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The decentralization of public authority as a result of the political changes in Poland

Abstract: The main aim of this paper is to answer the following questions: does the present model of local government, professional associations and self-regulatory business associations fulfil the idea of decentralisation? Does it meet the expectations of the authors of the 1989 system reform?

The currently functioning model of administration assumes the execution of administrative tasks by both the centralised governmental administration and a multifarious system of independent bodies and institutions which carry out public tasks vested in them by legislation. Apart from some obligatory units, like the units of local government, there are some other entities which have a significant role in the public sphere: professional associations and self-regulatory business associations.

Key words: systemic transformation, local government, professional association, self-regulatory business association

The notion of a civil society has revived recently, both in political as well as theoretical discourse. It is of great importance to define the pace of changes that took place in Poland after 1989. Civil society is usually identified with groups or organisations, both formal and informal, which work irrespective of the state or economy to promote the interests of different social groups (Witkowska, Wierzbicki, 2005, p. 9).

In the course of historical change, the state has not been sufficient to embrace the whole social life of its citizens. Spontaneous processes to rationally fill that void have appeared. As a result, those processes have led to the appearance and formation of a civil society. What is understood by civil society is a society in which all the citizens are subjects in the social, political and economic spheres (Witkowska, Wierzbicki, 2005, p. 10–12). The crucial issue, positively influencing the development of a civil society is the right of each social group to organise its own affairs. It is a sign of a state's acknowledgement of society's ability to be independent.

The political changes after 1989 were mostly connected with liberal capitalism in the economic sphere, as well as the democratisation of the apparatus of public power. As a result, the homogenous and centralised structure was almost totally left behind. An indication of this process in the administration was the decentralisation of the administrative apparatus. The current model of administration assumes its execution by both centralised government as well as a multifarious system of bodies or separate institutions which execute some regulatory tasks on their own behalf and on their own responsibility. This idea assumes the diversity of public law entities, taking part together with the state in exercising the law and administration. Apart from obligatory units, like the units of local gov-

ernment, administration is also executed by professional associations and economic self-government. There is no doubt that the new model of administration in Poland is in opposition to the system imposed in the 1940s, which was reformed during the period of the People's Republic of Poland.

The changes in the political system which started in 1989 in Poland resulted in the beginnings of a state which was created on a democratic basis, together with the tolerance of the basic rights and liberty of the individual. The 1990s was a turbulent period, mainly because of the introduction of local government. There is no doubt that the decentralisation of public power is one of the most important elements of the Third Polish Republic.

According to Eugeniusz Ochendowski, "local government is an extension of the state's structures, based on the law established by the local community union to exercise public administration, furnished with money that enables it to implement the tasks imposed on it." Therefore, the point of local government is the management of public issues by those whom it may concern (Tarno, Sieniu, Sulimierski, Wyporska, 2002, p. 20).

Local government is an institution secured by the Constitution and so it has a remarkable role among other units of public administration (Leoński, 2006, p. 7). The responsibility of local government is to satisfy the needs of a local community by providing public services. The services provided by centralised bodies are not always suited to local community needs, and their unified character stops them from retaining a local or regional identity. The aim of the tasks and competences shared between central government and local government administration is the accomplishment of these tasks by structures which can execute them well and effectively (Słobodzian, 2006, p. 207–209).

It is also necessary to point out that local government as an institution of public life has a distinct political character because of the manner of electing local authorities as well as the way power is executed. The legislative, management and executive bodies have a political character. In light of the Polish political transformation, the visions of the creators of local government did not come true. Taking the English and Swiss experiences as an example, they built a vision of ideal structures which were supposed to prove favourable to local communities regardless of common interest groups or political parties. In practice, it was common for local government to be dominated by parties and voting groups which formed single-party or coalition structures. Before elections, local government becomes a battleground, and the fight is often quite tough. As a result, it is difficult for local governments to satisfy local needs. Local government should act in order to meet local and regional communities' needs and should not waste its energy on interminable political games (Adamiak, 2005, p. 76).

The reconstruction of local government is a postulate proposed for many years by different social groups, especially academics, as well as by political activists and the opposition. Some ideological, political and social issues have been brought up for discussion while explaining the need for reconstructing local government. The basic assumptions of local government were negotiated during the deliberations of the Round Table between the representatives of the government at that time and the opposition (Słobodzian, 2006, p. 41). In December 1989, by changing the constitution, parliament made it possible to re-establish local government and gave it the right to exercise power (Adamiak, 2005, p. 66).

The political changes introduced by a package of acts in 1990 led to a dualistic model of local administration. On 8 March, 1990 the Sejm (Polish parliament) passed amend-

ments to the Constitution, under Art. 5 stating that “the Republic of Poland shall guarantee the participation of local government in the exercise of power.” Furthermore, it was completed with a new chapter concerning local government. At the same time, two other significant acts were enacted. That is, a Local Government Act and electoral law for municipal councils. The former provided the basis for a municipality (Polish: *gmina*), while the latter made it possible to prepare and conduct elections for the new municipal councils (Antkowiak, 2011, p. 36).

During the next few months, a package of laws regarding local government was passed. These efforts were concluded by the local government elections on 27 May, 1990. These were the first, fully democratic elections to municipal councils. At the same time, the process of building a new model of society was started. In this model, municipalities had a significant role in the political system.¹

The local government reform of 1990 depended on separating it from the administrative apparatus and replacing it with a council with an independent budget, legal personality and municipal estate, as well as well-defined competences. This reform removed the system of homogeneous state power (Nowacka, 2005, p. 58).

On 2 April, 1997 the new Constitution of the Republic of Poland was enacted, coming into force on 12 October of the same year. Three basic principles come out of the Constitution which are connected with the functioning of local government. These are:

- **Subsidiarity principle** – units of local government carry out certain public tasks to satisfy the inhabitants’ needs. The county (Polish: *powiat*) and region (Polish: *województwo*), as broader units, have more of an auxiliary function in respect to communities. These units also carry out the tasks of government administration, as long as there is such a need;
- **Independence principle** – the units of local government are independent and they have legal protection guaranteed. These units are independent in respect to one another and state power as well. This means financial independence as well as independence of public law. Thanks to this independence, they are self-contained as far as creating the internal political system is concerned;
- **Presumption principle of local government** – in cases where the provision of statutory law does not specifically reserve the right to deal with an issue at the state administration level, then the issue belongs to the authority of local government (Tarno, Sieniu, Sulimierski, Wyporska, 2002, p. 23–25).

Under the auspices of the new Constitution, the second phase of local government reform started. It aimed at introducing two more levels of local government, namely the county and region. On 5 June, 1998 the acts concerning the government of counties and regions, as well as government administration in a region were passed. In the same year,

¹ A quite disturbing occurrence for the founders of the local government reform in 1990 was the surprisingly low turnout, which amounted to 42.27% of all those entitled to vote. It was disappointing, mainly because of high expectations for the first democratic election in Poland. It was expected that Polish society would be more active. Unfortunately, it turned out that only a part of Polish society is interested in such activity. However, it should be remembered that elections to local government are less interesting for society. For example, when in 2002 for the first time village mayors, and city mayors and presidents were elected, the turnout was 35.02%.

on 24 June, an act changing other acts that stipulated the competences of public administration authorities came into force. On the strength of a decision, a triple level territorial division and a new system of territorial administration authorities of general competence came into being from 1 January, 1999 (Tarno, Sieniu, Sulimierski, Wyporska, 2002, p. 25).

There were 2,489 municipalities introduced as the basic units of local government, 373 counties (including towns which had the rights of a county) and 16 regions. In comparison to the partition which was ensured in the period from 1975–1998, the new administrative partition is believed to be much more advantageous. However, the reform is the subject of criticism.²

Opponents stress that no less than 15% of counties and several regions do not have the economic basis to be autonomous (Kowalski, 1999, p. 79). The bigger a county or region is, the more money it has and the more powerful it is. If a unit is weak, it faces the threat of a permanent shortage of money, or receiving an income which is high enough only to pay for its own administration.³ The foundation of a large number of towns which have the rights of a county is often highly criticised, especially in areas where similar rural counties exist. In the future, this may lead to the total number of administrative units decreasing.

The next highly important issue was the Act of 20 June, 2002 concerning the direct election of a village mayor, city mayor and president. The principle of the direct election of a single-person executive body was introduced. So far, in the municipalities there had been a collegial executive body which was elected indirectly by a decision making body. Nowadays, a triple-level territorial division is present. On the basic level, there is the municipality in which the legislative branch is the municipal council (town council in towns). The executive branch, a village mayor, mayor or president, is elected by direct election. At county level, the function of legislation and audit belongs to the county council while the county's council with a district governor (Polish: *starosta*) is the executive body. On the regional level, there is a regional parliament (Polish: *sejmik*) whose function is to audit and constitute. In addition, there is also a regional council consisting of five people led by a marshal (Leoński, 2006, p. 106).

The supervision of local government in Poland rests, pure and simple, on criterion of loyalty (that is, legal compliance) according to art. 171(1) of the Constitution. No exceptions from this rule are taken into account, although the purpose criterion was initially

² It should be remembered that in the project about 120–150 counties were expected. However, due to some parliamentary games and pursuing the particular businesses of some regions, it finally resulted in doubling the number. This has led to counties being financially unfeasible and limiting their ability to carry out their tasks. It is worth mentioning that counties were supposed to be organised according to a 5–10–50 plan, meaning there would be 5 municipalities, 10,000 inhabitants in the capital of county, and 50,000 inhabitants in the area of the whole county. However, in practice not all counties meet that requirement (Regulski, 2005, p. 153–163).

³ Similarly to the counties, the number of regions was the subject of discussion. It is worth noticing that the first reform projects mentioned 6 or 8 strong regions. The project introduced in the Sejm mentioned 12 regions. What is more, 15, 17 or even 49 regions were mentioned during the parliamentary haggling. Finally, it was decided to create 16 regions. According to some critics, they are too small and not economically strong enough to compete with regions like they have in Germany and in the European market (Regulski, 2005, p. 164–183).

employed as far as some tasks given, for example, to municipalities are concerned (Dolnicki, 2006, p. 374–385).

This triple-level local government is the outcome of a long-lasting process of reforms. During those 25 years of Polish system reform a large number of solutions have been accepted in acts, as well as some amendments to these acts, which aimed at improving the existing system. The evaluation or summary of this process requires a profound analysis of systemic solutions, as well as in practice. It is worth mentioning that the practice reflects the efficiency and credibility of local government on every single level.

While discussing decentralisation, it is often forgotten that it varies a lot. It depends if we take the people who live in a particular area into account or people who belong to a particular profession or economic status. Professional associations play a major role in representing the interests of some groups. In theory, a professional association is an organisational form of association of people who have the same occupation. The aim of such an organisation is to represent their interests to the state authorities, to develop their vocational skills and to provide them with social protection. Furthermore, it pays attention to work ethics and implements some tasks typical of public law associations (Kmieciak, 2000, p. 217).

The relevance of professional associations increased when the Constitution of 2 April, 1997 came into force. Art. 17 stated that: “[b]y law, professional associations representing professionals holding the public trust and custody over the proper practice of such professions in the public interest and for its protection can be created.” This entry was a *de facto* recognition, because at the time of its introduction, professional associations had existed for many years (Antkowiak, 2013, p. 130). Moreover, it should be mentioned that professional associations are created by professions which require higher professional and moral standards to protect those professions and their representatives, as well as to strengthen social interests. The emergence of such structures, and giving them authority, may be seen as vesting them with public tasks (Lemisowska, 2003, p. 173).

In 1989 there were plenty of changes, both social and political. As a result, some professions became more active. In addition, they decided to function as public legal association. However, at that time creating professional associations was the responsibility of the state (Kmieciak, 2008a, p. 352). The extent to which professional associations exercise authority includes:

- **representation of a particular profession’s interests to the state authority** – the best example of such actions is the assessment of draft acts as well as reporting findings on them;
- **supervising who can practise a particular profession** – that includes providing access to some specific professions and keeping records of people who have the right to practise a particular profession. In this respect, professional associations hold a number of prerogatives connected with administrative law;
- **making rulings and ensuring the profession is practised ethically** – in this case, and the subsequent one, it is the professional association that establishes working ethics. Its responsibility is also to influence its representatives by disciplinary means. This influence is sometimes far-reaching, as it can limit the right to practise a profession as well as deprive a person of the right to practise it;
- **organising a disciplinary judiciary;**

— **professional development and specifying the educational core in each profession** – quality of service is taken into account, and hence professional development training is organised (Kmieciak, 2005, p. 93).

So far, there have been fifteen laws passed that allow for the following professional associations to be established: attorneys, legal advisors, medical doctors, veterinarians, notaries, nurses and midwives, pharmacists, certified accountants, tax advisors, sequestrators, construction engineers and town planners, patent attorneys, psychologists, custodians and laboratory diagnosticians.

All the professions mentioned above are perceived as professions of public trust. Belonging to one of the following associations is compulsory in order to practise that profession, subject to appearing on the professional list. The structure of professional associations and the number of levels in professional associations are established by legal regulations. In those acts, state tasks together with the competences of corporate governance are specified. This is the fulfilment of the ideas of decentralisation – a professional association of public trust acquires a number of competences from the state in order to perform its liabilities. On the other hand, it also takes almost full responsibility for those actions.

It is worth noticing that professional associations have recently been harshly criticised in Poland, both by wider society and the members of those associations. There are so many contradictory opinions about the way professional associations function that the real picture of self-regulatory trade associations is blurred. Limiting the access to a particular profession, the monopoly of professional associations, violations of professional ethics and ineffective disciplinary judiciary inside these organisations are the main sticking points.

There is no doubt that belonging to a particular group which performs a profession of public trust should be a kind of social honour, as a result of high professional standards and impeccable morality.

Professional associations are, on the one hand, administrators of professional issues and organisers of public life among the members of a profession. On the other hand, public administration is performed by them.

Self-regulatory business associations are the third, important form of the decentralisation process in Poland. A self-regulatory business association is understood as an association organised to represent similar businesses by people with the same economic status. Furthermore, all the businesses should share the same high standards and virtues. Self-regulatory business associations are distinct from local government because the former gather particular groups of people, taking their qualifications and private businesses into account, while local government focuses on people who live in the same area. It can be said that self-regulatory business associations have a non-local character of obligatory public law association which operates as a business union (Grzelak, Kmieciak, 2008, p. 260).

In its traditional meaning, self-regulatory business associations consist of chambers of commerce, crafts and agriculture. The Act of 30 May, 1989 on Chambers of Commerce created the basis for chambers of commerce in Poland. Its provisions, however, stand in opposition to the hitherto prevailing traditions of self-regulatory business associations. A “chamber of commerce” was founded as a voluntary organisation which is to represent

the business of its associated subjects as far as their business activities are concerned. Such a definition of tasks performed by chambers of commerce refers to the notion included in the Act of 23 December, 1988 of Business Activity and is subsequently applied in other acts (Waligórski, Pawłowski, 2005, p. 220–221).

According to Professor Robert Kmiecik the regulations of the Act on Chambers of Commerce do not prove that we are dealing with chambers of commerce understood in relation to administrative law. In his opinion, real chambers of commerce cannot be created in the way stipulated in this Act. Some drawbacks of this Act can be enumerated:

- introducing the principle of voluntary membership of “chambers of commerce”;
- the way a “chamber of commerce” is created through the founding initiative of those concerned (at least 50 founders – business entities in the area of a region; or at least 100 business entities where the territorial area exceeds that of a region);
- the form of gaining legal personality through the entry in the register of “chambers of commerce” in the district court;
- basing the possessions of the “chambers of commerce” on members’ subscriptions, donations, legacies and income from the chamber’s activities (Kmiecik, 2004, p. 143).

In Polish law, the meaning of the term “self government” has been lost. It is questionable that voluntary organisations of people should be given the character of self government. Moreover, in the case of chambers of commerce, it is difficult to speak of their representativeness, as they involve a trifling percentage of Polish businesspeople and have no powers against their members. For this reason, chambers of commerce should not be established through the founding initiative of members, but through legislation. To talk about true self-regulatory business associations, the functioning of these “chambers of commerce” should be regulated, and the Act of May 30, 1989 on Chambers of Commerce should be replaced by a legal regulation which would establish obligatory organisations (Kmiecik, 2008b, p. 97–101).

As far as crafts chambers are concerned, the Act of March 22, 1989 on the crafts trades requires alterations and a clear distinction between self-regulatory crafts associations’ position in the legal structures of state. The above statement derives from Article 7 of the Act in which it was stated that: “self-regulatory crafts associations are created on members’ initiative on the principle of voluntary membership.” That means that membership of self-regulatory associations is related to those guilds or crafts chambers which express their consent to be members. Guilds, as well as crafts chambers can be created through the principle of members’ founding initiative. As a result, Professor Kmiecik states that self-regulatory crafts associations are losing the character of public legal organisations and are gradually evolving into associations. Undoubtedly, this is a backwards step. It is also a fact that the members of the Polish Craft Union are working towards the law of economic self-government to be passed. According to this law, self-regulatory crafts associations will be related to self-regulatory business associations. The law could include a provision for obligatory membership of a self-regulatory crafts association. However, at present, a self-regulatory business association is created through members’ initiative (Kmiecik, 2004, p. 155–156).

From this point of view, satisfactory legal regulations on the functioning of trade associations are those of the Act of December 14, 1995 on Agricultural Chambers, which de-

fines the functioning of an obligatory agricultural association and, the Act of May 22, 2003 on Insurance Activity, which defines the functioning of an obligatory Polish Chamber of Insurance. Of all the chambers, the agricultural chamber is the best formally and legally organised organisation. However, some regulations are questionable, mainly those connected with finance. Only 2% of agriculture tax revenue is given to the chambers' budget, which seems insufficient to make it work accurately and dynamically. Furthermore, if we were to look at the membership of agricultural chambers, we would see that it is extremely low. Some believe that this places the functioning of the Chamber of Agriculture in question (Grzelak, Kmiecik, 2008, p. 302–307).

As far as self-regulatory business associations connected with insurance are concerned, it can be said that Poland played a major role among the former countries of the eastern bloc. After passing the law on insurance business of July 28, 1990, Poland had one of the most modern insurance systems in Central Europe. This act was replaced in 2003 by an act under the same title. There is no doubt that Polish Chamber of Insurance has a very high position in the structures of self-regulatory business associations in Poland. This is surely a result of the obligatory membership of the chamber, which is the exclusive representative of the insurance sector. This leads to integration, as well as to working out collective and advantageous solutions in the insurance sector. As the chamber has the status of an organisation of public law, its importance in representing business is increasing. The example of the insurance self-regulatory business association is often indicated as the one businesses should follow, because they could also have a single, strong representative in the form of a business, industry or trade chamber. What is more, they could cooperate with the state as a partner. However, the business community does not have uniform and coherent representation (Kmiecik, Antkowiak, Walkowiak, 2012, p. 106–112).

In my opinion, the state ceding some prerogatives to organised social groups shows that those groups gain not only power, but also responsibility for their actions. This is vital, because in this way the state concedes that a part of the state's tasks should be performed by those groups which have the best knowledge about the existing situation and the needs of a particular community. One should hope that the members of individual self-regulatory business associations will understand that associations are not permanent. It is the state that decides to give some prerogatives to social groups, trusting that they will be able to implement public tasks.

It is difficult to point out what the relations between local government, professional associations and self-regulatory business associations are and how they influence the development of civil society in Poland. This results mainly from the different stages of the associations' development. While the functioning of local government is unarguable, the existence of professional associations, as well as self-regulatory business associations is often questioned. In the case of the latter, so called quasi-self-regulatory business associations are often mentioned, because they do not have real executive competences against their members. Belonging to their structures is not obligatory and does not have representative character. It is worth stating that in the transformation period many different organisations were created. As time passes, they appropriate powers and become involved in relations with the state or local government, although they do not have the right to do so.

Simultaneously, there are many fields in which the cooperation of a local government, professional associations and self-regulatory business association seems to be possible,

or even desirable. Cooperation in terms of the economy, regional development, health service, town planning or legislation can be mentioned here. One could imagine that the development of a region should be planned together by local government and self-regulatory business associations, while health policy is consulted by local government with medical, or nurses and midwives associations. The experiences of recent years show that such cooperation is almost non-existent, and one can get the feeling that individual forms of self-governance are developing independently, in parallel and at different paces.

More than two decades of experiences with decentralisation is insufficient time to create an aware civil society that can actively take part in social or political life. It is much easier to change legal regulations or the organisation of devolved structures than make society more active. Such a model of a devolved power is possible to create. Experience with devolving power is the best way to make society more aware of their rights and responsibilities, and that may result in a civil society.

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Decentralizacja władzy publicznej jako efekt przemian ustrojowych w Polsce

Streszczenie

Przedmiotem tego opracowania jest próba udzielenia odpowiedzi na pytanie: Czy obecnie funkcjonujący model samorządu terytorialnego, zawodowego i gospodarczego jest urzeczywistnieniem idei decentralizacji i spełnieniem oczekiwań twórców reformy systemowej z roku 1989?

Obecnie funkcjonujący model administracji zakłada jej wykonywanie zarówno przez aparat scentralizowanej administracji rządowej, jak również wieloraki układ organów czy instytucji działających samodzielnie i wykonujących powierzone im w drodze ustaw zadania publiczne w imieniu własnym i na własną odpowiedzialność. Oprócz jednostek obligatoryjnych o podstawowym znaczeniu, jak na przykład jednostki samorządu terytorialnego, równie istotną rolę w sferze publicznej odgrywa samorząd zawodowy i gospodarczy.

Słowa kluczowe: transformacja systemowa, samorząd terytorialny, samorząd zawodowy, samorząd gospodarczy