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UNITARISM AND DECENTRALIZATION AS A CONSTITUTIONAL PRINCIPLES OF THE REPUBLIC OF POLAND

Abstract
The article considers notion and meaning of two constitutionals principles of Republic of Poland: unitarism and decentralization. These two principles are the key of territorial organization of Polish state, determining statutory model of assignments and competences of central government and local government in context of horizontal division of power. There is also a synthetic presentation of three – tier local government and its relations with territorial bodies (representatives) of central government, especially in perspective of supervision and cooperation.

Key words: unitarism, decentralization, Republic of Poland

Constitutional principles expressed in more detailed provisions of the constitution, are the foundation of the system of government of every modern democratic country. Such principles, which are of a very general nature, permeate the whole legal system of the state, determine the form and content of the statutes, and form a basis of interpretation of other laws.

In the Republic of Poland, in compliance with the principle of constitutionalism, the framework of the system of government is defined in the constitution whose principles are particularly important given the political transformation that took place in Poland in 1989. The founders of the political system aimed to shape Poland's new system of government, which in many areas required abandoning the old constitutional order and introducing new principles, or redefining some of the old principles of the system of government.

The principles of the system of government are defined in Chapter I of the Constitution of the Republic of Poland of 2 April 1997, titled “The Republic.” Of note is the fact that some of the principles are also derived from the preamble (Introduction), as well as other chapters of the Constitution. The lists of principles of Poland’s system of government defined by representatives of the science of constitutional law often differ with regards to the principles’ number, importance, and meaning. Nevertheless, one may try to list those among the principles which are unquestionably considered to be the pillars of Poland's system of government. Thus, the key principles are: Poland’s existence as a democratic state ruled by law, sovereignty of the nation, division of the government into branches and balance between the branches, existence of civil society, political pluralism, and – most important to our discussion – the principle of unitarism and decentralization based on the standard definition of the principle of subsidiarity, declared in the Preamble to the Constitution.

The constitutional principles mentioned in the title of this paper refer to one of the most important characteristics of the system of government, namely its form. From this point of view, states can be divided into unitary and federal. What sets the two types apart is not the presence or absence of territorial divisions, which are in place in both types of states. In unitary states, territorial divisions serve solely administrative purposes and can be changed freely by the central government (the parliament). In federal states, on the other hand, the internal territorial divisions are usually protected by the constitution and the individual units are not only elements of the administrative structure of the state but constitute members of the federation (confederacy) and have some characteristics of states, i.e. some powers of their government are parallel to those of the federal government (Jaskiernia 2010: 17).

One of the most systematic definitions of a unitary state has been proposed by P. Sarnecki who defined the following characteristics of a unitary state: 1) uniformity of the organization of the government, which means that there is only one government in the state, that the government serves the purpose of preserving and developing the state, and that no other public authorities that are not a part of the uniform government exist in the state; 2) uniformity of the legal status of the state's population, due to the fact that only one citizenship is in place, which is an expression of the public law bonds between the population and the integrated state structure; 3) integrity of the state's territory, which means that there are no divisions in its territory (which is possible in only very small states) or that the divisions only serve the purpose of enhancing the functioning of the only government present in the state (Sarnecki 2007: 1).

The Polish version of the principle of unitarism of the state is based most of all on art. 3 of the Constitution which provides that: "The Republic of Poland shall be a unitary State." Given the above definition of a unitary state, the above provision of the Constitution means that the foundation of the existence of all public authority agencies (or even all public authorities themselves) are regulations adopted by the central institutions of the state, which define the political system of the state, in a process where the Nation as the sovereign may participate directly. This also means that none of the territorial divisions of the state enjoys state-like autonomy, i.e. sovereignty (Winczorek 2008: 21).

What is characteristic of unitary states is the lack of a vertical division of the legislative branch of the government between the different territorial units of the states. This is due to the definition of the subject of sovereign power in the state; in the Republic of Poland, under art. 4 of the Constitution, it is the Nation who is the sovereign – the aforementioned article provides that "Supreme power in the Republic of Poland shall be vested in the Nation." However, what is permissible – albeit not required – in a unitary state is a vertical division of

the executive branch of the government, which is the foundation of the institution of territorial self-government. If such a division of the executive branch of the government is present and meets certain requirements (to be discussed later), the state is considered to be decentralized in the meaning of art. 15 of the Constitution.

Of course the nature of the vertical division of the government in a federal state is quite different – in federal states the legislative branch, the executive branch, and very often the judicial branch of the government are divided in accordance with the division of sovereignty between the federation and its constituent parts. Thus, federal states can be described as non-centralized.[1]

Art. 3 of the Constitution defines the Republic of Poland as a unitary state, but a systemic analysis of the Constitution leads to the conclusion that it allows for a relatively open and flexible territorial organization of the state and does not impose on the legislator the requirement to define a comprehensive and rigid form of territorial self-government or administrative division of the state. This, however, does not lead to complete freedom, as the Constitution comprises a number of provisions on this matter. One of the most important provisions are comprised in art. 15 which defines the principle of decentralization of the government. Its first passage says: "The territorial system of the Republic of Poland shall ensure the decentralization of public power."

This principle of decentralization of the government involves a transfer of a part of important tasks and competences of the state government to lower-level units (mostly to the local self-government) and assurance of their autonomy in the performance of such tasks. Such a transfer should be followed by a transfer of adequate funds to perform such tasks and exercise such competences. The state government interferes with the activities of territorial self-government units only within the boundaries defined in the law. Also, there is a hierarchy where territorial self-government is subordinate to higher-level entities.

Article 15 of the Constitution of the Republic of Poland defines, in passage 1, the general principle of decentralization of the government and states, in passage 2, a very important directive which requires of the legislator to pay, in defining the territorial structure of Poland, the greatest attention to the needs of decentralization of the system of government, by way of empowering the territorial self-government. This is of particular importance to the position of the units of territorial self government, especially in their relations with the central government administration. The aforementioned art. 15 (2) provides that "The basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties."

This provision imposes two important requirements on the legislator. First, the authors of the Constitution have decided that the territorial division of the state will ensure that the territorial units have the capacity to perform their public duties; consequently, the division should first take into account the needs of the territorial self-government and only then the needs of the central government administration.

Secondly, the provision defines the factors to be taken into account when determining the territorial divisions, namely the bonds existing in a given territory, which can be of the following nature:

- social (e.g. a region of a certain employment or ethnic characteristics);
- economic (e.g. a region dominated by the mining industry or agriculture with large area farms);
- cultural (a region with a unique dialect or customs).

Such wording of the provision, where the "or" conjunction expresses an alternative, means that the bonds of a given type do not necessarily occur simultaneously and the presence of only one of the types suffices to meet the requirement set forth in art. 15 of the Constitution. Of course presence of such a bond is not a sufficient condition for establishing a territorial division – it is only a *conditio sine qua non.* Other factors that can be referred to are: *raison d'état,* economic reasons, or historical traditions (Jackiewicz 2008: 142).

As J. Jaskiernia rightly notes (Jaskiernia 2010: 18), the territorial division of the state, especially the territorial system of the Republic of Poland, must implement the principle of decentralization of the government as the basic idea of such a system (art. 15 of the Constitution), but it must also comply with the principle of a "unitary state." Thus, decentralization may not go so far as to turn Poland into a federal state or to form within Poland's territory units of a special status which does not conform to the unitary nature of the state. The requirement to decentralize the government defined in the constitution translates into the need to break up the monopolies which existed in Poland's previous system of government, namely the political monopoly, the uniform government, the state ownership, the financial monopoly, and the monopoly of the state administration. Rejection of such monopolies is a condition for forming other entities which may exist in parallel with the central government administration and autonomously perform functions of public administration. Decentralization of the government means not only a transfer of tasks by central state organs to lower-level units of central government administration (vertical deconcentration), but also broadening the competences of such units with regards to their autonomous decision-making.

One manifestation of the implementation of the principle of decentralization is the territorial self-government. In the light of chapter VII (Local Government) of the Constitution, and especially art. 163 and 164, which provide that the commune (*gmina*) shall be the basic unit of local government and other units of regional and/or local government shall be specified by statute, it can be concluded that the authors of the Constitution have decided to introduce a model of the territorial self-government with several levels[2], whose final form was defined in a statute. Nevertheless, regardless of which model is chosen, one level of territorial self-government is required on the local level and one – on the regional level.[3]

This requirement was implemented in 1998 in a number of statutes which reformed the territorial structure of the state. Of special importance from the point of view of this paper are the Act of 5 June 1998 on the province self-government[4], the Act of 5 June 1998 on the district self-government[5], and the Act of 24 July 1998 on the introduction of a three-level territorial division of the state.[6] In these acts (which raised many controversies), the legislator decided to establish, in addition to the commune-level territorial self-government which had been in place since 1990[7], two additional levels of the territorial self-government, namely the district (*powiat*) (a local-level structure) and the province (*województwo*) (a regional-level structure). One should keep in mind, however, that the constitution formally allows also for more than one level of a regional self-government. Thus, it would formally be possible to "add" another level of regional (or local) self-government (Izdebski 2006: 68). Considering the experiences with the functioning of the current model of the territorial self-government, this appears to be impossible; more likely is elimination of the district self-government.

Poland's Constitution relatively broadly discusses the organization of the territorial division of the state, most of all by defining Poland as a unitary state which is decentralized by way of introducing the institutions of territorial self-government. The territorial self-government has become a very important part of the structure. Nevertheless, the Constitution does not exhaustively define the territorial division of the Republic of Poland and allows the legislator to decide on its form. Thus, it is the legislator who decides on both the territory governed by the territorial self-government and on the extent of its autonomy. However, the legislator does not enjoy unrestrained freedom in making its decisions, because the Constitution (as well as international laws, such as the European Charter of Local Self-Government) includes provisions which define the limits of such freedom, such as the aforementioned principles of a unitary state, decentralization of government, or autonomy of units of territorial self-government and its legal protection.

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[1] An intermediate form of the territorial organization of a state is a regional state, which is also referred to as a state based on autonomy of regions. Standard examples of such states are Spain and Italy. This form of statehood is characterized by the fact that regions as parts of the state have their own parliaments and the executive branch, but their competences are limited and often very different, compared to those of members of a federation. This does not mean that a federalist or regionalist concept of the territorial organization of a state precludes further territorial decentralization. Most often both the constituent parts of a federation and the regions are divided into lower, self-governing levels of public authorities.

[2] Article 164 of the Constitution is commented this way among others by P. Sarnecki, *Uwagi do art.164 Konstytucji RP* [A commentary to art. 164 of the Constitution of the Republic of Poland], in: L. Garlicki, ed., *Komentarz do Konstytucji Rzeczypospolitej Polskiej* [A commentary to the constitution of the Republic of Poland], vol. IV, Wydawnictwo Sejmowe, Warsaw 2007; and P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 1997 r*. [A commentary to the 1997 Constitution of the Republic of Poland], Liber, Warsaw 2000, p. 216.

[3] A completely different potential problem which may occur in the case of constitutional provisions which require the legislator to regulate a given matter – as is the case here – is the issue of potential responsibility in the case of failure to observe such a duty. Poland's legal system does not have any provisions which would impose sanctions in the case of failure to take action by the legislative bodies, such as shortening the term of the parliament. It is also impossible to hold liable the persons elected to the legislative bodies.

[4] Consolidated text: Journal of laws of 2001, no. 142, item 1590, as amended.

[5] Consolidated text: Journal of laws of 2001, no. 142, item 1592, as amended.

[6] Journal of laws of 1998, no. 96, item 603, as amended.

[7] The commune-level self-government was reestablished by the Act of 8 March 1990 on territorial self-government (consolidated text: Journal of Laws of 1990, no. 16, item 95) – this statute, after the higher levels of the territorial self-government were introduced, was called the Act on commune-level self-government.