

**СЪЩНОСТТА И ФУНКЦИИТЕ НА САМОУПРАВЛЕНИЕТО ОТ
ПЕРСПЕКТИВАТА НА ПОЛША - ИЗБРАНИ АСПЕКТИ**

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**THE ESSENCE AND FUNCTIONS OF SELF-GOVERNMENT FROM THE POLISH
PERSPECTIVE - SELECTED ASPECTS**

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Abstract

The aim of this article is to present the importance of the essence and function of Self-Government in Poland in relation to the local municipal management. In the article there are presented the functions and possibilities in the field of municipal management based on the current legal status in Poland and the organization of local government resulting from the provisions of law. The whole presented material reflects a certain mental process that took place in Poland in connection with the reform of the local government system.

Keywords: *management, self-government, public management, municipal management, public administration, public property*

JEL Codes: *H76, H83, K23*

1. Introduction - analysis of recent researches and publication

The Polish Constitution regulates existence of various local government units. A commune is the primary local government unit in Poland. Under the act of 8 March 1990 on communal self-government, residents of a commune create a community under the law. A commune shall be understood as a self-government community and an appropriate territory, hence one may speak about communal self-government when there are two equally-legal factors: an appropriate territory and self-government community. When one of the above factors is unavailable, we may not talk about local government at the communal level. Hence, a self-government community may be used to describe all residents living on a given territory that has specific characteristic features such as: social and business bonds ensuring ability to carry out public tasks as well as a unified spatial arrangement (Dolnicki, 2013, p. 91).

It is worth noting that residents compose an integrated society with common social awareness due to local conditions, and one that is able to organise and fulfil tasks. Each member of the community participates in it on relatively the same conditions and may benefit from its value equally as others. With its activity, a commune covers the entire population or at least the primary core of population residing on its territory, as well as people who stay there temporarily (Dahlek, 2017, p. 39). The general local government life is focused on the communal level and this is where the majority of competences of the local government are situated. A commune has a legal personality and court-

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guaranteed independence protection that is exhibited in the public law and private law aspects (Dolnicki, 2013, p. 98).

Thanks to the legal personality, the community may participate in business trade and may enter into legal relationships with state authorities, characteristic for equal entities. The Act on Communal Self-Government indicates that a commune carries out public tasks on its own behalf and responsibility. The scope of activities undertaken by communes includes all public matters that are locally-important, not reserved with acts benefitting other entities (Iluk, 2018, p. 105). A commune may possess its own assets, manage them, take out liabilities, enter into legal relationships with state authorities and also enter into disputes with them. It is independent of the state apparatus, it shapes its own internal organisation, chooses its representative authorities and creates the local law (Jaworska-Dębska, 2004, p. 88).

2. The essence of self- government in the polish reality

The model of local government is described in the Polish Constitution adopted by the National Assembly on 2 April 1997 and approved by means of a national referendum on 25 May 1997. This Constitution refers to solutions that apply in the Constitution of 1990 waived by the Small Constitution, and to legal regulation of the local government in the Constitution from 1952. This Act is focused more on public law entities and independence of local government units. A local government was defined in the Constitution from 1997 as an entity taking part in providing public authority and executing the general part of public tasks in this scope, on its own behalf and responsibility (Constitution from 1997, Article 16 (2)).

Local government units were provided with a legal personality. Public tasks were assigned to them not reserved by the Constitution or Act benefitting other authorities (Constitution from 1997, Article 163, Article 165 (1)). Public tasks that satisfy the needs of the self-government community were defined as the local government units' own tasks (Constitution from 1997, Article 166(1)). The Constitution ensures independence to a local government in terms of carrying out its assigned tasks subject to court protection and also provides for the possibility of appointing a multi-level structure of a local government in Poland, indicating that a commune shall remain the basic authority (Constitution from 1997, Article 164).

Some of the provisions contained in the Constitution and its explication are resembled in the Act on Local Government of 8 March 1990, uniform text, applicable from the point of the announcement of Speaker of the Lower House of the Polish Parliament of 17 March 2016 regarding announcement of uniform text about the Act on Communal Self-Government. In the Act, a commune is described as a self-government community appointed to carry out public tasks on its own behalf and responsibility. Article 1 of the Act of 17 May 1990 on the division of tasks and competences defined in special acts between communal authorities and government administration authorities, and on amending some acts similarly as the Act on local government, states that competences of the communal authorities are handed over (if special regulations do not state otherwise) as own tasks, specified in Acts, and competences that were the responsibility of national councils and local authorities of state administration of the basic degree to date, (Jaworska-Dębska, 2004, p. 89).

The regulation of local government is characterised by multiple sources of law. From regulations contained in the Constitution of 2 April 1997, to Acts dedicated to particular units of local government. Besides the above sources, the Act on local government permits functioning of separate acts regarding the organisation and creation of accounting chambers, taxes, fees and profits considered to be the commune's income, general principles of the budget procedure and financial management as well as the conditions of taking out loans by communes. All provisions that regulate the legal position of a local government indicate it as a legal personality that is equipped with attributes of public government, i.e. with administrative authority, and executing a significant part of public and local tasks independently (Jaworska-Dębska, 2004, p. 90).

Territorial division of the country introduced on 1 January 1999 by means of the Act of 24 July 1998 on introducing a general three-level territorial division, was a “supplement” to the reform regarding the local government from 1990. In line with the above Act, the principle units of territorial division are as follows: communes (2489 communes), districts (308 townships, 65 towns with district rights – country districts) and provinces (16 provinces) (Jaworska-Dębska, 2004, p. 98).

The reform regarding local government implemented in 1990, consisted mainly of creating the so-called self-government communities and assigning particular formal and legal independence to them. The centralisation principle applicable from 1990 was the reason why the scope of independence of national councils was narrow (Matejek & Kucharczyk, 2017, p. 112). Development of communes meant suppressing the monopoly of government administration, activation of initiatives of local positions and democratisation of Poland’s system. The reason for the reform also consisted of thorough remodelling of the system of local finances. The system that was based on centralised structure of state budget covering the central budget and local budgets adopted by national councils, strictly connected with central budget and executed by local state administration authorities at the provincial and communal level, was replaced by a decentralised system.

In this system, each of the communes is in possession of their own assets, income, has the right to manage its expenses freely, has a legal personality and the possibility of choosing local government (representatives) by the local community in elections. Nevertheless, many tasks that were strictly local, remained within the scope of responsibilities of the government administration. Expanding competences of communes lasted until 1990 and was caused by lack of stability of the political system in Poland, causing delays in the legislative operation of the Lower House as well as the lack of willingness of a significant part of government administration to hand over their permissions to communes. The reform on three-level division of the territory of the country connected with the reform of public finances introduced on 1 January 1999 changed the previous arrangement of ministries and branches to local arrangements. As a result of the above, the general politics of the country as well as strategic tasks with constitutional character are executed at the central level, while local and regional issues are handled at particular levels of the local government. Through decentralisation, communal, district and provincial self-governments were assigned tasks, obligations and administrative permissions of the central government and administration, and the financial means related thereto. Introducing three levels of the local government is compliant with the general principles resulting from the Polish Constitution of 2 April 1997. The model of a unitary state specified in Article 3 of the Polish Constitution was retained. Constitutional principles are also executed, such as:

- decentralisation of the public government (Article 15 (1)),
- the principle of subsidiarity (preamble of the Polish Constitution),
- principles of assigning a significant part of public tasks to local governments (Article 16 (2)),
- the principle of implication of local government competences (Article 163, Article 164(3)) (Zieleniewski, 2006, p. 35).

The local government system is based on three levels of authority, where public law entities (communes, districts, provinces) independently, handle public matters and are responsible for their proper execution. There are three segments on each level of the government:

- local (communes, districts or cities with district rights),
- regional (self-government provinces),
- authority (government, central administration, governors) (Kowalewski, 2010, p. 15).

Activities of the commune and district are to guarantee satisfying of collective needs of local communities so they should consist of providing popular services as a rule, which can be received by potentially any person from a particular commune. Activities of the commune and district are focused on an individual (citizen) and their needs. Tasks with basic character remain in the competences of the commune. A district carries a supplementary role in the scope of those public tasks that exceed the

possibility of an average commune. As a result of the reform, a district has acquired the previous competences of a governor (Kowalewski, 2010, p. 17).

3. Types of self-government in Poland and its tasks

The purpose the regional segment of local government is to satisfy the needs of a unit and ensure development of economy and its entities. The essence of a self-government province is to execute the interest of the country with special consideration of regional conditions (Kowalewski, 2010, p. 19).

The main tasks of the region are as follows:

- 1) ensuring economic and civil growth of the region,
- 2) regional planning,
- 3) promoting the region,
- 4) international economic cooperation,
- 5) cherishing Polish identity,
- 6) shaping national and civil awareness of residents (Kowalewski, 2010, p. 20).

A self-government district takes over the previous competences of a governor and various provincial and regional government administration authorities. A self-government province acquires many previous tasks and competences of central administration. Governors are responsible towards the government for activity on the territory of a province of the entire public administration.

Duality in the scope of administration structures occurs at the provincial level. This is management of the province with a marshal as the leader and governor as a representative the Council of Ministers. The purpose of this division is to ensure consistency of operation of local government units with the directions of state politics. Governors in a province and a starost in a district provide general supervision over various authorities operating on the territory and accept legal and political liability for the public order and collective safety.

The key rule of particular levels is independence. This means that a self-government of the province does not violate the independence of local governments and does not supervise them. Similar relations occur between district and communal self-governments. Mutual relations between units of local government of various levels may be regulated by means of settlements concluded, to manage certain public tasks. An important goal of the reform is also to adjust the territorial organisation of the country and local government structures to the standards of the European Union. This will make it possible to use the legal and economic instruments of the EU contributing to regional development and international cooperation (Kowalewski, 2010, p. 22).

A commune is a legally-organised local association of people defined in the Act as a self-government community living on a given territory. It has a legal personality separate from the state as well as competence- and task-related independence. The following elements compose a commune:

- area;
- residents; each commune resident is its member, regardless of being inactive or active in a given community;
- authority; commune authorities elected democratically;
- organisational units; e.g. budget entities, budget units, auxiliary enterprises, special means (Kowalewski, 2010, p. 25).

The criteria separating a commune from other units of territorial division are as follows:

- unified settlement and spatial system;
- social and economic bonds ensuring the ability of carrying out public tasks (Kowalewski, 2010, p. 27).

The key aim of a commune is to carry out tasks aiming at satisfying collective needs of residents. The tasks of a commune may be divided as follows:

- own tasks;
- assigned tasks (Jaworska-Dębska, 2004, p. 88).

When executing tasks, the commune utilises its independence. Independence of a commune has various aspects:

- organisational and personal; (own authorities and structures, the right to appoint jobs of communal administration in companies, plants and other self-government institutions);
- economic; (asset resources including ownership entitlements and financial means);
- administrative; (own competences for creating administrative laws and for providing administrative authorities in individual forms within the scope of statutory authorisations);
- political; (free choices based on the criteria of local interest) (Jaworska-Dębska, 2004, p. 89).

Such defined independence of the commune as a decentralised entity of public administration and legal personality is subject to court protection. Independence is to guarantee the possibility of executing tasks of the commune corresponding to its interest, but independence of the commune is in certain cases limited by introducing mandatory own tasks that the commune cannot waive. When performing tasks at its own responsibility, the commune faces full consequences of its activity or negligence, and is also obliged to remedy a generated loss (Jaworska-Dębska, 2004, p. 90). A commune, as an organisational system occurring in a civil law sphere is an entity of rights and obligations. It features the following spheres:

- internal, i.e. the mechanism of mutual associations;
- external, thanks to which it is possible to establish legal relations with third parties.

A commune executes the following functions:

- organisational and legal;
- administrative and legal;
- social and economic;
- communal and legal;
- management.

The Polish system defines the following communes:

- agricultural;
- agricultural and industrial;
- industrial;
- industrialised;
- service;
- tourist (Zieleniewski, 2006, p. 35).

A community creating the local government makes decisions and executes tasks through representative bodies chosen by them in democratic elections. The community council is an authority that controls the local government chosen by the community residing a given territory in direct elections (Zieleniewski, 2006, p. 36).

4. Functions of self- government in Poland in European conditions

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5. Functions of self-government in Poland and it's municipal nature

A local government may execute tasks in various organisational and legal forms. It executes them independently creating its own organisational units or assigns tasks to external entities. Communal management uses the following institutions for executing tasks:

- budget entity;
- budget unit;
- auxiliary enterprise;
- communal organisational units;
- commercial partnerships;
- foundations;
- cooperatives;
- communal banks;
- communal insurance institutions.

The choice of communal management is not fully independent and the following factors affect it:

- type of business conducted and level of capital intensity;
- local conditions;
- economic situation of a country (Konosala, Zachorko & Matan, 2002, p. 32).

A limitation is also enforced by means of Article 7 of the Act on communal management of 20 December 1996, which states that tasks exceeding the character of public utility may not be conducted in the form of a budget entity. The tasks of the commune result from Article 7 of the Act on communal self-government. In order to fulfil them, forms of budget law and non-budget management are used. Budget units are the key form of activity. They are created by the communal council in the form of resolutions in order to execute its own public utility character. The unit does not feature a legal personality. It operates on the basis of a legal personality of the commune. A budget unit does not have separate assets. It uses property of the local government in order to execute tasks. A budget unit is associated with the budget by means of the gross method, i.e. the income is fully transferred to the

budget of the unit, which is used to cover all of its expenses (Konosala, Zachorko & Matan, 2002, pp. 32-33).

The basis of a budget unit's functioning is an annual financial plan. Financial management of those units is not flexible and ineffective. It lacks motivation for generating bigger income because it has to be transferred to the budget instead of being spent on own development and investments. Besides the listed characteristics, budget units are also characterised by the following:

- their expenses are independent of revenues;
- a budget unit provides services fully or partially for free;
- budget units do not pay taxes to the budget;
- financial means at the disposal of a budget unit expire at the end of each year (Konosala, Zachorko & Matan, 2002, p. 40).

Another form of budgetary management is a budget entity. Entities are created in order to satisfy on-going needs of the people by providing services that are commonly available. A budget entity is created by the communal council on the basis of the Act on public finance and regulation of the Minister of Finances of 8 May 1991. Similarly as a budget unit, it does not feature a legal personality, and according to C. Kosikowski, it is a "legal personality with limited legal capacity" (Konosala, Zachorko & Matan, 2002, p. 42).

An entity conducts its business on behalf of and on the account of the local government unit, which impacts its activity, e.g. by appointing an entity leader by the management. The management assigns an authorisation to the leader that cannot be exceeded without the management's consent. A budget entity possess assets that are its property and constitute communal property. Special means are created beside budget units. They are associated with the unit by means of financing through the net method. They are clearly defined and separated incomes from auxiliary activity conducted by a budget unit and used for covering costs of such an activity. Accounts in which fees for using rooms, premises equipment or medical care are an example of special means. The obtained revenue is used for improving the quality of services provided by units.

6. Conclusion and Recommendations

The local self-government enables to decentralise **the authority**, to bring it closer to citizens in order to ensure its effectiveness on the one hand (Kucharczyk, 2017, p. 115), while on the other, and this is worth emphasising, in order to respond to needs of people in a better way. A very important function of local government is also to ensure proper financial allocation – effective division of finances is only possible where the authority has an actual insight into the needs of a given community, and the possibility of social and economic growth. To conclude our considerations, we cannot forget that it is thanks to local government that activation of the civil society is enabled, **i.e. making it possible for the people to participate in the government, and hence making it possible to execute the principles of democracy**. The role of local government as a factor in development of a democratic legal state with effective politics and activation of the society cannot be overstated. The local government, despite some difficulties it has to face (such as effective cooperation of its particular levels), makes it possible to manage the country in a significantly better way, in order to execute the public business consisting of the good of all citizens.

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