Teka Komisji Prawniczej PAN Oddział w Lublinie, vol. XIV, 2021, no. 1, pp. 179-192
https://doi.org/10.32084/tekapr.2021.14.1-16

RECENTRALIZATION IN THE LOCAL GOVERNMENT – A CASE-BASED ANALYSIS OF CRITERIA

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Abstract. The subject of this article is recentralisation in local government. The aim of the study is to formulate and define the scope of the term "recentralization," as well as an attempt to identify its criteria and effects concerning the functioning of the local government and meeting the needs of its residents. The starting point for discussion is the definition of the concept of recentralisation. The theoretical analysis was supported by the interpretation of the provisions that transfer competences from the decentralised structure to the central government administration bodies and justifications for the proposed changes. The effect of the conducted research is conclusions concerning the evaluation of the practice of recentralising local government's tasks.

Keywords: recentralization criteria, self-government independence

INTRODUCTION

Pursuant to the Constitution of the Republic of Poland of 4 April 1997,[1] the territorial division of the Republic of Poland ensures the decentralization of public power (Article 15 of the Constitution). The principle of decentralization guarantees the right of the local government to participate in the exercise of public power. By statute, the local government discharges a substantial part of public duties in its own name and under its own responsibility (Article 16(2) of the Constitution). The constitution or other statutes do not reserve the discharge of such duties for other public authority bodies (Article 163 of the Constitution). Therefore, the constitution performs an initial diversification of public duties, which is subsequently specified in the ordinary legislation. The fact that the principle of decentralization is anchored in the constitution does not suffice as a protection of the local government against being deprived of competences associated with the performance of own assignments. If statutory regulations are passed which transfer the performance of and responsibility for assignments which have thus far been delivered by the local government to the government administration, then the local government is deprived of their performance. The doctrine emphasizes that recentralization is not a novel phenomenon. Apprehension connected with the phenomenon emerged directly after the restitution of the local government [Kulesza 1991, 86–90; Kulesza 1993, 42–47; Korczak 2018, 159–78]. Since 2015, the scope of recentralization has considerably broadened and the rate of

[1] Journal of Laws No. 78, item 483 as amended [hereinafter: Constitution].

changes noticeably accelerated. In light of the foregoing, based on specific cases, the present article will analyze recentralization in relation to the local government. The article will strive to identify the criteria of recentralization, determine the scope of the process, its impact in relation to the operation of the local government, and the capacity to satisfy the needs of citizens.

1. RECENTRALIZATION – THE MEANING OF THE TERM

Recentralization denotes the acquisition of duties which were previously performed by other entities, departments, or bodies operating within a decentralized structure, by supreme and central state bodies. The recentralization process encompasses the transfer of duties and competences from a body at a lower level to a body at a higher level. Alternatively, the performance of such duties may be retained in the decentralized structure while being subordinated to the higher level body to such an extent that the decentralized body loses self-governance granting the independence of the performance. As a consequence, recentralization constitutes the reverse of decentralization. The cases discussed further seem to acknowledge such constatations.

Recentralization constitutes a trend associated with the criticism of the local government. The criticism is based on a premise of a crisis in the local government institution. It is believed that the crisis is connected with a general dysfunction of the local government, pathologies within the local government administration, clientelism, and declining interest in elections. Legal institutions and organizational structures of the local government are deemed out-of-date and in need of a radical change. Such an argument serves as a basis for the transfer of duties and competences to the government administration, and as a manifestation of the state's modernization. Such arguments are offered in spite of the fact that public acceptance of the local government is much stronger than that of the government administration [Lipowicz 2019, 14–15]. Such a shift of duties and competences is incremental, location-based, and built upon selective changes in the substantive law. Depopulation, deindustrialization, nomadization and deinstitutionalization are offered as a justification for the processes [ibid., 26–27]. However, such changes violate the stability and continuity of public power [Szlachetko 2018, 54]. In addition, the lack of financial independence results in the local government's helplessness as regards the limited capacity to satisfy the needs of local government community members. Despite the fact that the principle of decentralization is associated with the transfer of the performance of public duties to decentralized local government bodies acting under the principle of self-governance, in practice, the scope of self-governance is limited by the legislator. As a consequence, the fact that the principle of decentralization does not determine the extent to which the legislator may regulate the performance of duties assigned to the local government seems potentially dangerous to the local government [Gromek 2020, 27]. It creates a loophole which enables duties and com-

petences to be shifted between the local government and government administration.

2. RECENTRALIZATION – CRITERIA

The distribution of duties and competences among the government and local government administration was conducted under the statutes of constitutional law and substantive administrative law. The legislator applied criteria which served as a basis for the categorization of duties. In addition, the doctrine also attempts to establish criteria for the distribution [Wiktorowska 2002, 120]. Due to the fact that recentralization constitutes a reverse of decentralization, further interpretation of the research field requires the criteria of decentralization to be determined. In addition, the criteria ought to be analyzed in terms of the capacity of the recentralization of duties to be decoded.

The following constitute the fundamental criteria of decentralization: a) criterion of the type of duties and means of their performance; b) criterion of territory; c) criterion of the material part of public duties; d) criterion of local interest; e) criterion of the satisfaction of local needs; f) criterion of finances.

As far as the first criterion is concerned, it may be argued that duties which require a uniform approach throughout the state ought to be performed by the centralized administration. The group encompasses duties such as those which pertain to regional or local affairs, but whose state interest is significant to such an extent that they are performed by state authorities or under strict state guidelines [Leidinger 1992, 54]. In addition, government administration ought to manage affairs which may not be adequately managed by the local government due to technical reasons [Szreniawski 1991, 67]. As regards the means for the performance of the duties: "If a specific duty or a competence is to be executed throughout the state in accordance with identical laws, standards, and in a formalized procedure, and additionally, by using its powers, the state confirms the correctness of and gives credibility to the action, then such a duty falls within the scope of the government administration. If both the above elements are absent, or at least the latter of the two is (authorization of the action by the state), then such a duty has or ought to (not all statutes under substantive law stipulate it) fall under the scope of the local government, which specifically pertains to the duties of servicing administration" [Stec 1999, 67]. The criterion of the type of duties and means of their performance executes the principle of subsidiarity. It is also associated with the criterion of satisfying local needs. If the duties are connected with satisfying the needs of local government community members, they ought to be performed by decentralized structures. In theory, recentralization may occur when, on the national level, local government units of a given level fail to perform assignments and fail to meet their statutory duties. However, under such circumstances, the action would be taken under the conditions of a (political, economic,

social) crisis. In a democratic state under the rule of law, such a scenario ought never to emerge.

Pursuant to Article 15(2) of the Constitution, the fundamental administrative organization of the state which considers social, economic and cultural ties, and which ensures local government units' capacity to perform their public duties, is determined by the Act of 24 July 1998 on the Fundamental Three-Tier Territorial Organization of the State.[2] Pursuant to Article 4(3) of the Act of 8 March 1990 on Municipal Self-Government,[3] the delineation and the change of a municipality's borders are made in a mode guaranteeing the municipality's territory is as uniform as possible with respect to settlement and spatial systems, which include social, economic and cultural ties, and which ensure the capacity for the performance of public duties. Article 3(3) of the Act of 5 June 1998 on County Self-Government[4] stipulates identical premises pertaining to the delineation of a county's borders. On the other hand, the Act on Voivodeship Self-Government of 5 June 1998[5] has no direct counterpart of Article 4(3) A.M.S.G. or Article 3(3) A.C.S.G. However, Article 5a of the Act on the Fundamental Three-Tier Territorial Organization of the State stipulates that when a change is made to the borders of a voivodeship, the change ought to seek improvement in the performance of the voivodeship-related public duties as well as to maintain social, economic and cultural ties in the region. In connection with the territorial criterion, decentralized duties are performed within a limited territory. This is to translate into the effectiveness of their performance associated with the satisfaction of the citizens' needs and the level of accessibility. In view of this criterion, in the case of recentralization, the duty would need to lose the territorial limit and change the character into a duty performed universally within the whole state. This entails the adoption of the primacy of the nationwide interest.

Pursuant to the Constitution, by statute, the local government shall participate in the exercise of public power. The local government is empowered to discharge a substantial part of public duties. Such provisions denote that the local government community in a municipality, county and voivodeship ought to actively participate in the exercise of public power. Under the constitution, any restriction concerning public duties which would violate the discharge of the local government's substantial part of public duties is impossible. The recentralization and violation of self-governance would constitute, under the constitution, an inadmissible modification of the local government system [Lipowicz 2011, 185]. However, the term "substantial part" constitutes a vague concept. As a consequence, it is difficult to specify its exact scope and proportions. This may result in the emergence of abusive behavior if the government administration takes over certain duties. The execution of public duties falls under the responsibility of the

[2] Journal of Laws of 1998, No. 96, item 603 as amended.
[3] Journal of Laws of 2020, item 713 as amended [hereinafter: A.M.S.G.].
[4] Journal of Laws of 2020, item 920 [hereinafter A.C.S.G.].
[5] Journal of Laws of 2020, item 920 as amended [hereinafter: A.V.S.G.].

local government administration. Therefore, citizens may demand such duties be exercised. However, it ought to be emphasized that public administration determines neither its duties nor has it any influence as to the scope of such duties. They emerge directly from legal regulations set forth by the legislator.

The specific character of the local government consists in the state's acceptance of the existence of local community interest, thus the existence of a bipolar model of the operation of public power. Such a constatation denotes that, in certain cases, it is the local community which independently decides upon the management of certain public affairs by its specific bodies. In other cases, the affairs are managed by the government administration on behalf of the public in public interest [Kulesza 1986, 19]. The operation of local government units on behalf of the local or regional self-government community constitutes a consequence of the isolation of the local government from the state's structures. In light of the foregoing, public interest may be understood in broad terms as a national interest, and in narrow terms, as the interest of the local community (local interest) [Gardjan–Kawa 2007, 88]. When determining the competences of local government units, the legislator "must carefully balance national and local interests and distribute the competences of individual levels of the local government and government administration."[6] When considering such a criterion as a criterion for recentralization, a change in the character of the interest associated with a specific duty would need to occur. The character would need to change from local to the one critical for the protection of national interests. If such a change emerged, the duty would be adopted by government structures.

When identifying public duties and distributing them, the legislator ought to specify the purpose of the execution of such duties. Local government statutes specify that own assignments ought to be executed in order to ensure a specific standard of existence of citizens. When designating local government duties, the legislator needed to identify the type of needs, subordinate them to a specific level of territorial organization and assess whether and to what extent the duty satisfies the needs. In connection with the satisfaction of needs, recentralization ought to include an assessment of an objective incapability of the satisfaction of needs by a specific territorial unit viewed at the national level.

The financial limitations of decentralization pertain to sufficient funds being granted for the execution of duties and competences. As a consequence, local government units are allocated a share of public income corresponding to their duties. The term "are allocated" denotes that public authorities are obliged to allocate a specific share of public income for the disposal of local government units [Banaszak 2009, 754]. Financial management in the local government is based upon own income generated by local government units. Pursuant to the provisions of specific statutes, the units set taxes and local fees to generate such income. In addition, local government units benefit from general and targeted subsidies from

[6] Ruling of the Constitutional Tribunal of 12 March 2007, ref. no. K 54/05, OTK–A 2007/3, item 25.

the state budget. The criterion for the determination of financial self-governance of local government units includes not only the amount of funds at the units' disposal, but also the proportion of individual income to the total income of the unit, especially the ratio of own income to other types of income [Szołno–Koguc 2004, 212]. This is due to the fact that financial instruments may be employed by the state as a leverage in order to bring pressure on the operation of local government units so that the operation of a local government unit is in line with national priorities, state interest and state policy. Such an approach is to stimulate behavior the state deems appropriate [Wiktorowska 2002, 181]. Changes in the distribution of duties of local government units ought to entail changes in the distribution of public income. Otherwise, the solution would become a façade subordinating the execution of duties and competences to an arbitrary whim of the state or a necessity for the tentative acquisition of funds. Therefore, a prudent legislator ought to analyze the sources of own income of local government units of a certain level because the decentralization of a duty will entail the necessity of its execution and financing.

Meanwhile, changes detrimental to the finances of local governments can be observed, e.g. reduction of subsidies and grants, deindustrialization which results in the disappearance of taxpaying entities and the necessity of revitalizing certain sites [Lipowicz 2019, 225–26]. Such conditions encumber local government unites with costs of reforms e.g. of the education system. Local government units have been encumbered with the cost of operation of hospitals. However, their main funding originates from the National Health Fund. In addition, the funding does not suffice to cover the costs of day-to-day operation of hospitals. This results in progressing debt of such institutions and petitions for further funds being submitted to the government administration [Sześciłło 2018, 7].

The aforesaid criteria aim to identify premises for the distribution of duties, all the more that the enumeration and indication which duties are to be executed by the government administration and which by the local government were excluded. The criteria relate to the decentralization of duties and were analyzed in terms of their applicability to decode premises for recentralization. In light of the foregoing, recentralization constitutes a reverse of decentralization. However, the criteria for recentralization cannot be developed as a direct opposite of the criteria for decentralization. Recentralization requires such criteria to be analyzed. The analysis ought to encompass criteria of a more specific character and associated with the type of duty to be recentralized as well as the outcomes of such a transition. As a consequence, decentralization criteria ought to be regarded as a type of guidelines to formulate recentralization criteria.

3. RECENTRALIZATION OF DUTIES – CASE STUDY

Changes discussed below constitute selected examples from various fields of the local government's operation. The examples seem to confirm the tendency

for the recentralization of local government's duties and a stronger impact exerted by the government administration upon duties which have thus far been executed territorially by decentralized structures. The impact may adopt various forms: from the consolidation of the role of government administration units in relation to local government units, to the adoption of duties and competences of the local government by the government administration. The analysis includes statements of reasons for statutes in order to determine criteria the legislator applied to justify recentralization.

The first group of changes pertains to the duties of the local government in relation to the education system. Gradual changes in the operation of the education system resulted in the consolidation of the role of the Education Superintendent Office and pertained to e.g. a change in the requirement of an opinion into the requirement of a positive opinion in the case of a liquidation of a school operated by a local government unit,[7] introduction of a requirement of a positive opinion in the case of an establishment of a school or similar public institution by a legal person other than a local government unit.[8] On 1 September 2019, an amendment was introduced pertaining to the network of public pre-schools operated by a municipality established upon a positive opinion of the Education Superintendent Office.[9] Prior to the change, the competence belonged exclusively to the municipal council. The statement of reasons for the amendment concerning the establishment of public pre-schools argues that "recent years witnessed changes in the network of schools operated by local government units. The changes aimed to replace such schools with schools operated by other entities. Such actions were primarily motivated by economic factors and were designed to limit expenditures of the local government related to the operation of schools and similar public institutions (including the circumvention of the Teacher's Charter concerning e.g. guaranteed salaries). The proposition of the amendment […] aimed to restore the supervision of the Education Superintendent Office over local governments units' actions concerning the prudent development of the network of public schools and pre-schools." In relation to schools or similar public institutions established by a legal person other than a local government unit, the change requires a positive opinion of the Education Superintendent Office. The amendment aims to consoledate the role of the office in developing the network of schools and to prevent "an attempt to replace a school operated by a local government unit by a public school operated by another entity, i.e. a school which, in principle, ought to supplement the network." In the case of a liquidation of a school, the statement of reasons laconically stipulates that the amendment "shall preclude the liquidation or con-

[7] Compare Article 59(2) of the Act of 7 September 1991 on the Education System, Journal of Laws of 2004, No. 256, item 2572 and Article 89(3) of the Law on Education Act, Journal of Laws of 2020, item 910.

[8] Compare Article 58(3) of the Act on the Education System and Article 88(4) of the Law on Education Act.

[9] Article 32(4) of the Law on Education Act of 14 December 2016, Journal of Laws of 2020, item 910.

version of a school or a similar public institution operated by a local government unit without a positive opinion of the Education Superintendent Office."[10] Article 1(9) of the Act of 29 December 2015 on amending the Education System Act and Certain Other Acts[11] restored the obligation for the development of an action plan of public teacher-in-service training institutions to be reviewed by the Education Superintendent Office. The statement of reasons stipulates that the amendment is to "enhance the effectiveness of the influence of the Education Superintendent Office as a teaching supervisory body […]."[12] The legislator argues that such changes shall protect students' interests in terms of fulfilling the schooling duty and a one-year pre-school training. However, no details are offered as to the scale in which the schools operated by local government units are replaced by those operated by other entities. The justification for the amendment of regulations solely based upon the argument of restoring the Superintendent's supervision or enhancement of the Superintendent's influence as a supervisory body is insufficient. However, it ought to be noted that the operation of the local government is subject to verification by statutory supervisory bodies. The bodies are bound to take action in case a breach of law is detected.

Another group of changes pertained to the voivodeship funds for environmental protection and water management. Such institutions operate as local government legal persons managing finances on a self-governing basis. They finance expenses in connection with the execution of duties set forth in the act as well as operational costs from own resources and received income.[13] The Act of 7 April 2017 on amending the Environmental Protection Law[14] changed the composition of the funds' members of supervisory boards. With the exception of the vice-chairman of the board, who is appointed by the regional assembly, the remaining members are appointed by the government administration. Prior to the change, the members of the supervisory boards of the voivodeship funds were appointed and removed by regional assemblies. Under present legal conditions, they are appointed and removed by the minister in charge of climate-related affairs (Article 400f E.P.L.). A change occurred concerning the composition of the funds' management boards, specifically the reduction of the number of members whose appointment and removal is influenced by supervisory boards, whose composition, in turn, is subordinated to the government administration (Article 400j E.P.L.). Such a reduction was justified by the argument of reducing the cost of operation, simplification and acceleration of member appointment procedures, and consequently improvement of the bodies' operational efficiency. The proce-

[10] Statement of reasons for the Bill on amending the Act on the Education System and Certain Other Acts, form no. 106 Parliamentary Bill on amending the Act on the Education System and Certain Other Act, http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=106 [accessed: 24.03.2021].
[11] Journal of Laws of 2016, item 35.
[12] See http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=106 [accessed: 24.03.2021]
[13] Article 400(2) and Article 400q of the Environmental Protection Law of 27 April 2001, Journal of Laws of 2020, item 1219.
[14] Journal of Laws of 2017, item 898 [hereinafter: E.P.L.].

dure of the appointment of a 7-member supervisory board of funds was defined as inconsistent, complex, and extended due to the fact that the legislator granted the right to appoint and remove the members of the funds' supervisory boards to regional assemblies and simultaneously to the minister competent for environmental affairs.[15] Such a change resulted in a bizarre situation whereby voivodeship funds for environmental protection and water management, operating as local government legal entities, are *de facto* managed by a government administration body. The criterion justifying recentralization is the capacity to reduce the cost of operation of the funds, and simplification and acceleration of member appointment procedures. However, an uncertainty arises concerning whether such a criterion is sufficient to justify recentralization. Based on the conclusions pertaining to recentralization discussed previously, it seems that it is not. The procedure of member appointment or the number of the body's members may have been changed without the need for the recentralization of duties. The legislator does not raise any other reservations concerning the operation of the funds.

A change also occurred concerning the determination of tariffs for collective water supply and collective wastewater treatment. Prior to the change, the matter was under the competence of the municipal council. The Act of 27 October 2017 on amending the Act on Collective Water Supply and Wastewater Discharge and Certain Other Acts[16] deprived the municipality of the competence in favor of the regulating body, i.e. the director of the regional water management board of the National Water Holding Polish Waters.[17] The director and deputy directors are appointed by the president of the holding,[18] who, in turn, is appointed and removed by the minister competent for water management.[19] The legislator raised the argument that the municipality clusters the entirety of competences concerning water supply and wastewater discharge, thus insufficiently protects end users (predominantly consumers). The legislator reasons that the change deprives local governments merely of supervisory powers associated with the establishment of tariffs. The legislator also emphasizes that under current legislation, local government units do not have unrestricted power in terms of the establishment of tariffs. However, the legislator believes that these powers insufficiently protect the interests of end users. As a consequence, the National Water Holding Polish Waters shall perform the function of a regulating body which acts ex ante. The approval of tariffs shall be the duty of the body.[20] The protection of consumers and end users has become a criterion for the change. However, the legislator argues in favor of the change in a vague and contradictory manner. On the one hand, the legislator indicates the need for a change. On the other hand, legal solutions ena-

[15] See http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1127 [accessed: 24.03.2021].
[16] Journal of Laws of 2017, item 2180.
[17] Article 27a(1) of the Act of 7 June 2001 on Collective Water Supply and Wastewater Discharge and Certain Other Acts, Journal of Laws of 2017, item 328 as amended.
[18] Article 245(1) of the Water Law of 20 July 2017, Journal of Laws of 2020, item 310 as amended.
[19] Article 242(1)(2) of the Water Law.
[20] See http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1905 [accessed: 24.03.2021].

bling the prevention of unwarranted increase of tariffs are offered in the statement of reasons.

Pursuant to the Act of 23 January 2020 on amending the Act on the State Sanitary Inspectorate and Certain Other Acts[21] the staroste (an official in charge of a county) was deprived of the competence to appoint and remove the state county sanitary inspector and deputy inspector upon the consent of the state voivodeship sanitary inspector. Under the new legislation, the inspectors are appointed and removed by the state voivodeship sanitary inspector upon the opinion of the voivode (an official in charge of the combined administration in a voivodeship) relevant in relation to the seat of the state county sanitary inspectorate. The state voivodeship sanitary inspector is appointed and removed by the Chief Sanitary Inspector upon the consent of the voivode relevant in relation to the seat of the applicable state voivodeship sanitary inspectorate. The amendment also established the state county sanitary inspector as a combined government administration body in the voivodeship. The legislator gives reason for the amendment by arguing that "a stronger subordination of State Sanitary Inspectorate bodies ensures effe--ctive operation in the public health domain in a uniform and coordinated manner, especially as regards crisis situations requiring rapid and coordinated actions. The amendment will contribute to the introduction of cohesion of actions among State Sanitary Inspectorate bodies as regards the standards of sanitary and epidemiological supervision. The amendment also satisfies the need for hierarchic management which will ensure an effective execution of uniform governmental strategy and policy as regards the protection of public health. It will also improve the operation of all State Sanitary Inspectorate bodies coordinated by the Chief Sanitary Inspector. By doing so, the operational performance will be improved."[22] The efficiency of operation constitutes the criterion for recentralization. The argument concerning a swift response to crises which require rapid and coordinated actions seems sensible. However, the introduction of a hierarchical management in relation to day-to-day operation seems dubious. The pursuit of a uniform governmental strategy and policy in the field of public health protection, as well as hierarchical management, are considered a priority by the legislator. No information as to the specific bodies in need of operational improvement was supplied. In addition, the legislator offered no information pertaining to errors in management or data indicating the extent to which previous organizational structures failed to perform.

The Act of 22 June 2016 on amending the Act on Agricultural Advisory Units[23] transformed voivodeship agricultural advisory services centers operating as local government voivodeship legal persons into voivodeship agricultural advisory services centers operating as state organizational units with legal perso-

[21] Journal of Laws of 2020, item 322, 374.
[22] See https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=46 [accessed: 24.03.2021].
[23] Journal of Laws of 2016, item 1176.

nality.[24] Such a change also pertained to land under the perpetual usufruct of the centers. The land is the property of the voivodeship. However, voivodeship agricultural advisory centers operating as state organizational units are entitled to perpetual usufruct. The centers also retained their property which since the beginning has not been used for the performance of duties associated with agricultural advisory services. The statement of reasons for the act stipulates that "the amendment aims to transfer the subordination and supervision over voivodeship agricultural advisory services centers from the voivodeship board to the minister competent for rural development. The primary premise for the transfer of the subordination of the centers is the enhancement of competitiveness and development of agriculture and rural areas by the improvement of the execution of duties associated with the delivery of agricultural advisory services. The change was to ensure a uniform character of the centers' operation in individual voivodeships and raise the expenditure efficiency of targeted state subsidies, which were to be linked with an annual action plan. In addition, the change of the subordination was to enable the operation of the centers to be monitored and controlled […]."[25] The statement of reasons for the amendment indicates that the legislator deemed the enhancement of competitiveness and development of agriculture and rural areas by the improvement of the execution of duties associated with the provision of agricultural advisory services as the criterion for recentralization. The process is to ensure a uniform character of the centers' operation in individual voivodeships. However, the uniform character of operation ought to stem from statutory regulations and does not require the change of subordination. The legislator raises the lack of uniformity in the operation of voivodeship agricultural advisory service centers in terms of drafting action plans and reporting activities as a further criterion for recentralization. However, the option of specifying the existing regulations in this respect was disregarded.

CONCLUSIONS

Pursuant to the constitutional principle of decentralization, local government units execute own assignments based on the principle of self-governance. The duties do not stand in opposition to the duties of the state. Such duties are those of the state as a whole but they are executed by decentralized structures. However, despite the fact that the government and local government administration are independent from each other, their coexistence assumes the need for collaboration and coordination of actions. Due to the fact that the legislator's decisions concerning the division of duties manifest a degree of arbitrariness, it is vital that any shifts of duties are clearly and accordingly substantiated. The aforesaid criteria of decentralization ought to be considered as a type of guidelines for the formulation of recentralization criteria. Recentralization criteria cannot be automa-

[24] Article 2 of the Act on amending the Act on Agricultural Advisory Units.
[25] See http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=572 [accessed: 24.03.2021].

tically designed as a reverse of decentralization criteria. To repeat the constatation made previously, recentralization requires the criteria to be analyzed along with the analysis of additional criteria of a more specific character which are connected with the type of duty to be taken over by the government administration as well as the evaluation of consequences such a change may entail. In addition, such an interpretation should not be made exclusively in relation to a single criterion but ought to include all of these because the criteria supplement one another. Moreover, the legislator must assess whether recentralization does not violate principles the local government system is based upon. An objective assessment of a specific situation ought to constitute the departing point. The assessment ought to encompass consultations and should not raise doubts as to the necessity of implementation of such changes. It ought to be noted that recentralization ought to constitute an ultimate solution, all the more so as it will affect all local government units of a given level in a country.

The statements of reasons for the amendments indicate that the legislator based the decisions upon the criterion of the protection of students' interests in relation to the fulfilment of the schooling duty and a one-year pre-school training, criterion of effectiveness, criterion of the enhancement of competitiveness and development of agriculture and rural areas by the improvement of the execution of duties associated with agricultural advisory services. Additional arguments were used which are connected with the consolidation of the role of a government administration's body, and improvement of supervision over the actions of a local government unit. The argumentation supporting such changes seems dubious as well. The application of vague references in the statements of reasons for amendments recentralizing duties and competences, e.g. "effectiveness," "uniform character of operation," "competitiveness," without specifying what the "effectiveness" or "uniform character" denote is insufficient. The statements of reasons also miss data, lists and calculations referring to the previous actions, which would justify the changes. They also disregard or merely touch upon the social aspect of recentralization, but highlight the development of hierarchical structures, subordination and procedures. The "consolidation of the role" of a government administration body in relation to the local government is also a faulty argument. The two structures ought to cooperate instead of compete with each other, or even worse subordinate one to the other. This stands in direct opposition to constitutional principles determining the operation of the state. Antagonizing the structures which, in principle, ought to supplement each other seems a dangerous approach. The legislator does not take into consideration changes of regulations in terms of an objective improvement of procedures or the operation of the local government but creates solutions restricting their self-governance. The legislator enlarges the group of government administration entities equipped with legal means which may bind local government units. Meanwhile, specific instruments are vested in supervisory bodies competent to take actions specified in legal regulations.

In conclusion, based on the case study, it ought to be noted that the recentralization of the aforesaid duties has not been sufficiently substantiated, and manifests political changes instead of changes mandated by objective and valid premises or criteria. It also diminishes the position of local government units. Due to the fact that the operation of the local government is based on several founding principles, recentralization cannot occur in isolation from the principles. The legislator ought to assess the outcome of such regulations in this aspect as well. The recentralization cases discussed in the article violate the principle of the local government's involvement in the exercise of public power, the principle of decentralization, subsidiarity, and the principle of self-governance of the local government. Despite the constitutionalization of the principle of decentralization, it does not offer the local government sufficient protection. As the legislative practice proves, the legislator may deprive the bodies of own assignments by means of an ordinary act. In addition, due to the fact that the local government in Poland does not act as an autonomous body, it does not dispose of legal means which would actually consolidate its legal status. Therefore, in practice, the self-governance of the local government is determined by the political will of the parliamentary majority.

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