

## TERRITORIAL AUTONOMY AS A DETERMINANT OF LOCAL GOVERNMENT – AN OVERVIEW OF THE ISSUE

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**Abstract.** It has been exactly 25 years since local government was introduced at all three levels of the fundamental territorial division, which raises the question of the correctness of the solutions adopted in the context of territorial autonomy. At the municipal level, local government is authentic, with all its attributes, including the territorial autonomy of that level. Nevertheless, is this also the case with higher-level units, i.e., counties and provinces? Here, the answer is not so obvious. “Territorial autonomy” does not have a strictly defined legal content. It is a general and relative concept, which is difficult, if not impossible, to define. One thing is sure, however: this concept embodies an idea that shapes the legal system governing the organizational and territorial structure of the state. It concerns the division of power between the center and the regions, taking into account the processes of centralization and decentralization. It seems that the concept of “territorial autonomy” can be explained by considering the relationship between the interests of the “territory” and the interests of the state as a whole. The main conclusion of these considerations is the assumption that territorial autonomy exists when the interests of individual territorial units acquire the characteristics of an independent legal entity, i.e., legal provisions create a particular permanent sphere of activity for local authorities that is free from the domination of the interests of the state as a whole. It is a normative construct based on the assumption that, in addition to national tasks that are uniformly implemented throughout the country, the legislator defines tasks that are independently shaped and implemented by local authorities and are specific to their jurisdiction. This, in turn, is part of the essence of local government. This reasoning allows us to accept the fundamental thesis of the considerations undertaken on the determining role of territorial autonomy in the concept of local government.

**Keywords:** public administration; administrative law; local government; territorial autonomy.

### INTRODUCTORY REMARKS

The system of local government is a consequence of the territorial organization of the state, which is one of the most important issues in its functioning. It forms the basis for the territorial management of the state and is linked

to the adoption of a specific concept of administration at both the national and local levels. Currently, there is no doubt that autonomy is a prerequisite for effective local government in Poland. Moreover, it can be argued that territorial autonomy is the main condition for effective local government, as it allows public tasks to be identified with a specific area as its public interest. It requires a properly structured territorial system.

According to the Constitution of the Republic of Poland,<sup>1</sup> the territorial system is to ensure the decentralization of public authority (Article 15(1)) while maintaining the executive role of the Council of Ministers (Article 10(2)). These principles are reflected in the dualism of public administration, which involves the coexistence of centralized and decentralized systems within the territorial structure. The primary tool of the centralized system is currently the administration, referred to as government – central and local, which constitutes the executive apparatus of the Council of Ministers. For the decentralized system, the executive apparatus is the local government administration, based on the bodies of individual local government units. Their functioning encompasses public tasks that reflect the public interest specific to a given local government unit. This leads to the conclusion that local government is an integral part of local management.

The above assumptions allow us to formulate the fundamental thesis that territorial autonomy is a necessary condition for local government. This thesis is confirmed beyond any doubt by the essence of local government – after all, autonomy is inherent in local government. It should be emphasized here that while local government is one of the means of territorial autonomy, perhaps the most important one, the mere fact of introducing local government does not allow us to draw far-reaching conclusions about territorial autonomy. What is decisive here is the legal structure of local government emerging from the applicable legislation, or more precisely, the shape of the individual elements defining the limits of the autonomy of individual territorial units and the legal mechanisms for protecting that autonomy.

“Territorial autonomy” does not have a strictly defined legal content. It is a general and relative concept, which is difficult, if not impossible, to define. One thing is sure, however: this concept embodies an idea that shapes the legal system governing the organizational and territorial structure of the state. It concerns the division of power between the center and the regions. Further attempts to define “territorial autonomy” in concrete terms encounter severe difficulties.

However, it is critical to identify the elements that determine the final structure of territorial autonomy. It is also necessary to determine the shape of these elements and the mutual connections and relationships between

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<sup>1</sup> Constitution of the Republic of Poland of April 2, 1997, Journal of Law No. 78, item 483 as amended.

them. It therefore seems that the success of the process of “territorial” autonomization depends on the cumulative definition and resolution of issues such as: the general division of functions between the “center” and the “territory”; the structure of territorial division; the status of individual levels of the territorial structure; the precise division of tasks, competences, and responsibilities between government and local government administration; legal guarantees of the independence of territorial bodies and units; material safeguards for the implementation of the tasks of territorial bodies.

The process of territorial autonomy in Poland was complex and protracted. Despite many reforms carried out under the banner of decentralization and democratization, the first visible step towards territorial autonomy was the Act of July 20, 1983, on the system of national councils and local government,<sup>2</sup> and its amendment of 1988. It should be noted that the legislators at that time, while introducing many new elements of autonomy for the so-called territory, took the position of generally continuing the existing model of functioning of territorial units (in force since 1950).

A breakthrough moment came on March 8, 1990, with the adoption of the Local Government Act,<sup>3</sup> which clearly expressed the intention to establish the autonomy of basic territorial units. This autonomy was guaranteed by the institution of local government, which was the basic form of public life organization in the commune and found its constitutional basis in Article 164(1). Subsequent normative acts resulting from the political reform introduced in 1999, i.e., the Act of June 5, 1998, on county self-government<sup>4</sup> and the Act of the same date on provincial self-government,<sup>5</sup> introduced local government at the remaining levels of the fundamental territorial division of the state. While the 1990 Act was a turning point in the autonomization of the territory, the real breakthrough came only in 1999, when the contemporary three-tier Polish model of local government emerged. Only systemic solutions that assume autonomy at all levels of the basic division are effective, thus creating an internally coherent system. Each of the units of the basic division has a specific role to play in the implementation of the public interest. It has been 25 years since the introduction of local government at all three levels of the fundamental territorial division, which raises the question of the correctness of the solutions adopted in the context of territorial autonomy.

It seems that the concept of “territorial autonomy” can be clarified, to the extent necessary for the present considerations, by taking into account the relationship between the interests of the “territory” and the interests of the state as a whole.

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<sup>2</sup> Original text: Journal of Laws of 1983, No. 41, item 185.

<sup>3</sup> Original text: Journal of Laws of 1990, No. 16, item 95.

<sup>4</sup> Original text: Journal of Laws of 1998, No. 91, item 578.

<sup>5</sup> Original text: Journal of Laws of 1998, No. 91, item 576.

## 1. PUBLIC INTEREST AS A FACTOR IDENTIFYING TERRITORIAL AUTONOMY

The category of public interest is multifaceted and both internally complex and diverse. It is tough, if not impossible, to define it. There is no absolute, fixed, and permanent definition of this concept, because there is no fixed, permanent, and unchanging object of definition. M. Wyrzykowski made an interesting synthesis of views on this subject. The author states that attempts to construct a concise definition of this concept lack real, lasting foundations [Wyrzykowski 1986, 44], although they deserve recognition. As he points out, these are attempts to define the inviolable boundaries of the public interest as a common good in given social and political conditions. The research methodology requires the use of both positive and negative designations of the concept in question. Thus, these attempts limit the possibilities of its abuse [ibid., 47]. The public interest requires constant redefinition, constant determination in a never-ending process through many channels of discussion (mass media, doctrine, legislation, jurisprudence, etc.), as it is a constantly changing composition and balance of different values of a given society at a specific time and place [Friedmann 1962, cited in: Wyrzykowski 1986, 45]. The concept of public interest is essentially relative. Its content depends on constantly changing social conditions [Lang 1972, 135]. This variability is, among other things, a result of the local context. Different content will be appropriate for defining the national interest, and a different one for the local interest.

In the national interest, the basis of social conditions will be the nation, while in the local context, it will be specific communities. These communities are closely linked to the individual units of the fundamental territorial division of the state<sup>6</sup> for which they constitute the basis of the political system. Although the activities of individual units of the basic division relate to the interests of the same residents, it should be remembered that these residents, as communities at different levels, have different needs. Therefore, different interests can be attributed to the municipality, the county, and the province as territorial communities. Moreover, the interests of each of these units will have a corresponding territorial dimension, different from the interests of the state as a whole.

Generally speaking, there are two possible solutions here. Firstly, legal provisions may, to a certain extent, recognize and take into account the systemic distinctiveness of the interests of individual units and the interests of the state as a whole. As a result, this gives local authorities the freedom and independence to articulate and, most importantly, carry out tasks related to the development of the area and the satisfaction of the needs of their

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<sup>6</sup> On the subject of territorial division, see, for example, Niemczuk 2013, 204ff.

communities. Secondly, legal regulations may give rise to a system of state management in which local arrangements are only dependent elements of the national system. It would mean that the interests of individual entities are derived from objectives shaped at the central level. In this case, the various functions of local authorities would, in fact, be the implementation of the national interest.

There is no doubt that the concept of "territorial autonomy" discussed here should be linked to the first solution presented above. However, the question arises as to what method of legal regulation should be used so that, on the one hand, it allows for the realization of the separate interests of individual territorial units and, on the other hand, takes into account the unquestionable need for the existence and possibility of realizing the general interest of society, obviously within a strictly and rationally defined scope. It seems that the normative construction of the idea of territorial autonomy should be integrated into a general scheme, according to which there are: firstly, objectives set at the central level, recognized as national priorities and uniformly implemented throughout the country; secondly, objectives set at the central level, but of a more general nature, thus creating the possibility of adapting them to local conditions during the implementation phase; thirdly, objectives independently shaped and implemented by local authorities.

It leads to the fundamental conclusion that territorial autonomy exists when the interests of individual territorial units acquire the characteristics of an independent legal entity, i.e., legal provisions create a specific permanent sphere of activity for local authorities that is free from the domination of national interests. This is a normative construct based on the assumption that, in addition to national tasks that are uniformly implemented throughout the country, the legislator defines tasks that are independently shaped and implemented by local authorities and are specific to their jurisdiction. Moreover, the proposal to make the concept of territorial autonomy a constitutional principle seems justified. It should be added that the independence referred to here cannot be absolute and should be subject to the supervision of central authorities, but only based on the criterion of legality. Autonomy is not federalism.

## 2. PUBLIC TASKS AS A FACTOR IN IDENTIFYING TERRITORIAL AUTONOMY

A further problem is the scope of activity of local authorities. The complexity of this problem precludes the possibility of formulating a relatively specific *a priori* assumption. The rationality of the legislator and its actual intentions to empower the territory must be of decisive importance here. However, it should be assumed that the general guideline for the legislator

should be to take an interest in all tasks related to the socio-economic development of territorial units and the satisfaction of the collective needs of residents. It would involve observing the principle that all public matters expressing the interests of the "territory" should be the responsibility of local authorities at various levels, depending on the nature of these matters, their degree of detail, or their territorial scope.

Territorial autonomy is also – or rather, above all – the ability to carry out tasks that constitute the interests of the area. It goes without saying that the balance between the tasks set and the instruments by which they are to be carried out ultimately determines the appropriate legal structure of territorial autonomy.

Public tasks are based on law and serve the public interest. As M. Stahl rightly points out, public tasks are tasks of the state, which it performs independently through its bodies or transfers to other public administration entities [Stahl 2011. 32]. The mere transfer of tasks by the state to another entity does not affect its state character. The public nature of these tasks determines the direction of actions aimed at achieving the common good, rather than individual good, at achieving the public interest [Leoński 1998, 80]. It is essential to select the appropriate instruments for their implementation in the process of distribution.

M. Elżanowski introduces a new term here, i.e., "spatial scope of implementation of tasks and competences" [Elżanowski 1977, 31-32]. According to this author, it is somewhat similar to the concept of "local jurisdiction" commonly used in legal and judicial language. However, as he emphasizes, these concepts should not be equated. Other elements are also important here. Local jurisdiction is essentially a procedural concept. It is mainly used to assess the correctness of court or administrative rulings. On the other hand, the "spatial scope of tasks and competences" is a concept from administrative science. Its content indicates the relationship between the totality of the competences and tasks of an authority of a given level and the size and shape of the territory in which they are to be performed.

It seems that the fundamental issue determining the autonomy of individual units of the territorial system is the structure of the sphere of activity of the authorities of these units, which is determined by the scope of their tasks. Here, there is a fundamental division between own and delegated tasks. The former seem straightforward, but doubts arise concerning the latter. It is since delegated tasks are closely linked to the center of the state, while their territorial implementation is only of an executive nature. Funds provided by the government administration finance the implementation of delegated tasks. As Z. Gilowska notes, local government units do not have the option of refusing to perform them, including due to a lack of financial resources or setting them at an insufficient level, or due to the untimely

transfer of these resources [Gilowska 1999, 88]. Therefore, they can only carry out financial tasks to the extent possible and then assert their rights to receive appropriate funds from the state budget [Olejniczak-Szałowska 2000, 10]. The implementation of delegated tasks is therefore closely linked to the state budget and the government administration that manages it.

E. Olejniczak-Szałowska notes that there is no uniform view in Polish literature on the issue of the independence of local government units in the performance of delegated tasks [ibid., 5]. In this regard, it can be assumed that, concerning their own tasks, these units are not subject to anyone's will and can act at their own discretion within the limits of their competencies. Concerning delegated tasks, however, they are limited by the will of the delegating party, as the nature of the delegation requires that the limits of the delegating party's authority be observed. These tasks are not the responsibility of local government, but rather those of government administration. In this respect, therefore, the principle that a specific entity performs them on its own behalf and on its own responsibility does not apply [Agopszowicz 1999, 67 and 77; Boć 2000, 185; Miemiec and Miemiec 1991, 17]. The tasks entrusted to a local government unit are "foreign" to it in the sense that they originate from another administrative entity, namely the state. This unit performs these tasks with financial resources provided by the government administration, on behalf of that administration, and therefore not entirely independently. Moreover, delegated tasks serve the interests of the state as a whole, while one's own tasks remain closely linked to a specific area and its individual interests. For example, issuing identity cards does not serve the needs of the municipality or its residents, but is part of the national population registration system, and is therefore a delegated task carried out uniformly throughout the country.<sup>7</sup> On the other hand, the performance of one's own tasks in the field of social assistance is closely related to the needs of the community of a given local unit. The scope and extent of the assistance provided will therefore depend on the needs of the residents and the economic capabilities of individual units.<sup>8</sup>

These circumstances lead to the conclusion that delegated tasks are not a key element in shaping the territorial autonomy of the state's basic territorial units. The above reasoning leads to the conclusion that the boundaries of autonomy of individual territorial units are determined solely by the scope of their own tasks. This, in turn, raises the issue of the criteria for dividing tasks into own and delegated ones, but a broader analysis of this issue goes beyond the scope of this study.

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<sup>7</sup> Article 8(2) of the Act of August 6, 2010 on identity cards, Journal of Laws of 2022, item 671 as amended.

<sup>8</sup> Article 17 of the Act of March 12, 2004 on social assistance, Journal of Laws of 2025, item 1214.



## CONCLUSION

Finally, there is a fundamental issue – the legal personality of individual territorial units. Each unit of the fundamental territorial division of the state has all the attributes of a legal person. Legal personality should be considered a fundamental element determining the autonomy of each of these units. It ensures separation from the state apparatus, gives them the possibility to act on their own behalf, and thus to bear sole responsibility. It also opens up the possibility of judicial protection. Finally, legal personality is a guarantee of their self-government.

It seems that the following elements are at the forefront of determining the territorial autonomy of individual local government units: 1) legal personality, 2) scope of own tasks, 3) scope and nature of legal instruments for the implementation of tasks, 4) scope and nature of state supervision, and 5) economic efficiency. However, it should be emphasized that these are only the most important, selected elements. The scope of this study does not allow for a broader treatment of this issue, limiting itself to merely pointing them out.

Another feature of territorial autonomy is undoubtedly the democratic manner of appointing and dismissing local government bodies, as well as their functioning. Territorial autonomy will only make sense if it is based on the assumption that local authorities are the true representatives of the will and needs of society. This, in turn, is linked to another element of territorial autonomy – social control.

Bearing in mind the symbolic 25 years that have passed since the introduction of the three-tier model of local government, it is reasonable to question the correctness of the solutions adopted in the context of territorial autonomy. There is no doubt today that local governments can be said to enjoy territorial autonomy. At the basic level, local government is authentic, and territorial autonomy is clearly defined at this level. However, is this also the case with higher-level units, i.e., counties and provinces? Here, the answer is not so obvious. Instead, legitimate questions arise: Do these units have their own public interest? Can we talk about the specific tasks of these units? Does territorial autonomy characterize these units? Moreover, is the local government in these units authentic? The answers to these questions seem to be the key to determining the success of the decentralization process in Poland from the perspective of more than a quarter of a century. A complete analysis in this area goes beyond the scope of a single study. These considerations are therefore limited to raising the issue and constitute a contribution to further findings and discussions, which, as a rule, should be considered necessary.



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