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## Strengths and Weaknesses of Polish Local Government: Basic Considerations

### Abstract

This article presents both the strengths and weaknesses of the Polish local government structure from a dogmatic and an empirical perspective. On the whole, the establishment of a three-tier local government structure in Poland in 1990 should be assessed positively. This local government is based on constitutional regulation, which sets out the basic principles of its functioning and securing its independence. In a unitary state, the role of local government is reduced to adapting public tasks to local conditions, needs and opportunities. Social participation plays an important role in strengthening local government communities. A weakness of the Polish local government is, however, its insufficient financial independence.

**Keywords:** local government, unitarity, financial independence, social participation, supervision, judicial control, constitutional principles.

### Abstract Deutsch

In diesem Artikel werden Stärken und Schwächen der Struktur der polnischen Kommunalverwaltung aus einer dogmatischen und empirischen Perspektive dargestellt. Im Großen und Ganzen ist die Einrichtung einer dreistufigen Struktur Kommunalverwaltung in Polen im Jahr 1990 positiv zu bewerten. Diese Kommunalverwaltung basiert auf einer verfassungsrechtlichen Regelung, die Grundprinzipien der kommunalen Selbstverwaltung und die Sicherung ihrer Unabhängigkeit festlegt. In einem Einheitsstaat beschränkt sich die Rolle der Kommunalverwaltung auf die Anpassung der öffentlichen Aufgaben an die lokalen Bedingungen, Bedürfnisse und Möglichkeiten. Die gesellschaftliche Beteiligung spielt eine wichtige Rolle bei der Stärkung der lokalen Gebietskörperschaften. Eine Schwäche der polnischen Kommunalverwaltung ist ihre unzureichende finanzielle Unabhängigkeit.

**Keywords Deutsch:** kommunale Selbstverwaltung, Einheitsstaat, finanzielle Unabhängigkeit, soziale Partizipation, Aufsicht, gerichtliche Kontrolle, Verfassungsgrundsätze.

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## I. Introduction

Local government in Poland was reborn in 1990 at the level of municipalities,<sup>1</sup> and in 1999 at the level of counties (districts) and regions (voivodeships).<sup>2</sup> The creation of a local government is treated as one of the best implemented reforms, in which the benefits far outweigh the disadvantages.<sup>3</sup> In this regards, the preparation and adoption of a new law on local government within a few months of breakthrough of 1989 and 1990 should be counted among the great successes of the Polish political authorities of the time.

The aim of this article is to present both the strengths and weaknesses of the local government structure in Poland. As this subject is extensive, only the basic issues will be analysed from a dogmatic and an empirical perspective. This will make it possible to assess the accuracy of the thesis about the definite predominance of the benefits of local government reforms. The article begins with an overview of the regulation of local government at constitutional level (II.) before turning to a European perspective (III.). Part IV. analyses one of the key weaknesses, namely financing, thereafter assessing the advantages in depth (V., VI.). Conclusions are drawn in Part VII.

## II. Constitutional regulation of local government

One of the strengths of Polish local government is its regulation in the Constitution of the Republic of Poland.<sup>4</sup> The Constitution contains a number of provisions defining not only the position of local government in the structure of the state, but also the basic principles governing its activities.<sup>5</sup> According to Articles 3 and 15 of the Constitution, Poland is a unitary state, and local government is a form of decentralization of public power understood as participation in the exercise of executive power.<sup>6</sup>

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- 1 Act of 8 March 1990 on Territorial Self-Government (Journal of Laws of 2023, item 40, as amended). From 1 January 1999 called the Act of Community Self-Government, hereinafter: A.Gov.Com.
  - 2 Act of 5 June 1998 on District Self-Government (Journal of Laws 2024, item 107) hereinafter: A.Gov.Distr. and Act of 5 June 1998 r. on Voivodeship Self-Government (Journal of Laws 2022, item 2094, as amended) hereinafter: A.Gov.Reg.; both Acts entered into force on 1 January 1999.
  - 3 Z. *Niewiadomski*, Samorząd terytorialny RP w świetle 30 lat doświadczeń (spojrzenie z perspektywy regulacji prawnej), Samorząd Terytorialny 4|2020, p. 27; P. *Swianiewicz*, Samorząd jako część państwa i samorząd jako wspólnota obywateli – ile spójności, ile autonomii?, in: 25 lat odrodzonego samorządu w Polsce – osiągnięcia, porażki i zadania na przyszłość, Warsaw 2014, p. 23.
  - 4 The Constitution of The Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, item 571, as amended), hereinafter: the Constitution.
  - 5 H. *Izdebski*, Konstytucyjny model samorządu terytorialnego, Państwo i Prawo 2022, pp. 276-291; I. *Skrzydło-Niżnik*, Model ustroju samorządu terytorialnego w Polsce na tle zagadnień ustrojowego prawa administracyjnego, Krakow 2007, pp. 289-324.
  - 6 J.P. *Tarno*, Pojęcie i istota samorządu terytorialnego, in: J.P. Tarno et al. (eds.), Samorząd terytorialny w Polsce, 2nd ed., Warsaw 2004, p. 26; B. *Dolnicki*, Samorząd terytorialny, 3rd ed., Krakow 2006, p. 30.

Article 16 (2) of the Constitution is of fundamental importance. According to this provision, the substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility. This provision applies not only to “the substantial part of public duties”, but to all tasks of local government. Local government bodies do not have the competence to create their own public tasks, which results directly from the second sentence of Article 16 (2), according to which local government shall participate only in the exercise of public power.<sup>7</sup>

The lack of participation of Polish local government in the creation of public tasks is inscribed in the constitutional position of government in a unitary state, in which the tasks of local government are created only at the level of acts of the Parliament.<sup>8</sup> Some representatives of the doctrine see such a restriction as a weakness of the local government, which should be able to achieve far-reaching independence in creating non-authoritative forms of performing public tasks.<sup>9</sup> This view has not been confirmed by the courts.<sup>10</sup>

The Constitution additionally regulates local government in a separate chapter (Chapter VII titled “Local government”, which consists of ten separate provisions: Articles 163-172). These provisions, while regulating the basic principles, at the same time protect local government against excessive interference in its functioning by the legislator and government administration, which include: the principle of decentralisation (Articles 15-16), the principle of subsidiarity (in the preamble of the Constitution), the principle of division of tasks (Articles 163-164), the principle of autonomy (Article 165), the principle of only criterion of legality of supervision on government (Article 171), and the principle of financing public tasks performed by government authority (Article 167). These are not all the constitutional principles that protect local government. It is rightly argued in the doctrine that such a broad constitutional regulation protects local government from the risk of its limitation and reduction to a facade.<sup>11</sup> The constitutional principles of local government allowed the Constitutional Tribunal (hereinafter: CT) as well as administrative courts to repeal or interpret pro-constitutional provisions in the way of protecting local government itself.<sup>12</sup>

7 *K. Bandarzewski*, Samorząd terytorialny - kierunek czy kierunki zmian?, in: M. Ćwiklicki (ed.), *Sprawne państwo. Systemowe zmiany w funkcjonowaniu polskiego samorządu terytorialnego*, Krakow 2015, p. 82.

8 *D. Dąbek*, *Prawo miejscowe*, 3rd ed., Warsaw 2020, pp. 72-73; *P. Tuleja*, Zасаda wyłączości ustawy a zakres swobody prawodawczej gminy, in: A. Bisztyga/A. Chodokowska/A. Feja-Paszkievicz (eds.), *Prawo samorządu terytorialnego. Doświadczenia, wyzwania i perspektywy*, Zielona Góra 2019, p. 131.

9 *H. Izdebski*, Art. 3 Komentarz do Konstytucji RP, Warsaw 2021, pp. 132-133.

10 The judgment of the Supreme Administrative Court (hereinafter: NSA) of 3 October 2018 II OSK 2223/18, LEX No. 2580926.

11 *Niewiadomski*, fn. 3, p. 22.

12 CT judgment of 6 April 2016, P 5/14, OTK-A 2016/15; NSA judgment of 7 December 2018 II OSK 2643/18, LEX No. 2609706.

### III. Respect for the fundamental principles of the European Charter of Local Government

In 1994, Poland introduced the European Charter of Local Government<sup>13</sup> (ECLSG) into the Polish legal system without any restrictions. Despite the formal introduction of the ECLSG into the Polish legal system, some of its provisions are not properly respected. For instance, according to Article 4 (4) ECLSG, the delegation of competences to local communities should be full and complete, but in particular in the field of social assistance and education, these conditions are not met, because the wide range of regulations issued on the basis of delegations contained in laws limits the competences of local governments to such an extent that it is difficult to speak of independence and their own solutions.<sup>14</sup> According to Article 6 (1) ECLSG, in principle, local and regional authorities should be able to determine their own internal administrative structure, setting up bodies tailored to specific needs and enabling effective management. However, a significant part of local government administrative structures is obligatory, which significantly limits the freedom to shape them.<sup>15</sup> The main objection to non-compliance with the ECLSG concerns the principles of financing local government, which will be discussed in the next part of this article. At this point, it is only necessary to point out that, under Article 9 (1) ECLSG, local authorities have the right to have sufficient financial resources of their own, which they are free to dispose of in the exercise of their powers. The CT has repeatedly pointed out that Article 9 ECLSG does not constitute a separate standard of review, because this provision has its equivalent in Article 167 of the Polish Constitution.<sup>16</sup>

### IV. Financing

A clear weakness of the Polish government is the rules of its financing. According to Article 167 (2) of the Constitution, the revenues of units of local government consist of their own revenues, as well as general subsidies and specific grants from the State Budget. Government's revenues should be of fundamental importance, especially in the performance of the government's own tasks. The table below shows structure of budget revenues of government units (hereinafter: LGU) for the years 2014-2022.<sup>17</sup>

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- 13 The European Charter of Local Self-Government opened for signature by the member States of the Council of Europe on 15 October 1985 and entered into force on 9 September 1988. Poland ratified the European Charter of Local Self-Government in 1993 (Journal of Laws of 1994, No. 124, item 607, with corrigendum).
- 14 *M. Weber*, Skargi na związane ręce, Rzeczpospolita 132|2014, p. C7.
- 15 *W. Kisiel*, Prawo samorządu terytorialnego w Polsce, Warsaw 2006, pp. 137-143.
- 16 CT judgment of 26 September 2013, K 22/12, OTK-A 2013/7/95.
- 17 *M. Wójcik*, Finanse jednostek samorządu terytorialnego przed i w pandemii covid-19, in: *K. Kwiatkowski/W. Tyszkiewicz/M. Wójcik*, Raport. Finanse samorządów terytorialnych po pandemii. Od kryzysu i rozwoju, Warsaw 2021, p. 18; own study based on statistical analyses Central Statistical Office in Poland for the years 2015-2022.

Source of income of local government	Share in total income								
	2014	2015	2016	2017	2018	2019	2020	2021	2022
Own income PIT+CIT as a part of own income	50.7% 42%	52% 43.5%	49.9% 43.5%	49.3% 47%	49.2% 48%	48.7% 49%	48% 45%	47.6% 48%	51% 52.7%
Target grants (dotation on states' tasks)	22.9%	22.2%	25.2%	27.1%	28.4%	29.1%	30%	27.7%	23%
Grants total (general subsidy)	26.4%	25.8%	24.8%	23.6%	22.4%	22.2%	22%	24.7%	22%
Total income Approx. % share in total income of the Polish government unions from the EU funds <sup>18</sup>	100% 9.3%	100% 7.3%	100% 3.1%	100% 3.5%	100% 6.3%	100% 6%	100% 6%	100% 4.4%	100% 4.5%

Based on the presented data, it can be assumed that, as a rule, approx. 25% of revenues, and only at the level of communes, constitute the LGU actual own revenues. The remaining revenues, including revenues from personal income tax (PIT) and corporate income tax (CIT), have only been referred to as “local government’s own revenues”, but in fact they are state revenues subject to redistribution to local governments.

Pursuant to Article 167 (1) of the Constitution, LGU shall be assured public funds adequate for the performance of the duties assigned to them. The principle of adequate financing of own’s public tasks, covered by this provision, is, however, the greatest weakness.<sup>19</sup>

The principle resulting from the above-mentioned provision leads to a limitation of the financial possibilities of the local government’s activities: adequate financing does not mean full financing.<sup>20</sup> In a unitary state, where the scope of public tasks of the local government depends only on the legislator, the sources of financing public tasks are also determined by the legislator. This follows directly from Article 169 (3) and (4) of the Constitution, according to which it is the legislator who indicates the sources of financing the tasks of the local government, and not the local government itself that is to seek these sources.

The sources of financing the local government’s own tasks, which were repeatedly indicated, turned out not to fully cover the expenses for the performance of the tasks in question. The constitutional principle of adequacy of financing the government’s

18 Bank PKO, *Finanse JST Raport Roczny 2022*, Warsaw 2023, p. 4.

19 Z. Niewiadomski, *Samorząd terytorialny*, in: R. Hauser/Z. Niewiadomski/A. Wróbel (eds.), *System Prawa Administracyjnego*, Tom 6, Warsaw 2011, pp. 167-170.

20 P. Czarny, *Komentarz do art. 167*, in: P. Tuleja (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd ed., Warsaw 2023, pp. 552-553; CT judgment of 16 July 2013 K 13/10, OTK-A 2013/6/77.

own tasks should indicate that these funds are to ensure the necessary level of expenditure for the performance of a given task.<sup>21</sup> However, they do not have to fully cover all expenses resulting from the implementation of a given task, because local government bodies have both the freedom to allocate funds for the implementation of specific tasks at the expense of others, and they can also adjust the level of tasks performed to the possibilities and local needs.<sup>22</sup> In Poland, it is assumed that a necessary condition for the financial independence of a local government is that it disposes of its own revenues.<sup>23</sup>

One of the important sources of financing the local government's own tasks is the share in state (and not self-government) taxes. According to Article 4 (2) A. Rev.,<sup>24</sup> municipalities receive 39.34 % of PIT revenues from taxpayers residing in the municipality. At the next level, the county receives 10.25% PIT from taxpayers of this tax residing in the district (Article 5(2) A. Rev.). The level of the governing region (voivodship) receives 1.60% of PIT revenues from taxpayers residing in the voivodeship (Art. 6 (2) A. Rev.).

An important source of local government revenues are general subsidies from the State Budget. As shown in the above table, they amount to approximately 1/3 of the total revenues of local governments over the last dozen or so years. However, local governments not only receive such subsidies from the State Budget, but they are also obliged to subsidise other local governments. Such a subsidy is equalisation payments of municipalities. Pursuant to Art. 29 (1) A. Rev., municipalities, in which the rate of tax revenue per capita is less than 92% of the rate of tax revenue for all municipalities, make contributions to the state budget, intended for the balancing part of the general subsidy for poorer municipalities.

Therefore, the richer municipality must transfer part of the funds to the State Budget, which is then transferred to poorer communes. For example, in 2022, 4.5% of municipalities, 15% of districts and one voivodeship were obliged to pay amounts for the equalisation subsidy. These units paid a total of approximately PLN 3.4 billion, which although constitutes a small percentage of the local government's total revenues, was still treated as the state stealing from richer and more resourceful LGU.

In 2021, the expenditure of local governments on the example of municipalities was as follows: over 64% of all expenses were devoted to educational tasks, 18% to administrative maintenance costs and 6% to social assistance tasks.<sup>25</sup> In the field of educational tasks financed by subsidies from the state budget, some local governments contribute approximately 50% of the costs of performing these tasks.<sup>26</sup> To carry

21 *B. Banaszak*, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, wyd. 2, Warsaw 2012, p. 848.

22 CT judgment of 28 February 2008 K 43/07, OTK-A 2008/1/8.

23 *W. Miemiec*, *Transfery środków penitence pomiędzy budżetem państwa a budżetami jednostek samorządu terytorialnego - wybrane aspekty*, *Finanse Komunalne* 1-2|2010, p. 52.

24 Act of 13 November 2003 on the Revenue of Local Government Units (consolidated text, *Journal of Laws* 2024, item 356), hereinafter: A. Rev.

25 *Rada Ministrów*, *Sprawozdanie z wykonania budżetu państwa za okres od 1 stycznia do 31 grudnia 2021 r. Informacja o wykonaniu budżetów jednostek samorządu terytorialnego*, Warsaw 2022, p. 73.

26 Najwyższa Izba Kontroli, *Finansowanie zadań oświatowych realizowanych przez jednostki samorządu terytorialnego. Informacja o wynikach kontroli, 2022*, Warsaw, p. 7.

out such a task, local governments must limit expenditure on other tasks or go into debt.

## V. Participating society

The strengths of Polish local government include the existence of civil society institutions aimed at cooperation in the performance of public tasks by local government administration, but also exercising social control over the activities of local government bodies or transmitting information from residents to local government bodies and administration. They are also a form of empowerment of local government communities, regardless of the subjectivity of government unions.<sup>27</sup> The basic institutions of civil society are presented in the following.

### 1. Non-governmental organisations

A non-governmental organisation (NGO) has the right to participate in the performance of almost all public tasks carried out by local government.<sup>28</sup> Constitutive bodies are obliged to adopt annual cooperation programs with NGOs,<sup>29</sup> in which they must specify, inter alia: principles of cooperation, priority public tasks to be performed by NGOs, forms of cooperation, principles of selecting NGOs.

The NGO is selected after conducting an open competition and concluding an appropriate agreement. The forms of cooperation between NGOs are quite extensive. Especially, they include: (i) commissioning NGOs to perform public tasks, which may be implemented both in the form of entrusting the performance of public tasks, along with granting subsidies to finance their implementation or supporting the performance of public tasks, together with granting subsidies to co-finance their implementation; (ii) consulting with NGOs on draft normative acts in areas relating to the statutory activities of these organisations; (iii) concluding contracts for the implementation of local initiatives and partnership agreements for the implementation of public tasks.<sup>30</sup> NGOs themselves may apply to the executive body of a LGU for the implementation of a public task, including one that is already implemented by public administration bodies.<sup>31</sup> The participation of NGOs in the performance of public tasks is quite wide.<sup>32</sup>

27 *K. Bandarzewski*, O podmiotowości wspólnot samorządowych, in: M. Stec/K. Małysa-Sulińska (eds.), *Podmiotowość samorządu terytorialnego- ustrojowe pytania i dylematy*, Warsaw 2020, pp. 69-92.

28 Article 3(1-2), Article 4, Articles 5-5b Act of 24 April 2003 on Public Benefit Activities and Volunteering (consolidated text, Journal of Laws 2023, item 571) hereinafter: Law of NGOs.

29 Article 5a (1) Law of NGOs.

30 Article 5 Law of NGOs.

31 Article 5 Law of NGOs.

32 In Poland, over 70,000 NGOs were active in 2020, approx. 83% of which cooperated with local governments, in particular in the field of education and upbringing, culture and art, social services and social assistance, and health care: *B. Charycka/M. Gumkowska/J.*

## 2. Auxiliary units of municipalities

The lowest level of local government (communes) may be divided into auxiliary units called village councils (in rural communes) and estates and districts (in urban municipalities). This division is generally optional and most often results from historical conditions, sometimes even dating back to the Middle Ages. The auxiliary unit aims to: (i) transfer opinions and ideas from the smallest societies to governed authorities; (ii) cooperate in exercising local public tasks; (iii) transfer some tasks to these auxiliary units (according to subsidiary principle) and; (iv) protect against public strikes, turmoil, etc.<sup>33</sup>

The municipality council determines the tasks of the auxiliary unit, the scope of its participation in the performance of public tasks, the principles of election to the bodies of such units and the scope of control and supervision over them. In this way, the methods of performing tasks are adapted to local needs and eliminate local disputes by enabling their articulation by the bodies of auxiliary units.<sup>34</sup> The ability to operate such units is a strong point of the Polish municipalities. There are over 40,000 such units in Poland, which means that statistically there are over 16 such units in each municipality.

## 3. Participatory budgeting

Participatory budgeting is an important instrument of civil society.<sup>35</sup> Although the regulation of this institution appeared only in 2018, it has been used since 2011, first in Sopot.<sup>36</sup> The idea of participatory budgeting, whereby residents themselves have a say in how public funds are spent, is respected in the Polish legal system. By introducing the institution of this budget into law, the legislator recognised that the participatory budget itself is a form of social consultations.<sup>37</sup> This, on the one hand, weakens the participatory budget, because residents only have the legally guaranteed right to express their position (give opinions), but on the other hand, constitutive bodies can grant residents more rights, up to and including deciding on how to spend this part of the budget.

Another strong point is the obligation for each constitutive body at each level of local government to adopt resolutions regulating the formal requirements for submitted projects, the required number of signatures of residents supporting the project (no more than 0.1% of the residents of the area covered by the civic budget pool);

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*Bednarek*, 2021. *Kondycja organizacji pozarządowych – najważniejsze fakty*, Warsaw 2022, pp. 5-13.

33 Article 5, Article 35 A.Gov.Com.

34 *M. Mączyński*, Rola i miejsce jednostek pomocniczych gmin w społeczeństwie obywatelskim, in: *K. Bandarzewski et al.*, *Jednostki pomocnicze gmin*, Krakow 2002, p. 36.

35 *A. Opaliński*, Partycypacja społeczna wyzwaniem dla samorządu. Zalety i wady budżetów obywatelskich, in: *A. Biszyga/A. Chodokowska/A. Feja-Paszkiwicz* (eds.), *Prawo samorządu terytorialnego. Doświadczenia, wyzwania i perspektywy*, Zielona Góra 2019, pp. 281-295.

36 [https://pl.wikipedia.org/wiki/Bud%C5%BCet\\_partycypacyjny](https://pl.wikipedia.org/wiki/Bud%C5%BCet_partycypacyjny), 20 January 2024.

37 Article 5a (3) A.Gov.Com.

rules for assessing submitted projects as to their compliance with the law, compliance with formal requirements, etc.<sup>38</sup> The tasks selected under the participatory budget are included in the LGU budget resolution and the body constituting in the course of work on the draft budget resolution may not remove or change significantly the tasks selected under the participatory budget.<sup>39</sup> Thus, in each unit constitutive bodies are obliged to adopt rules regarding participatory budgets, and it is the residents themselves who decide whether they will use these rules. The only exception concerns cities with county rights. The authorities of such cities (which are municipalities) additionally exercise the powers of district authorities and manage the district government administration. There are 66 such municipalities in Poland and these are the largest cities. In the case of cities with county rights, the creation of a participatory budget is mandatory, and the amount of this budget is at least 0.5% of the commune's expenditure included in the last submitted report on budget implementation.<sup>40</sup>

#### 4. Village budget (village fund)

Village budgets are a very special way of encouraging residents of auxiliary units operating under the name of 'village community' to engage in civic activity.<sup>41</sup> The municipality council may adopt a resolution allowing a part of the municipality budget to be named as the village fund. On this basis, the commune head provides village heads with information about the proposed amount of funds in the municipality budget constituting the village fund. After receiving this information, village heads will convene a village meeting at which residents will decide which public tasks performed by the commune are to be financed from this fund.<sup>42</sup> This indication is binding on the commune head, who must include these tasks in the municipality budget project. Apart from the undoubted benefit of empowering the inhabitants of the village, who instead of councillors and the mayor decide what tasks are to be performed from the village fund, an additional benefit is the financial support of those municipalities that use these funds. Expenditures made within the fund are subject to reimbursement from the state budget in the amount of 20% to 40% of the funds spent as a village fund.<sup>43</sup> Therefore, this is the only way to obtain additional funds from the state budget without earmarking them for specific public tasks. A controversial issue is the limitation of the rules for reimbursement of expenditure funds in this way only to those communes in which auxiliary units are called village councils. If, in a rural commune, auxiliary units have other names, such as housing estates, colonies, etc., this fund cannot be used.<sup>44</sup>

38 Article 5a (7) A.Gov.Com., Article 3d (6) A. Gov. Distr., Article 10a (6) A. Gov. Reg.

39 Article 5a (4) A.Gov.Com., Article 3d (4) A. Gov. Distr., Article 10a(4) A. Gov. Reg.

40 Article 5a (5) A.Gov.Com.

41 See Act of 21 February 2014 on the Village Fund (Journal of Laws of 2014 item 301).

42 Articles 3-5 Act on the Village Fund.

43 Detailed rules are specified in Art. 3(8) Act on the Village Fund. The amount of money paid depends on the size of the municipality's income in relation to the average income in the country.

44 The judgment of the Voivodship Administrative Court (hereinafter: WSA) in Poznan, 28 April 2010 II SA/Po 15/10, LEX No. 618681.

## 5. Legislative incentives from inhabitants

Since 2018, the legislator has regulated the rules for submitting draft resolutions by residents. Before this date, these rules could be determined voluntarily by the bodies constituting LGU, but they did so infrequently.<sup>45</sup> After this date, each constitutive body is obliged to define detailed rules for submitting citizens' initiatives, rules for establishing committees for legislative initiatives, promoting citizens' legislative initiatives, and formal requirements for submitted projects.<sup>46</sup> The minimum support provided by persons with active electoral rights (necessary for the effective submission of the project) and the obligation to submit the draft resolution submitted as part of the citizens' legislative initiative to the deliberations of the constitutive body no later than three months from the date of submission of the draft were determined in a uniform manner for each level of local government.<sup>47</sup>

## 6. Consultations

The right to participate in consultations is one of the basic rights for residents.<sup>48</sup> The legislator specifies several matters that are subject to mandatory consultations<sup>49</sup> and allows for optional consultations with residents in every important matter, but only at the request of local government bodies.<sup>50</sup> The legislator did not assign a more important role to consultations, and the prevailing view is that since consultations are not binding, it is sufficient to only seek the opinion of residents.<sup>51</sup> There are also opinions raised, although in a minority, according to which the results of consultations should always be taken into account: in this way the principle of adapting the performance of tasks to local needs is implemented.<sup>52</sup> In practice, consultations do not enjoy much public interest.<sup>53</sup>

45 *R. Marchaj*, in: B. Dolnicki (ed.), *Ustawa o samorządzie gminnym*, Warsaw 2018, pp. 683-685.

46 Article 41a(5) A.Gov.Com., Article 42a(5) A.Gov.Distr., Article 89a(5) A.Gov.Reg.

47 Article 41a (3) A.Gov.Com., Article 42a (3) A. Gov. Distr., Article 89a (3) A. Gov. Reg.; *B. Klucińska/D. Sześciło/ B. Wilk*, *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018 r., Samorząd Terytorialny 10/2010*, pp. 34-36.

48 *T. Moll*, *Konsultacje komunalne jako klasyczna forma partycypacji społecznej*, in: B. Dolnicki (ed.), *Partycypacja społeczna w samorządzie terytorialnym*, Warsaw 2014, pp. 244-258.

49 e.g., mandatory consultations are carried out in the event of the creation or liquidation of municipalities, changes in municipalities boundaries or the creation of auxiliary units.

50 Article 5a (1) A. Gov. Com.

51 *M. Chmaj*, *Referendum lokalne*, in: M. Chmaj (ed.), *Prawo samorządu terytorialnego*, Warsaw 2013, p. 72; NSA judgment of 13 December 2017 II OSK 564/17, LEX No. 2441376.

52 *R. Marchaj*, *Samorządowe konsultacje społeczne*, Warsaw 2016, p. 94; NSA judgment of 26 June 2020 II OSK 3930/19, LEX No. 3035537.

53 *K. Zajda*, *konsultacje społeczne a proces wdrażania innowacji społecznej*, *Samorząd Terytorialny 7-8/2018*, pp. 112-117.

## 7. Referendum

The referendum is an important right of residents and is specified in Article 170 of the Constitution. According to this provision, members of the local government community may decide by way of a referendum on matters relating to this community, including the dismissal of a directly elected local government body. Members of the local government community who have the right to vote in elections to community bodies have the right to participate in the referendum.<sup>54</sup> In fact, residents can express their views on any matter relating to a given community, not only those dealt with by local government bodies. Even if a given issue concerns residents, but is implemented by the government administration, residents still have the right to express their opinion through a referendum.<sup>55</sup> This is therefore a strong point of the local government system in Poland. The condition for the referendum to be valid is the participation of at least 30% of those entitled to vote, and in the case of a referendum on the dismissal of a body of a LGU resulting from direct elections – the participation of not less than 3/5 of the number of people taking part in the election of the recalled body.<sup>56</sup> The doctrine argues that the basic difference between a referendum and consultations concerns the binding result of the referendum. This statement is not fully justified. The referendum result is binding, but only for the local government body.<sup>57</sup> The government administration body is not bound by the result of a local referendum. The result of a binding referendum does not replace the local government body, but constitutes a binding goal for that body that must be achieved.

## 8. Auxiliary, consultative and advisory bodies

Residents' participation may take the form of participation in administration by creating various teams, groups, commissions, opinion-giving and advisory entities, etc.<sup>58</sup> Supporting, advisory or consultative bodies at local government levels can be divided into four basic groups. The first includes the internal bodies of constitutive bodies. Except for a few obligatory cases,<sup>59</sup> constitutive bodies have great freedom in creating them, although only a councillor can be a member of such a body (called a committee). The second group consists of opinion-giving and advisory bodies, which are obligatorily appointed by constitutive or executive bodies. This is not a very large

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54 Article 3 Act of 15 September 2000 on Local Referendum (consolidated text, Journal of Laws 2023, item 1317 as amended).

55 Article 2 (1) point 3 Act on Local Referendum: the judgment of the Constitutional Tribunal of 26 February 2003 K 30/02, OTK-A 2003/2/16.

56 Article 55 (1-2) Act on Local Referendum.

57 *E. Szalowska-Olejniczak*, Referendum lokalne w świetle ustawodawstwa polskiego, Warsaw 2002, p. 256.

58 *A. Gronkiewicz/A. Ziolkowska*, Komisje, zespoły, rady jako forma partycypacji obywateli w samorządzie terytorialnym, in: *B. Dolnicki* (ed.), Partycypacja społeczna w samorządzie terytorialnym, Warsaw 2014, pp. 280-304.

59 Each self-government unit must have an audit committee and a committee for complains, motion and petitions.

group, it includes: an interdisciplinary team (at the municipality level),<sup>60</sup> municipal commission for solving alcohol problems,<sup>61</sup> district security and order commission,<sup>62</sup> and the urban and architectural commission. The third group includes optional opinion-giving and advisory bodies appointed by constitutive bodies called the youth commission and the senior council.<sup>63</sup> The fourth group includes all other commissions or advisory bodies appointed by the executive bodies of local government units. to any extent and in any quantity, provided that the statute of a given local government unit includes the power to appoint them.<sup>64</sup>

## 9. Resident's complaint against a resolution or order of a local government body

The entitlement of every person, not only the resident of a LGU, should be assessed positively to appeal against a resolution or order of a local government body to an administrative court. This right is available to anyone whose legal interest has been violated by a given resolution or order.<sup>65</sup> The condition for exercising this right is for the complainant to demonstrate that a given act violated a person's right protected by law. This is therefore not a common complaint.<sup>66</sup> Nevertheless, this institution allows for control over the activities of local government bodies.

## VI. Protection and supervision of government unions

### 1. Court protection

The strength of the Polish local government is its full judicial protection against interference by any external authority in the activities of this local government. Each performance of a public task in the form appropriate to public law is covered by the protection of an administrative court and local government bodies have the right to file a complaint against the acts of such bodies.<sup>67</sup> This issue is related to the supervision criterion used by the administrative court when controlling the activities of local governments. This criterion is compliance with the law (legality).<sup>68</sup> This is extremely important from the point of view of local government protection as any activity that interferes with the functioning of local government must result from a

60 Article 9a Act of 29 July 2005 on Counteracting Domestic Violence (consolidated text, Journal of Laws 2021, item 1249 as amended).

61 Article 4<sup>1</sup>(3) Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism (consolidated text, Journal of Laws 2023, item 2151).

62 Articles 38a-38c A. Gov. Distr.

63 Articles 5b-5c A. Gov.Com., Articles 3e-3f A. Gov. Distr. and Articles 10b-10c A. Gov. Reg.

64 NSA judgment of 1 March 2022 III OSK 2738/21, LEX No. 3349510.

65 Article 101 (1) A. Gov. Com., Article 87(1) A. Gov. Distr., Articles 90-91 A. Gov. Reg.

66 *T. Szewc*, *Skarga powszechna w samorządzie terytorialnym*, Gliwice 2016, p. 325.

67 CT judgment of 29 October 2009 K 32/08, OTK-A 2009/9/139.

68 Article 1 § 2 Law of 25 July 2002 Law on the Organisation of Administrative Courts (consolidated text, Journal of Laws 2022 item 2492 as amended).

legal basis. It is not possible for bodies exercising supervisory powers to act based on expediency, reasonableness or compliance with government policy. Any such action will be subject to appeal, and the administrative court will repeal the supervisory act if it was not issued based on an express statutory provision.<sup>69</sup>

## 2. Supervision over local government

The functioning of Polish local government is subject to supervision. Supervisory authorities have already been defined in Article 171 (1) of the Constitution: the government representative in the field (voivode), the financial supervision authority (regional chamber of audit) and the Prime Minister. The Voivode is a supervisory authority with general jurisdiction, while the Prime Minister's supervisory powers are very limited and are exercised very rarely in practice. Even though the Constitution lists only three bodies exercising supervisory powers, local government is subject to significantly greater interference in the performance of both its own and commissioned tasks. For instance, in the field of educational tasks, the government educational administration (provincial superintendent of education) has several authoritative powers, and in terms of maintaining order and cleanliness in the commune – the provincial environmental protection inspector as the government administration. Such participation of local government and government administration in performing the same tasks results from the adopted principle of the so-called substantive supervision of the government administration over the tasks performed by the local government. Government administration either participates in the performance of specific local government tasks<sup>70</sup> or defines the rules for performing these tasks. The interference of the government administration was sometimes too far-reaching and actually limited the independence of local government.

Local government bodies have the right to challenge the agreement, opinion or other position of a government administration body issued while performing a task.<sup>71</sup> Regardless of the doubts raised in case law and doctrine, in each case legality is the only acceptable criterion for the influence of government administration on local government administration.<sup>72</sup>

This situation implies that government administration (especially at the central level) often resorts to regulating the principles of performing tasks by local governments by means of implementing acts to acts of general binding force (regulations). It suffices for the legislator to authorise the government administration to issue a regulation, and in this way the rules for the performance of the local government's own tasks are sometimes very detailed. Violation of the provisions of these acts by local government bodies or local government administration will constitute grounds

69 NSA judgment of 26 June 2022 III OSK 3746/21, LEX No. 3361734.

70 e.g., positive opinion from the government education superintendent is required to close a public school: Article 89 (3) 3 Act of 14 December 2016 Law on School Education (consolidated text, Journal of Laws 2023 item 900 as amended).

71 Article 89 A. Gov. Com. in conjunction with Article 98 A. Gov. Com.

72 NSA judgment of 20 October 2022 III OSK 5503/21, LEX No. 3429489; *M. Pilich* (ed.), *Prawo oświatowe. Komentarz*, 3rd ed., Warsaw 2022, pp. 590-616.

for authoritative interference in the functioning of local government, accusing it of violating the law.

Local government can protect itself against normative general acts implementing laws, but this protection is weak. It is the right to submit a constitutional complaint to the CT.<sup>73</sup> The weakness of this protection lies in the fact that the legislator has a broad right to independently regulate each public task performed by the local government, and thus also indicate what part of the regulations is to be covered by regulations of ministers or the government.<sup>74</sup>

The Constitution does not provide protection for local government against detailed regulations regarding the tasks delegated to it. This is undoubtedly a weakness of the Polish local government. The Polish local government cannot effectively challenge the regulation alleging excessive regulation on the part of the government administration, and such excessive regulation essentially reduces the local government to the role of executing a task regulated in detail by the legislator and government administration.<sup>75</sup>

Generally, the admissibility of defining the rules for the performance of public tasks by the government administration results from the principle of state unity. However, the strengths of local government include the application of the principle of proportionality in the supervision of local government. The admissibility of its use results from Article 8 (3) ECLSG, according to which administrative control of local communities should be exercised while maintaining proportion between the scope of intervention by the control body and the importance of the interests it is supposed to protect.

The Polish legislator applied the principle of proportionality in the regulation of borders and the basis for supervision. Despite the legality criterion, not every violation of the law by the authorities will be subject to supervisory activities: only in the event of a significant violation of the law. In the event of an insignificant violation of the law, the supervisory authority has no possibility of authoritative intervention. This is an adaptation of the principle of proportionality arising from the ECLSG.

The principle of proportionality has also been applied in a way that weakens local government. The Prime Minister may undertake supervisory activities towards the executive body of local government units in the event of repeated violation of laws or the Constitution. Similarly, the Parliament may dismiss the bodies constituting local government units in the event of repeated violation of laws or the Constitution. "Repeated violations" is not defined, therefore there is much scope for interpretation for the authorities applying this criterion. However, while acts of supervision by the Prime Minister are subject to appeal to the administrative court, resolutions of the Parliament are not subject to appeal.<sup>76</sup> The disadvantage of supervision regulation

73 *A. Chmielarz-Grochal*, *Zdolność skargowa gminy w postępowaniu przed Trybunałem Konstytucyjnym*,

in: Ryszard P. Krawczyk/A. Borowicz (eds.), *Aktualne problemy samorządu terytorialnego po 25 latach jego istnienia*, Łódź, pp. 119-140.

74 CT judgment of 18 July 2006 U 5/04, OTK-A 2006/7/80.

75 *Niewiadomski*, fn. 3, p. 22.

76 *P. Chmielnicki*, *Komentarz do art. 96*, in: P. Chmielnicki (ed.), *Ustawa o samorządzie gminnym. Komentarz*, Warsaw 2022, pp. 1178-1180.

is the criterion of lack of hope for quick improvement and prolonged state of ineffectiveness in the performance of public tasks. Based on this criterion, it is permissible to suspend local government bodies and appoint a government commissioner. This criterion is criticised in the doctrine.<sup>77</sup>

The strength of the Polish local government is, as a rule, the lack of inability of a supervisory authority to take over matters to be dealt with. Even if a given task is performed in violation of the law and this is found several times, the supervisory authority cannot take over such a task. Exceptions to this rule are few and generally unchallenged.

Another strength of the Polish local government is the limited time for conducting supervisory proceedings. The supervision authority may issue a supervision act only within 30 days from the date of receipt of the act of the local government authority. The expiry of this deadline nullifies supervisory rights. This is a substantive legal term. If the supervisory authority fails to issue a supervisory act within 30 days, after its expiry it may only appeal against such act to an administrative court.

## VII. Conclusions

The regulation of Polish local government in a unitary state should be assessed positively. Local government has both strengths and weaknesses. Undoubtedly, the strength of the Polish local government is its three-tier organisation. This division is sufficient to perform several tasks. Also, the scope of public tasks provided by Polish local government is sufficient to properly meet social needs. A positive feature of local government is its relatively broad regulation in the Constitution.

The vast majority of local tasks are the LGU own tasks. Another strong point is the participation of local government residents in the performance of public tasks, either directly through e.g. elections, referenda, legislative initiative or participatory budget, village budget or consultations or through NGOs or auxiliary units. The difficulties result from the lack of widespread knowledge among residents about the possibility of their direct or indirect influence on local government bodies. A positive feature of Polish local government is its legality as a criterion for its supervision and the protection of this independence by administrative courts.

The weaknesses of the Polish local government include a faulty financial system, in which the vast majority of financial resources come from the state budget or a share in state income taxes. The financial independence of local government is minimal. The principle of detailed statutory authorisations to issue legal acts by local government bodies, which is too strictly applied by the legislator, should also be considered a disadvantage of Polish local government regulations. This directly interferes with the independence of local government, which allows the government administration to select the rules for performing public tasks. The more general the statutory authorisations are, the greater the extent to which tasks can be adapted to local needs and conditions.

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77 *W. Kisiel*, Nadzór nad samorządem terytorialnym, in: *W. Kisiel* (ed.), *Prawo samorządu terytorialnego*, Warsaw 2006, p. 330.

In the period 2015-2023, the legislator sought to increase the participation of government administration in the performance of public tasks, and thus also to centralise by reducing the competences and powers of LGU and limiting their independence in the implementation of public tasks. It is hoped that after 2023, this direction will not only be abandoned, but the scope of local government tasks will expand at the expense of government administration and the scope of local government independence will expand instead.

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