



The constitutional principle of decentralizing public power in the Polish legal system

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Abstract

Decentralization of public power is one of the fundamental principles in rule of law democracies. It is a constitutional principle manifested through the functioning of local self-government. The article concisely characterizes the decentralization of public power in Poland, with particular emphasis on the basic principles governing the functioning of local self-government. The author also points to problems related to the implementation of this principle.

Keywords

decentralization, local self-government, autonomy, territorial division, public tasks, subsidiarity principle

Introduction

Decentralization is one of the basic principles underlying the Polish state (Skoczylas & Piątek, 2016). Pursuant to article 15 of the Constitution of the Republic of Poland,¹ the territorial system of the Republic of Poland shall ensure the decentralization of public power. It is treated as a social idea, rooted in the content of constitutional regulations and is as important in the legal system as constitutional regulations. It occupies a place among the constitutional values on which the state system is based (Kieres, 2020), and is one of the most important system principles (along with the principle of subsidiarity) on which the nature and shape of public administration are constituted (cf. Zgud, 1999; Szpor, 2021, 20; Cieślik, 2004, 33; Popławska, 1998, 190; Przybylska-Marciniuk, 2004).

Decentralization of public power in the Polish legal system

Decentralization of public power is defined in various ways: as a political postulate, a legal principle, an organizational model or a mechanism for the functioning of public power (cf. e.g.: Kumaniecki, 1924; Bigo, 1928; Reiss, 1932; Panejko, 1934; Starościak, 1960; Wiktorowska, 2002;

¹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended.

Fundowicz, 2005; Niczyporuk, 2006). In each of these approaches, it is possible to distinguish and highlight specific features of decentralization. Above all, however, and pursuant to the Constitution of the Republic of Poland, the principle of the decentralization of public power underlies the territorial system of the Republic of Poland. Any action of the authorities affecting the territorial system of the Polish state should be designed while taking the principle of decentralization into account. The concept of public power used in the Constitution is very broad.² However, attempts to clarify it in the context of the term “territorial system” forces one to interpret this principle in relation to the organizational structure of the state and the division of tasks and competences that follows. It therefore determines the existence of local self-government and entails a transfer of some of the powers of higher-level public authorities to lower-level entities. Such an organizational arrangement of public administration entities determines the political system of the Polish state, which, in the light of the Constitution of the Republic of Poland, is a rule of law democracy. It can therefore be concluded that local self-government is an element of the territorial system of the Republic of Poland and also a part of the system of public power (Izdebski, 2009, 15).

The existence of local self-government in Poland is one of the conditions for an efficiently functioning democratic state. It is also emphasized in the international law, primarily in the European Charter of Local Self-Government,³ which was ratified by Poland and has been in force since 1 March 1994. By ratifying it, “Poland considered the ECLSG to be valid in its entirety and separately for each of the provisions contained therein, with the promise that it will be consistently preserved” (Skoczylas & Piątek, 2016). The Charter emphasizes the role and importance of decentralization and points out that local communities constitute one of the foundations of democracy, and that the right of citizens to participate in making decisions regarding public affairs is one of the democratic principles common to all the Member States of the Council of Europe.⁴

Decentralization is defined as a permanent and legally protected transfer of important tasks, competences and funds from national authorities to bodies operating at various levels of the territorial division of a country (Nowacka, 2003, 63). It is a manifestation of the broadest cooperation between the administrative system and the social and the economic ones. In the context of local self-government, it involves engaging separate parts of the social system,⁵ namely communities shaped according to their area of residence, in processes of self-administration. In this way, they become part of the administrative system with regard to administrative tasks specified in statutory provisions.

Decentralization should be recognized as a constitutional value and characterized by the world of social principles that shaped its content and gave it a certain public dimension, where it is described as “the idea of decentralization”.⁶ In the jurisprudence of the Polish Constitutional Tribunal, decentralization is considered as a relevant social phenomenon.

² According to the Constitution of the Republic of Poland public power should be understood as legislative, executive and judicial power (cf. Art. 10 Paragraph 1).

³ European Charter of Local Self-Government adopted in Strasbourg on 15 October 1985, Journal Of Laws of 1994, No. 124, item 607, as amended.

⁴ Preamble to the European Charter of Local Self-Government.

⁵ Cf. Art. 1 Paragraph 1 of the Act of 8 March 1990 on gmina self-government, Journal of Laws of 2022, item 559, as amended, Art. 1 section 1 of the Act of 5 June 1998 on powiat self-government, Journal Of Laws of 2022, item 528, as amended, Art. 1 Paragraph 1 of the Act of 5 June 1998 on voivodeship self-government, Journal Of Laws of 2022, item 547, as amended.

⁶ Judgment of the Constitutional Tribunal of 3.11.2006, [K 31/06](#) OTK-A 2006/10, item 147.

The Constitutional Tribunal considers the importance of decentralization in developing the political system of the Republic of Poland to be special, using as the basis the will of the legislator to accept decentralization as a separate constitutional principle (principle of decentralization). The principle of decentralization thus originates from the constitutional legal order – it has normative character.⁷ This is because the content constituting the identity of the principle of decentralization has been shaped by constitutional norms, which – according to the tribunal – gives it the characteristics of a specific legal norm, as it is shaped by the constitution.⁸

It is, therefore, necessary to pay attention to the values that shape the identity of the principle of decentralization which, although they have not been singled out *expressis verbis* in the Constitution, can be associated with the principle of decentralization by recognizing their character as constitutional customs.⁹

Going back to the very concept of decentralization, it is worth emphasizing that it has been analysed by a considerable number of Polish administrative law scholars (e.g.: Bigo, 1928; Reiss, 1932; Panejko, 1934; Starościak, 1960). As a result, two types of decentralization have been distinguished: territorial and material. Territorial decentralization consists in equipping the bodies in charge of individual administrative division units with such a degree of self-reliance that it is justified to recognize them as decentralized bodies, which is exemplified by local self-government (Wiktorowska, 2009, 96). Material decentralization consists in entrusting independent bodies or organizations, in principle local self-government, with certain types of tasks (Wiktorowska, 2009, 96).

Regardless of the type of decentralization, its main goal is, on the one hand, to relieve central authorities of carrying out detailed tasks so that they can focus on more general matters, and on the other, to enable local structures to effectively handle local matters (Niewiadomski, 2002, 3–4). In this context, one should pay attention to the principle of subsidiarity, deriving from the Preamble to the Constitution of the Republic of Poland, which in the science of law is combined with the principle of decentralization and often treated as its synonym (e.g.: Winczorek, 2008, 47). This principle means distributing tasks between citizens and their communities and the state. The latter performs more difficult and complex tasks of central nature, which smaller structures are unable to perform. Subsidiarity means that local needs are met at a given level of local self-government. If certain tasks cannot be accomplished that way, it will be supported by central structures. According to this principle, the state should not perform tasks that can be performed more effectively by smaller communities.¹⁰

Local self-government units and their tasks

Before further investigating decentralization, one should delve into the division of tasks between the state and local self-government. The aim of decentralization is undoubtedly to distribute tasks, competences or funds among territorial bodies, which is proved by the functioning of local self-government. Pursuant to Article 16 Paragraph 2 of the Constitution of the Republic of Poland, local self-government participates in the exercise of public power and performs a considerable part of its public duties in its own name and under its own responsibility. A con-

⁷ Judgment of the Constitutional Tribunal of 26.02.2003, [K 30/02](#).

⁸ Judgment of the Constitutional Tribunal of 28.11.2013, [K 17/12](#).

⁹ Judgment of the Constitutional Tribunal of 19.11.2008, [Kp 2/08](#), OTK-A 2008/9, item 157

¹⁰ Judgment of the Constitutional Tribunal of 12 March 2007, [K 54/05](#), OTK Series A 2007, No. 3, item 25, cf. e.g. Kania (2017, 13–21).

sequence of public power decentralization is empowering local self-government to participate in the exercise of this power. Moreover, the Polish legislator has expressed the will to assign a significant part of public tasks to local self-government. This must mean that these cannot only be marginal tasks (Grzybowska & Grzybowski, 2020, 249). According to the Constitutional Tribunal, the better the decentralization of the state is implemented, the greater the transfer of competences to local self-government is (while guaranteeing the greatest possible level of freedom).¹¹ Participation in the exercise of public power consists in performing public tasks, not reserved by the Constitution and statutory acts for other authorities,¹² aimed at satisfying the needs of local self-government communities,¹³ as well as in performing public tasks stipulated in statutory acts if it is in the state's justified interest.¹⁴

Several directives follow from these provisions. All tasks to be performed by the state for the benefit of citizens, sovereignty, security, etc. should be distributed as precisely as possible among local self-government units and other public authorities bearing in mind the principle of subsidiarity. As a consequence of this distribution, a catalogue of own tasks to be performed by individual local self-government units can be defined.¹⁵ At the same time, the Constitution of the Republic of Poland does not impose an obligation to specify further own tasks by way of statutory provisions, which in practice makes it extremely difficult to satisfactorily determine such tasks.¹⁶ It can be inferred from Article 166 of the Constitution of the Republic of Poland that public tasks designed to meet the needs of local self-government communities are performed by local self-government units as their own. As emphasized in the science of administrative law, a task will be considered “own,” provided that it is not performed according to principles and standards that are uniform throughout the country. If it is, it is a government administration task (Zimmerman, 2008, 175–176). It should be stressed, however, that “despite the existing difficulties in defining the tasks and competences of all public authorities, they should complement one another” (Skoczylas & Piątek, 2016). It should also be noted that the Act on gmina self-government introduces a special category of this unit's own tasks, namely the tasks that are mandatory by virtue of relevant substantive law acts (Article 7 Paragraph 2).

Some of the tasks performed by local self-government are ‘delegated’ by nature. They should be thus delegated by way of an act and must be justified by the state's needs. Despite the fact that these tasks will be carried out in a uniform manner like other state tasks, their delegation to local self-government units is justified for a number of reasons such as efficiency, effectiveness and accessibility of administrative structures. Unlike own tasks, the financing of which is independent and creative by nature,¹⁷ delegated tasks must be financed from the state budget.

¹¹ Judgment of the Constitutional Tribunal of 3 November 2006, [K 31/06](#), OTK Series A 2006, No. 9, item 135.

¹² Cf. Art. 163 of the Constitution of the Republic of Poland.

¹³ Cf. Art. 166 Par. 1 of the Constitution of the Republic of Poland; these tasks take the form of ‘own tasks’.

¹⁴ Cf. Art. 166 Par. 2 of the Constitution of the Republic of Poland.

¹⁵ The catalog of such tasks is specified in Art. 7 of the Act on gmina self-government, Art. 4 of the Act on powiat self-government and Art. 14 of the Act on voivodeship self-government.

¹⁶ Cf. Pośpiech-Kłak (2018). Delegating tasks to local self-government units undergoes constant evolution. Administrative law scholars also advocate various types of changes in this area. An example can be P. Wieczorek's proposal regarding the re-categorization of ‘creating new green areas’ (at least to some extent) as tasks delegated to cities. As a result, it would be financed from the state budget and at the same time it would force local self-government units to create such areas, cf. Wieczorek (2022).

¹⁷ Judgment of the Constitutional Tribunal of 13 March 2014. [P 38/2011](#), OTK Series A 2014, No. 3, item 31.

Determining a catalogue of local self-government own tasks and competences to implement them brings at various consequences. A task delegated to a specific local self-government unit is both a right and an obligation incumbent on a specific community. Local self-government units perform their own tasks in their own name and under their own responsibility. Therefore, it should be assumed *a contrario* that local self-government does not perform delegated tasks on behalf of individual government administrative units. As emphasized in the science of administrative law, “those are to be its tasks” (Skoczylas & Piątek, 2016). Consequently, local self-government must be responsible for their implementation. This responsibility takes various forms, “from financial to political” (Skoczylas & Piątek, 2016). Moreover, granting local self-government the competence to perform tasks entails granting it a legal personality (in private and public law). Each local self-government unit creates a corporation; that is, an association of people whose purpose is to carry out common tasks (Skoczylas & Piątek, 2016). On the one hand, having a legal personality allows such a corporation to be a party to civil law relations. On the other, it highlights its self-reliance and separateness from state authorities and allows it to use administrative power in when performing public tasks (Sidorowska-Ciesielska, 2018).

Delegating tasks cannot come down only to burdening local self-government with more and more duties (Niewiadomski, 2002, 7). Local self-government units must be viably prepared for performing such tasks, both organizationally and financially. Therefore, an extremely important element of decentralization is proper material security of local self-government units. Local self-government corporations must be equipped with assets, and it must also be possible for them to receive funds. Without these attributes, local self-government cannot be said to be self-reliant.

Self-reliance of local self-government units

Local self-government units are guaranteed self-reliance by the Constitution of the Republic of Poland. The separateness from the state, both in functional and institutional terms, is a constitutional feature of local self-government.¹⁸ Self-reliance within decentralization can be expressed in the words of J. Panejko, according to whom “this self-reliance consists of the fact that bodies (...) are not obliged to obey orders coming from central authorities and do not have to report to them. However, under the general legal order, they are obliged to comply with the laws and in this respect they are subject to supervision by government authorities” (Panejko, 1926, 95). Self-reliance means that these structures of public power must be situated separately from other bodies and institutions, in other words, local self-government is separated from government administration as well as other bodies entrusted by the legislator with performing public tasks. The self-reliance of local self-government units also affects their legal position in private law. As noted by A. Doliwa, “the essence of the self-reliance of local self-government units is expressed by the constitutional principle that they carry out public tasks entrusted to them by the law in their own name and under their own responsibility, while in the area of civil law, the gmina’s autonomy as a legal person involves ownership and other property rights” (Doliwa, 2012). The discussed self-reliance manifests itself not only as a freedom to perform public tasks. Its important elements include legislative as well as financial and property self-reliance (cf. Sidorowska-Ciesielska, 2018). Self-reliance is an immanent feature of

¹⁸ It results, among others, from Art. 16 Paragraph 2 sentence 2 and Art. 163 of the Constitution of the Republic of Poland.

decentralized local self-government¹⁹ structures – it is their basic attribute. For this reason, it is subject to judicial protection.²⁰

The self-reliance of local self-government units ensures freedom in performing public tasks. Local self-government corporations independently carry out their tasks, expressing the residents' will. However, it should be emphasized that the activities of local self-government must be carried out on the basis and within the boundaries of the law. It is stressed in the science of administrative law that self-reliance is synonymous neither with anarchy nor with autonomy. "Self-reliance is something positive as a self-government-forming factor, but anarchy and free unrestricted choices are considered something negative" (Skoczylas & Piątek, 2016). Individual local self-government units are also not autonomous, due to the fact that the provisions they produce "need a statutory basis to be legal". As the Constitutional Tribunal emphasizes, classifying a specific task as an "own" one does not mean that a local self-government unit has unlimited autonomy in determining the principles, forms and financing of this task's implementation, as the above-mentioned Article 16 Paragraph 2 of the Constitution of the Republic of Poland sets the statutory framework within which it may operate.²¹ As A. Sidorowska-Ciesielska points out, "due to the fact that local self-government exists by the state's will, the public power exercised by it cannot be opposed to the power of government administration, both central and local" (Sidorowska-Ciesielska, 2018). Self-reliance therefore does not mean autonomy, but independence, which is an attribute of a decentralized system (Wiktorowska, 2009, 147).

The self-reliance of the bodies of local self-government units is therefore not total. As indicated above, the authorities of gminas, powiats and voivodeships are obliged to act on the basis and within the limits of the law. It is the state's duty to make sure this condition is met through supervision exercised by its authorized bodies. However, in accordance with the Constitution and statutory regulations on local self-government, any interference by state authorities in the performance of local self-government tasks should be limited to supervisory procedures based solely on the criterion of legality (cf. Żelasko-Makowska, 2018a). Such a solution fully correlates with the principle of decentralisation, but respects the principle of relative self-reliance. The supervision may be exercised only in the form provided for in statutory acts, and the provisions on supervision must not be interpreted broadly. As emphasized by the Constitutional Tribunal, any interference in the self-reliance of local self-government units should be based on the principle of proportionality.²²

Territory of a local self-government unit

Decentralization implies the need to legally resolve the issues related to the territory and/or territorial jurisdiction of a given entity, which is necessary to perform administrative tasks better. Pursuant to Article 15 Paragraph 2 of the Constitution of the Republic of Poland, the basic territorial division of the state is to be determined in such a way so as to ensure that territorial units are able to perform public tasks. Several conclusions can be drawn from the wording of this

¹⁹ Self-reliance is considered a *sine qua non* condition for decentralization – e.g. Wiktorowska (2002, 55).

²⁰ Cf. Art. 165 Par. 2 of the Constitution of the Republic of Poland, as well as the provisions of local self-government acts, respectively: Art. 2 Par. 3 of the Act on gmina self-government, Art. 2 Par. 3 of the Act on powiat self-government, Art. 6 Par. 3 of the Act on voivodeship self-government.

²¹ Judgment of the Constitutional Tribunal of 28 November 2013, [K 17/12](#), OTK Series A 2013, No. 8, item 125.

²² Judgment of the Constitutional Tribunal of 2007.

provision. First, the system of local self-government is only partially stipulated in the Constitution. A considerable number of issues relating to the system and its functions is provided for in statutory regulations. The Sejm of the Republic of Poland is therefore the authority competent to create a specific “system” and, above all, to determine the entities forming the system (local self-government units) and their organizational ties (Grzybowska & Grzybowski, 2020, 245–246). Second, the constitutional legislator gives the statutory legislator free rein to resolve the issues relating to the structure of local self-government units, only deciding that gmina should remain its basic unit.²³ Finally, the structure of local self-government should depend on the type of tasks entrusted to its individual levels. When defining the tasks and competences of the bodies of local self-government units, the legislator should not only carefully balance national and local interests, but also separate the competences of individual levels of local self-government and government administration.

The territorial division is not a permanent structure. It should be adapted to demographic changes, state policy objectives, and economic and cultural conditions (Tuleja, 2019). However, the Constitution orders that any act defining or changing the basic territorial division of the state²⁴ shall take social, economic and cultural ties into account.²⁵ Therefore, any interference in the shape of local self-government and the existing social relations cannot be arbitrary or haphazard (Skoczylas & Piątek, 2016). “The legislator must not create local self-government units arbitrarily, without taking social, economic or cultural ties connecting the inhabitants of a given territory into account (Article 15 Paragraph 2 of the Constitution). Therefore, they also have the right to remain undisturbed in the existing territorial and political structures if they accept them, as they respect the fully-developed (usually in the long term) ties between inhabitants (...) The fact that self-government is a legal institution cannot completely obscure and ignore the existence of natural, historical, economic and cultural ties that determine the fact that inhabitants of a given territory feel and are considered a political and territorial community to a higher degree than others. Thus, the very existence of these ties is of decisive importance when assessing the cohesion of such a community, its self-awareness, and the ability to formulate its own collective tasks and public goals. These ties undoubtedly affect the local political activity of inhabitants. Respecting and nurturing the existing ties is the responsibility of all public authorities and bodies in the state, because they serve the development of democracy and promote active social attitudes”.²⁶

Self-government community

Decentralization of public power means respecting local self-government communities. As Professor Grzybowski notes, the provision of Article 16 Paragraph 1 of the Constitution of the Republic of Poland emphasizes the personal substrate of local self-government communities,

²³ Cf. Art. 164 Par. 1 of the Constitution of the Republic of Poland.

²⁴ “The territorial division is the permanent dismemberment of a state’s area made for a certain group or specific administrative units of the state or non-state units, [...] performing state tasks” (Leoński, 2001, 107). Another definition is given by M. Chmaj, according to whom “the territorial division is a relatively permanent territorial dismemberment of a state carried out for public administration reasons and assigning an entire territorial unit to its competent administrative body” (Chmaj, 2004, 144).

²⁵ Cf. Art. 15 Par. 2 of the Constitution of the Republic of Poland.

²⁶ Judgment of the Constitutional Tribunal of 26 February 2003, [K 30/02](#), OTK Series A 2003, No. 2, item 16.

which means that the basic territorial division, in the “geographical” sense, is a determinant of the range of individual local self-government communities (Grzybowska & Grzybowski, 2020, 249). As follows from the above, one of the main objectives of decentralization, in addition to the distribution of tasks and competences between state and local authorities, is to build a civil society. The role of the community is to stimulate the willingness and ability to manage one’s own affairs. Therefore, in accordance with the principle of decentralization of public power, local self-government communities are created (*ex lege*) in territorially separate units, together with local self-government bodies and institutions. According to W. Kisiel, the interest of local self-government communities in a broader aspect serves as a method of determining the values to be taken care of by local self-government administration (Chmielnicki, 2013, 35). The Constitution of the Republic of Poland requires that there be two types of bodies in each local self-government community: decision-making bodies, which generally determine the form of exercising their statutory powers, and executive bodies. However, this does not mean the separation of powers is to be decentralized. Considering the decisions of the Constitutional Tribunal, it²⁷ should be assumed that the separation of powers only affects the supreme organs of Poland and does not refer to the characteristics of the bodies of self-government communities. Not being under the influence of the separation of powers principle, both types of local self-government bodies display – as the Constitutional Tribunal has put it – only an indirect relationship with the executive power. As a consequence, the functioning of these two types of self-government bodies means that neither statutory acts nor communities themselves can establish any further bodies as community bodies, authorized to decide on their behalf on the implementation of their tasks and the shape of this implementation (cf. Sarnecki, 2002). To summarize, decentralization implemented by means of local self-government not only has a functional but also a structural aspect. The state, as an entity of public power, is obliged to respect the competences of other entities of such power, namely local self-government units (Nowacka, 2003, 63).

Conclusions

Local self-government was restored in Poland in 1990. At that time, the basic local self-government unit, the *gmina*, was established. Further administrative reforms took place on 1 January 1999. Since that day local self-government has been functioning at three levels: *gmina*, *powiat* and *voivodeship*. The restoration of the dualistic model of local public administration, consisting of a government part (based on the principle of centralism) and a self-government part (drawing from the principles of decentralization and subsidiarity) (Korczak, 2012, 191), was fuelled by the desire to build a new state, restore sovereignty and change the system to a democratic one. This is undoubtedly one of the most important achievements of the Third Polish Republic.

Changes and amendments to local self-government acts are carried out on an ongoing basis. They are caused by various factors including economic, social and political ones. Unfortunately, if such changes are influenced by the last of these factors, their implementation often results in a distortion of the idea of decentralization. For instance, such is the case when determining the borders of local self-government units. Contrary to appearances, the procedure of changing the borders of individual local self-government units is carried out very often. In accordance

²⁷ Judgment of the Constitutional Tribunal of 23 October 1995, [K 4/95](#), OTK 1995, No. 2, item 11.

with the provisions of the Act on gmina²⁸ self-government, the Council of Ministers, by way of regulation, creates, merges, divides and abolishes gminas and determines their borders, grants them the city status and determines the new city's borders, and also determines and changes the names of gminas and the seat of their authorities.²⁹ This means that such an extremely important element as the gmina's³⁰ territory is determined at the sub-statutory level.³¹ Perhaps this would not be a problem if it were not for the fact that border changes, especially those of gminas, are often disputed by the local self-government units concerned. Such disputes should not be settled by government executive bodies, as they are politicized by nature. The problem deepened when the Constitutional Tribunal issued its decision of 8 February 2017,³² which said that "a regulation on determining or changing the borders of a local self-government unit is not normative and does not fall into the category specified in Article 188 Paragraph 3 of the Constitution". The fact that this kind of regulation indirectly affects the legal situation does not mean that rules of general and abstract procedure can be inferred from it. As such, the Tribunal found itself lacking incompetence to assess such a regulation in terms of the hierarchy of legal acts. As a result, the local self-government unit facing a loss of territory is only a passive participant in the proceedings, and its role boils down to expressing an opinion (cf. Żelasko-Makowska, 2018b). This in turn calls into question the correctness of the implementation of the decentralization of public power in the model form stipulated in the Constitution of the Republic of Poland.

Numerous doubts raised by administrative law specialists concern the distribution of tasks between individual levels of local self-government and, in particular, the method of financing their operations. It is indicated that the violation of self-reliance occurs in the case of educational tasks. It is emphasized that local self-government units receive an educational part of the general subsidy from the state budget to perform such tasks, but it does not cover the full costs generated by operating schools. In addition, local self-government units have no influence on teachers' wages, their working hours, or the school's work system (cf. Ostrowska, 2020). Similar doubts arise when local self-government units (mainly powiats and voivodeships) have to perform tasks relating to health protection while its financing system remains centralized (health protection is financed from the National Health Fund and the state budget). Undoubtedly, these are only examples of reservations about the method of financing tasks assigned to local self-government (Ostrowska, 2020).

²⁸ Similar provisions can be found in the Act on powiat self-government (Art. 3 Par. 1 of the Act on powiat self-government). The borders of voivodeships were created by virtue of the Act of 24 July 1998 on the implementation of a three-degree territorial division of the state (Journal of Laws No. 96, item 603, as amended). This Act provides for the corrections of voivodeships' borders but only resulting from creating, merging, dividing and abolishing powiats (Art. 5 a). The provisions on changing the borders of gminas have been amended many times, which may suggest that the legislator is aware of problems in this area and tries to solve them. Unfortunately, the core of these provisions, pertaining to the competence of the Council of Ministers to issue regulations on changes to gminas' or powiats' borders, remained intact.

²⁹ Cf. Art. 4 Paragraph 1 of the Act on gmina self-government.

³⁰ It should be borne in mind that a gmina is composed not only of a community but also a precisely defined territory (Art. 1 Paragraph 2 of the Act on gmina self-government).

³¹ According to J. Szlachetko, the decentralization of public power should occur by way of statutory acts – it is only a statutory norm that can protect the entities of decentralized administration, including local self-government units, against excessive interference of government administration bodies.–Cf. Szlachetko (2018).

³² File ref. no. U 2/16, OTK ZU Series A 2017, item 4.

Polish democracy is still young and subject to continuous evolution. It is therefore vital to keep fostering and improving it. This cannot be achieved without building a civil society and implementing, as fully as possible, the principles of decentralization and subsidiarity. These principles are one of the foundations of a democratic rule of law.

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