funds never stabilised.

The unique nature of self-government and its meaning for the new Polish political system was aptly illustrated by Jerzy Regulski, one of the main creators of the self-government reforms. He believed it necessary to break up five monopolies which had been fundamental to the previous political system⁶: political monopoly

⁶ See: J. Regulski, *Samorząd terytorialny: skąd i dokąd?*, "Samorząd Terytorialny" 1991, no 1–2, pp. 105–106.

(free elections and democratic representation of the communes), monolithic state government (separating top level governmental functions from lower level local ones), state ownership (new type of ownership, municipal, outside of state control), financial (local budget autonomy), and state civil service (self-government having its own civil service and executive bodies).

He states in his introduction that system transformation is holistic in nature, and therefore also includes the local government, which can never be analysed or studied with disregard to the central government or in isolation from it. It is the top-level authorities who make decisions about the shape of local governments and about the scale and type of decentralisation implemented. Hence, it is unthinkable to disregard the territorial self-government during the process of system transformation in Poland.

Identifying the timing of the local government transformation⁷ is as difficult a task as determining the phases of the transformation process, which mark successive steps in the evolution of the territorial self-government.

I believe the first stage started back in the 1980s, when no one could have anticipated that the self-governments would be a firm element of the political system in ten years' time. At the time, facing economic and social crisis, various measures were considered, including changing the local authority. The idea of restoring self-government was analysed, but the efforts to incorporate such an entity into the process of state management failed⁸. The ruling political elite did bring up the term 'self-government' at the time, but only in the context of national councils. Self-government was treated as the equivalent of national councils⁹.

Studies devoted to the concept of self-governance in the 1980s were conducted by the 'Experience and the Future' conservatory (*konservatorium "Doświadczenie i Przyszłość"*), the Society of the Polish Free University (*Towarzystwo Wolnej Wszechnicy Polskiej*), the Polish Economic Society (*Polskie Towarzystwo Ekonomiczne*), and the Institute of Economic Science at the Polish Academy of Sciences (*Instytut Nauk Ekonomicznych PAN*). Self-government was also a topic of discussion at the Ninth Group of the Economic Reform Commission. A Territorial Self-Government Commission by the President of the Solidarity trade union was established as well¹⁰. All these studies provided analyses which were to be of sig-

⁷ The dates commonly accepted are 8 March or 27 May 1990.

⁸ See: W. Dawidowicz, *Jeszcze jedna reforma rad narodowych czy przywrócenie samorządu terytorialnego?*, "Państwo i Prawo" 1982, no 3–4, p. 106; A. Antoszewski, *Władza i samorząd a zagadnienia kompetencji rad narodowych*, "Państwo i Prawo" 1983, no 4, pp. 97–99.

⁹ See: M. F. Rakowski, *Dzienniki polityczne 1984–1986*, Iskry, Warszawa 2005.

¹⁰ See: M. Kulesza, *Druga rocznica wyborów komunalnych – 27 maj 1990 r.*, "Samorząd Terytorialny" 1992, no 5, pp. 36–37.

nificant help during the Round Table Talks. Additionally, they were used in the legislative process in the new parliament after the 1989 elections¹¹.

As mentioned above, an attempt had failed to include self-government into the political system of the People's Republic of Poland in 1983. Even though the phrase 'territorial self-government' appeared in its title, regulations contained therein did not exhaust the features of the self-government. Another negative opinion on the 1983 bill was voiced by the Law department at the Polish Academy of Sciences¹².

The first stage of the local government transformation in Poland ended with the Round Table Talks. Surprisingly, the local issues, which proved to be of utmost validity for the change of the political system, were left in the hands of experts who mainly had an academic background, and who were not overseen by any political authority. The opposition, then, might have underestimated what self-government was and what opportunities were available due to its restitution in terms of breaking the monopoly of the communist Polish United Workers' Party on the local level. Instead, it was the Party's experts who understood the consequences of system change. This led to many discrepancies concerning, for instance, the nature of local executive and representative bodies¹³. Nonetheless, the Round Table Talks were an excellent forum for expressing the need to reinstate territorial self-government.

The second stage (1989–1991) was devoted chiefly to creating a prescriptive model of self-government, with the Polish parliament playing a key role in the process. Thanks to academic research and political support from the Citizens' Committee 'Solidarity', parliament could pass the bills and directives most needed for full restitution of the self-government. In December 1998 the constitution was changed and the role of self-government in exercising power was assured. The next stage was passing key bills on territorial self-government, representation of the people in the commune councils, self-government by employees, and territorial self-government and its employees implementing provisions. It was necessary to amend over a hundred substantive bills to enable self-government to begin. As a result, a prescriptive model of self-government was created. It embodied all the features and qualities of the institution which for a long time had been an intrinsic part of political systems in West European countries. The second stage of the transformation of the local authorities ended in 1991 with the Sejm (i.e. the lower chamber of the Polish parliament) passing self-government-related bills that regulated local taxes and charges, the educational system, the commune's referendum and cultural activities.

¹¹ See: J. Regulski, *Reforma samorządowa. Materiały źródłowe 1980–1990*, Fundacja Rozwoju Demokracji Lokalnej, Warszawa 2000.

¹² In: "Państwo i Prawo" 1983, no 1, p. 132.

¹³ See: J. Regulski, *Dekada wolnego samorządu 1989–99. Okrągły Stół (luty–kwiecień 1989)*, "Wspólnota" 1999, no 28, p. 9; M. Kulesza, *Druga rocznica...*

During the third stage, which took place from 1992 to 1995, the first modifications to the system were carried out. After a couple of years, some of the changes made at the beginning of the 1990's were corrected, though without violating the foundation of the system. The two most important amendments to self-government law were passed in 1992 and in 1995.

Firstly, the executive body's position, especially that of its chairmen (commune heads, mayors and presidents) was reinforced. Secondly, a treasurer, secretary and board members were still appointed by the council, but only by motion of the chairman. None of the board members had to have a seat in the council. Moreover, it became more difficult to dismiss the executive body (the board could be dismissed by the absolute majority of the council and the chairman could be dismissed by a two-thirds vote by the council). Dismissal of the chairman of the council meant dismissing the whole body. If the motion was unsuccessful, another could be brought after 6 months. Also, if a council did not appoint the board in 6 months' time, it would dissolve.

On the other hand, the executive body was to be placed under greater scrutiny, particularly by the audit committee (the only mandatory committee of the council), which provided positive feedback on implementing the budget and made a motion to the commune council that the board be given, or not, the acceptance of accounts. The rejection of the acceptance stood for a motion to dismiss the board. In addition to those, the audit committee could perform other controlling duties imposed on it by the council. The council chairman's position was also specified: his role was to oversee the council's work and chair its meetings.

With another significant change that took place from 1992 to 1995, the commune was barred from running a business whose activities would transgress its public service duty and a councilor could not be employed by a commune office located in the same district where he held a seat. It was also against the law to be a councilor and a manager of any of the commune's bodies.

Even so, along with the modifications to the local self-government system, the recentralisation process continued. The fourth stage of the local political transformation had not finished by 1997. There were four tenets of the recentralisation process: desisting from adding a new self-governmental entity, a rural or urban district (*powiat*), not allowing the communes to assume more duties, assuming duties which would result in financial obligations without any compensation from the central government, preventing the expansion of special administration.

The district bill, which was drafted as early as 1991¹⁴, was recommended by the Territorial Self-Government and the State Authorities Commission during the Sejm's first term. After adopting some amendments, it became a project of the National Assembly of Local Governments and was endorsed and sent to the Sejm floor as a private member bill. The Parliament debated it from the end of 1992

¹⁴ Published in "Wspólnota" 1991, no 38, pp. 12–14.

until 11 July 1993¹⁵. After the parliamentary elections, the ruling coalition of the Democratic Left Alliance (SLD) and the Polish Peoples' Party (PSL) did not support the idea of district reform and abandoned it altogether.

An example of how the communes were not allowed to assume more duties was the lengthy process of assuming responsibility for the running of elementary schools. The adversaries of self-governing schools managed twice to hamper such an attempt. The first time was in 1990, when the self-government was being formed and elementary schools were to be run by communes. The second came in 1993, when the term for taking over the running of the schools was pushed back from 1 January 1994 to 1 January 1996.

All in all, 1993 saw no turning point which would fully embody tendencies toward recentralisation. Beyond the abovementioned powers that remained a part of the central administration, a detailed department-driven system of the state government was blooming at all levels. As a result, by 1995 there were 79 special departments, including 45 inter-provincial, 20 provincial and 14 inter-communal ones¹⁶. Those activities were actually carried out despite opposition from the decentralised, community-controlled public administration.

Moreover, among the commune's own duties and those it contracted out, there were areas which were not subsidised in any way by the central government. Two of them are worth highlighting: education and residential subventions. Schools, taken over from 1991 to 1996, were under-funded and lacked equipment. Education, after public utility management and transportation, was the third area of the communes' public expenditures. Investments in rural communes were of increasing importance and range. The same went for schools. Subventions the communes were receiving could not cover all the expenditures on their running maintenance. Residential subventions were insufficient as well.

The idea of decentralisation was revived in 1998. During the fifth stage of local government transformation in Poland, which ended in 2002, self-governing districts, so deeply rooted in Polish tradition, were founded¹⁷. Like the communes, the self-governing districts were designed as legal entities with legal privileges, property budgets and other local government attributes. The 'district' bill emphasised the new body's corporate nature and became a significant territorial division for such state entities as the courts, district attorney and government administration¹⁸, despite the fact that, in terms of both their population and area, districts are

¹⁵ Council of Ministers' position of 6 January 1998 on the draft proposal submitted by the Members of Parliament for self-governmental districts, "Druk", no 25, p. 3.

¹⁶ See: E. Wysocka, *Raport w sprawie aktualnego stanu terytorialnych podziałów specjalnych i kierunków ich ujednoczenia*, "Samorząd Terytorialny" 1996, no 4, pp. 5–77.

¹⁷ See: J. Sobczak, *Ponadgminne podziały terytorialne – ciążłość czy zmiana* [in:] *Samorząd ponadgminny w Polsce. Tradycja, odrodzenie, doświadczenia*, B. Nawrot, J. Pokładecki (eds), Poznań 2004, pp. 23–51.

¹⁸ Z. Leoński, *Samorząd terytorialny w RP*, C.H. Beck, Warszawa 2002, p. 139.

not very large bodies. Nonetheless, the actual size of the districts results in most of them not being able to function effectively (i.e. economically). It seems that it was historical issues, sociological connections and political pressure which were the primary objectives for establishing particular districts.

Besides the districts, province self-governments were instituted and authorised mainly to oversee regional development. An important reason to introduce self-government at this level was the prospect of Poland's accession to the European Union and how the country was to actively take part in the Union's regional policy.

In 1998, the Polish parliament passed a new public finance bill and local government revenue bill, education reform was launched and communal electoral law was radically amended. Despite shortcomings in these legislative efforts (especially in terms of financing), the long-awaited process of decentralising power had begun.

The last stage of the local government transformation took place from 2002 to 2004 and was concerned with the change in the statutory position of the executive branch of the communes' self-government, as well as with Poland's EU accession.

What had been a long-standing demand for a direct vote for commune heads, mayors and presidents was eventually granted. The council, i.e. a joint executive body, was replaced with a commune head, a mayor or a president and, in favour of the commune residents, lost its authority to recall the chairman. It was the local community which, thanks to direct voting, started to decide who would come into power. Unfortunately, as had happened in the past more than once, the reform was only partially completed. A change in chairman vs. council relations was completely abandoned, even though it could have significantly reinforced the chairman's position within the scope of the authority granted.

In 2004 Poland, after years of effort and preparation, became a member of the European Union. As with the transformation process, integration into European structures is holistic in nature and local government is one of elements of the process. Even so, the change in the territorial self-government system was not a condition of the accession. The number of levels the self-government exists on, its authority and funding mechanism depend entirely on the state's government, including any factors it decides to take into account, be they political or historical.

Nevertheless, Poland's accession to the European Union could not leave local government untouched, which brings us to the issues that need to be addressed. First and foremost, all citizens of member countries were afforded the opportunity to take part in elections to commune councils on the Polish territory. In the same way, Polish citizens acquired voting rights in other EU countries.

Polish local politicians started to work in the Committee of the Regions as well. Poland's delegation to the Committee was given 21 seats and an equal number of alternates. Polish delegates were now a part of an institutional process seeking to guarantee real regional and local participation in the community decision-making process. They could also present the issues and needs of local and regional authorities and cooperate with other member countries' self-governments.

Self-governments were, as one would expect, expected to play a role in carrying out EU regional policy¹⁹. Moreover, the participation of self-governments in the Union's legislative processes, especially those dealing with environmental protection, public contracts, social aid and competition policy, is significant and requires various skills and knowledge of *acquis communautaire*.

With Poland's accession to the European Union, the self-government found itself in a new situation. Although its political system and functions are governed by Polish laws, a part of the regulations governing their functions is determined abroad. Yet issues pertaining to self-government are discussed less and less in public discourse. When they are, it is mainly in the context of introducing single-member districts at all levels of local government and a direct vote for district governors and province governors, which in any case is unlikely due to the specific line-up of parties in the parliament. Self-government is taken up in the media, but mainly in connection with allegations of corruption, lavish expense claims and nepotism. Regrettably, this image of the local government and its officers is false and self-government's achievements and contributions to modernising the system are largely overlooked. I believe the current framework of territorial self-government will not be radically amended in the years to come. Minor changes are certainly to be expected and would even be recommended for the continuous development of the self-government. Legislators and especially supervisory bodies in the central government would be well-advised to change their attitude towards self-government. Self-government needs to be treated as a part of the public authority, which does not only deal with management but primarily with expanding and stimulating regional development. To perform this function, specific measures are required including removing some legislative barriers (e.g. expanding duties and changing the law).

Cooperation between the self-government, the private sector and non-governmental organisations is likely to grow. Some of the self-government's duties have clearly been transferred to the private and the volunteer sectors. A couple of factors account for why numerous projects are realised with the help of outside partners. Firstly, some interesting legislative measures have recently come about. The latest public and private cooperation bill and the concession bill have created a new platform for carrying out municipal projects. Joint public-private sector projects have become more and more common, especially those concerning recreational facilities, hotels, water supply and sewage systems, transportation and residential areas. There are a growing number of self-governments, chiefly communes, which handle their own tasks by means of public companies, including ones with private shares.

The volunteer sector also completes an increasing number of tasks within the self-government sphere. Even though the cooperation between the public sector (including self-governments) and the non-governmental one started at the begin-

¹⁹ See: *Fundusze Unii Europejskiej. Doświadczenia i perspektywy*, Studia Emka, J. Babiak (ed.), Warsaw 2006.

ning of the 1990s, this cooperation was for a long time not officially stipulated. Only in 2001 was cooperation with NGO's added to the self-government commune task list and in 2003 the public benefit organisation and charity bill was passed. It is the latter bill that defines what an NGO is, and delineates its roles and activities. NGO activities are valuable primarily in education, welfare, recreation and sport, all of which are areas self-government is responsible for.

Nonetheless, the biggest change concerns local communities' awareness, so that they will not just concentrate on their own private lives while disregarding public affairs. Their activity is limited to solving problems related only to their own needs (roads, sidewalks, water sewage repairs). Once the issue is resolved, community activity dissipates.

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Samorząd terytorialny w procesie transformacji systemowej w Polsce. Znaczenie, ewolucja i wnioski *de lege ferenda*

Elementem transformacji systemowej w Polsce była restytucja samorządu gminnego. W kolejnych latach budowy i kształtowania się nowego systemu politycznego instytucja samorządu terytorialnego odegrała istotną rolę. Stworzony w 1990 r. model władzy lokalnej, z uwagi na liczne uwarunkowania, podlegał ewolucji. Niestety, część przeprowadzanych zmian miała charakter recentralistyczny, niekorzystnie wpływający na decentralizację władzy w Polsce. Samorząd został także włączony w skomplikowany i trudny proces akcesji Polski do Unii Europejskiej.