

## LEGAL GROUNDS FOR FORMING AND ALTERING THE BASIC TERRITORIAL DIVISION OF THE STATE

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**Abstract.** The issue of territorial division of a state has been subject of the science of administrative law for years. The aim of territorial division is to introduce certain order in human activity in a given area. This refers in particular to general territorial division, which has most significance and plays the most important role in functioning of state and society. Thus, the issue of legal regulations concerning the prerequisites for shaping this order and the conditions for making alterations to it remains topical. The author presents the issue of legal regulations regarding the premises this order and the conditions for its transformation as still topical and being rather a long-term process than a single undertaking. It stems from the tension present in the science of administrative law between assuming that the territorial division of the state should be characterised by relative stability, and the simultaneous projection of its alterations in the face of changing conditions forcing transformation in the functioning of public administration. The current model of the basic territorial division is based on the concept laid down in the Constitution of 2 April 1997, assuming that the territorial division of the state must take into account the social, economic or cultural ties, at the same time ensuring that the territorial units are capable of performing public tasks. Moreover, the formal criterion for alterations to the basic territorial system is introducing them by means of an Act. The paper also presents the modern tendency to change the perspective and gradual, however constant, move from the analysis of the territorial division of the state as an element of effectiveness of public administration to the emphasis of the significance of territorial division as the real framework of local and regional self-governance and the areas of social activity.

**Keywords:** territorial division, administrative law, territorial units, public administration

### INTRODUCTION

The issue of territorial division of a state has been subject of the science of administrative law for years. It mainly stems from the fact that territorial division of a state is considered a “very important element of public administration’s efficiency and plays an important role in the overall functioning of the state” [Szreńiawski 2002, 127]. It has been emphasised in the literature that territorial division plays a very important role not only from the point of view of how the state functions, but also from the perspective of its citizens [Lemańska and Małecka-Łyszczek 2002, 330]. In the science of administrative law, territorial division is considered to be a generally fixed division of the state area, or “the relatively permanent fragmentation of state space” made for the local and regional state units (bodies) or nonstate entities, executing public administrative functions [Leoński 1977, 370]. It is assumed that the division of labour principle requires each territorial body to have own scope of action limited by its territory [Iserzon 1968,

149]. It is due to the fact that it is not possible to effectively manage all public issues from a central level, i.e., by a body whose range extends to the whole territory of the state [Piecha 2019, 241].

The literature in administrative law distinguishes three types of territorial division of a state: basic, auxiliary and division for special purposes. Basic division, the most significant one, is the general territorial division, created due to necessity to perform state (public) tasks in a given territory, significant from the perspective of the fundamental state objectives and the rules of functioning of the state. Auxiliary territorial division plays supplementary role in relation to general division and in the current conditions it is considered to be a division made from the perspective of local-government bodies or some public administration bodies. Division for special purposes is made for the purposes of bodies that do not belong to the system of general government administration or to a local government.

In general, it may be stated that the aim of territorial division is to introduce certain order in the human activity in a given area [Kulesza 1996, 3–4]. This refers in particular to the main territorial division, which has most significance and plays the most important role in functioning of state and society.

Thus, the issue of legal regulations concerning the prerequisites for shaping this order and the conditions for making alterations to it remains topical. The grounds for the current system had been formed in two stages. First, in 1990, local government was reinstalled at the communal level, without making alterations to the system remaining from the previous era. During the second stage, in 1998, the system of territorial structure was expanded based on a reformed structure of a general territorial division – the number of provinces was reduced from 49 to 16 and districts were established.

In the following years, despite retaining the general framework of the main territorial division, further changes of fragmentary or corrective nature have been made, without serious alterations to the “state architecture” [Izdebski 2016, 52–64]. At that time, many postulates have been made regarding big or small-scale alterations, e.g., the concept of *Inicjatywa Pomorza Środkowego*, Elbląg’s pursuit to change the location within the province [*województwo*] [Szreniawski 2004, 515]. Moreover, in 2019, new concepts were formulated regarding further decentralisation of structure and functioning of the state (“The Republic of Poland decentralised,” “Poland of local self-governments” and “21 postulates for Poland by local governors”), referring to the issue of administrative and territorial construction of the state [Mażewski 2020, 7–18]. Such projects include political initiatives of the ruling party aimed at division of the current mazowieckie province into two provinces – a draft amendment to the legislation in this area was announced to be presented in January 2021. Simultaneously, numerous changes to the territorial division are executed at a local level (communes [*gminy*] and districts [*powiaty*]) every year. This means the issues raised herein not only are important, but also remain topical.

## 1. THE PREMISES FOR FORMING TERRITORIAL DIVISION

The premises for forming territorial division are considered the conditions which are, or should be, taken into account when shaping particular model of territorial division. Modern territorial divisions usually refer to traditions of the past territorial structure of the state and historically formed cultural identity of the specific areas. Making a territorial division for administrative purposes is “an eminently creative operation that should be influenced by a multitude of different moments” [Iserzon 1968, 150].

The shape and size of the units of territorial division are affected by a number of factors, especially geography, demographics [including national and professional structure of the population], culture, history, politics, economy, degree of urbanisation and communications. At the same time, such units should be fairly homogeneous, while suited for the performance of public tasks in a best way possible [Giętkowski 2009, 227]. Territorial division as an important element of the state system is shaped mainly by history, geography, nationality, military and, recently, also economy, social factors, religion, linguistics and communications [Lemańska and Małecka–Łyszczek 2002, 316].

Nowadays, attention is being drawn to the role of division as a framework for self-government and social activity, which leads to the proposal that the division should take into account the specific features of the operation of a local self-government [Leoński 1995, 45]. It is also reflected in the quest for optimal model of the division of tasks and competence between the units of territorial division, especially in the context of emergence of new types e.g., creation of a self-governing district and a self-governing province in 1998 [Martysz 1999, 220]. On the other hand, the national issues, including territorial division, fall outside the legislative competence of the bodies constituting the local government units.<sup>1</sup> Pursuant to the position of the Constitutional Tribunal, expressed in the statement of reasons to the judgment of 27 November 2000, the main territorial division of the state and the main alterations to this division are the concepts of a state-wide dimension; not only, however, as from the perspective of “the bonds and feelings of the inhabitants, the liquidation of a given unit (its abolition) appears to be a fundamental change.” Constitutional Tribunal also emphasises that it would be arbitrary to make major changes to the territorial division of the state by means of statutory provisions, without prior consideration for the opinions of the residents of the communities affected by those changes, as “the will and opinion of the residents must have a proper place in the political system.”<sup>2</sup>

It was assumed in the mid-war period that the state “should, in its system, organisation and action of its authorities, take into consideration the diversity of specific individual conditions of its area” [Langrod 1931, 11–12]. For example,

<sup>1</sup> Decision by Supreme Administrative Court of 13 November 2019, ref. no. I OSK 732/18, CBOSA.

<sup>2</sup> Judgment of the Polish Constitutional Tribunal of 27 November 2000, ref. no. U 3/00, OTK 2000/8, item 293.

the systemic solutions of this nature had been sought in the first years of systemic transformation following 1989, through the analyses of cultural values of Polish space made during the works of the “Government Team for elaboration of the concept of changes in the territorial organisation of the State,” including the existing administrative divisions and proposals put forward by institutions, scientific centres and private individuals. It allowed to create a preliminary concept of a new territorial division of the state which later became a basis for development of a government draft of the Act of 1998 (the concept assumed creation of 12 regions), but the legislator has made major corrections to the project [Wysocka 1992, 203–18]. The views on the appropriate size of the units of territorial division had already been formulated earlier, indicating that the unit should be optimally small and, at the same time optimally large [Iserzon 1968, 150]. It is not easy to materialize such principle.

The literature assumes that spatial divisions carry cultural traditions, creating the general framework of social life and expressing specific beliefs and political doctrines [Kościński and Wysocka 1993, 3]. Strengthening social and cultural bonds is a fixed process, which may affect, among others, implementation of the tasks of a local self-government in the field of cultural heritage [Pawłowska 2016, 199–213].

## 2. SUSTAINABILITY AND CHANGES TO THE BASIC TERRITORIAL DIVISION

The science of administrative law assumes that territorial division of a state should be relatively stable, as it may not be subject to constant changes, eventually leading to chaos in the functioning of public administration [Piecha 2019, 242].

Already in the mid-war period, J.S. Langrod pointed to the transformation in spatial conditions, emphasising that there is “nothing more wrong than attaching the characteristics of constancy to all territorial conditions” as “the state must take those changes into account and foresee them in due time” [Langrod 1931, 12]. Further literature on the subject emphasises the expensive (both in social and financial terms) and risky nature of the reforms of territorial division. It should be the ultimate measure for raising the effectiveness of administration, only applied upon considering the possibility of obtaining similar effects using other, less expensive and risky measures [Elżanowski 1982, 52–55]. On the other hand, the inevitable nature of socio-economic changes, forcing constant alterations to the territorial division and adaptation of the division to new needs, has been pointed out. Moreover, territorial division created under the influence of various factors has either positive or negative impact on different areas of social and economic relations [Szreniawski 2002, 128]. In particular, transformation in the structure of functioning of administration should occur all the more frequently as the pace of civilisational and organisational change increases [Sakowicz 2012, 129–52].

Changes to the basic territorial division may be of different nature. The literature distinguishes changes within the framework of systemic reforms, i.e., changes of fundamental and systemic nature, as well as those fragmentary in nature, concerning specific areas, but significant both for this area and the whole territorial system of the state, as well as the changes constituting fragmentary corrections, irrelevant in terms of the whole architecture of the state [Izdabski 2016, 53–55].

It should also be emphasised that even the serious changes in the functioning of the government do not always mean alterations to territorial division, e.g., the objective of the authors of the draft act on the metropolitan district of the Upper Silesian agglomeration was to preserve the existing basic three-tier territorial division of the state [Dolnicki 2014, 5–17].

### 3. CONSTITUTIONAL PRINCIPLES FOR FORMING THE BASIC TERRITORIAL DIVISION

The literature points out that reinstatement of local government in Poland has taken years, had a number of stages and witnessed major systemic changes. Local government has created structure which provided support to the citizens in fulfilling their needs [Lipowicz 2015, 6–16]. Alterations to basic territorial division were a significant element of this systemic transformation.

The fundamental principles of the new territorial division of Poland were outlined in the Constitution of the Republic of Poland of 2 April 1997<sup>3</sup> and specified in more detail in 1998, at the level of general legislation. They had been negotiated by experts, politicians and local governors [Kulesza 2000, 81]. Diversity of views on the premises of shaping the division was reflected in the concept of the Constitution of the Republic of Poland of 2 April 1997, which was a certain compromise. Its basic assumption is the balance between the criterion of efficiency/effectiveness in completing public tasks (ability to perform public duties by territorial units) and the criterion of local or regional identity, expressed in the existence of social, economic and cultural ties (Article 15(2)). It should however be noted in this regard that the term “identity” comprises both the objective aspect, i.e., the identity of a given region, commune or district, and the subjective aspect, i.e., the sense of identity [Sługocki 1990; Idem 1997]. Identity of the communities of citizens, from the perspective of the research problem of the axiological foundations of public administration is considered an important value in administrative law [Cieślak 2000, 63]. Polish Constitutional Tribunal highlighted these aspects, claiming that although local governments are legal creations, this fact may not overshadow the existence of “natural historic, economic and cultural bonds which determine that a particular group of inhabitants of a given territory considers themselves to be a political and territorial community to a higher extent than others.” According to the Constitutional Tribunal, “existence of those bonds

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<sup>3</sup> Journal of Laws No.78, item 483 as amended.

is decisive in assessing the degree of cohesion of that community, its self-awareness and ability to formulate its own collective tasks and public objectives.”<sup>4</sup>

A clear relation between local government system and the issue of territorial division is noticeable especially in Article 16(1): “The entire population of a basic territorial division constitutes a self-governing community by law.” Emphasising the importance of the question of territorial division is associated with recognition of the principle of decentralization of public authority which should be ensured by the territorial system of the state (Article 15(1)) understood as obliging the legislator to shape territorial division in a way fostering decentralization of public authority [Giętkowski 2009, 227].

The basic territorial division should take into consideration “social, economic or cultural ties” and provide “the territorial units with ability to perform public tasks.” In the opinion of the Constitutional Tribunal, this means that the fundamental territorial division of the State must take into consideration the social, economic or cultural ties and must ensure that territorial units are capable of performing public tasks.<sup>5</sup> Moreover, the formal criterion for alterations to the basic territorial system is introducing those alterations by means of an Act.<sup>6</sup>

Legal scholars and commentators express negative views on the scope of regulations at a constitutional level, stating that the Constitution is very general in this regard, due to the fact that at the time of its adoption there was no precise position on the model of local self-government and local government administration. Due to recognition of the determination of the particular form of the basic division as a statutory matter, the provisions of the Constitution are implemented by the Act of 24 July 1998 on the introduction of the three-tier basic division of the state.<sup>7</sup> This Act reformed the territorial division of Poland. Since 1 January 1999, the units of basic territorial division have been as follows: communes, districts and provinces.

The current territorial division of Poland has the following units of territorial division: 16 provinces, 314 districts, 2,477 communes in total (including 66 cities with status of a district – communes with urban status, executing the tasks of districts): 1,523 rural, 652 urban-rural, 302 urban (report for 2021).

Province is a unit of public administration execution (state and local) and, at the same time, a regional local community. The basic unit of the basic territorial division of a state is a commune, as a local self-governing community. The current boundaries of communes were established before adoption of the Constitution (mostly in the second half of the 70s). Districts were created in 1998 and district self-government constitutes a second tier of the local self-government

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<sup>4</sup> Judgment of the Polish Constitutional Tribunal of 26 February 2003, ref. no. K 30/02, OTK ZU 2003, no. 2A, item 16.

<sup>5</sup> Judgment of the Polish Constitutional Tribunal of 8 April 2009, ref. no. K 37/06, OTK-A 2009/4, item 47.

<sup>6</sup> Judgment of the Polish Constitutional Tribunal of 10 December 2002, ref. no. K 27/02, OTK-A 2002/7, item 92.

<sup>7</sup> Journal of Laws No. 96, item 603 as amended.

which means the district's residents form a local self-governing community. The importance of this systemic structure is highlighted by the fact that the unit of auxiliary division of the communes (e.g., village [*sołectwo*], municipal district [*dzielnica*]) may not be considered a local community as this term is reserved in Article 16(1), Article 166(1) and Article 170 of the Constitution for the units of basic territorial division of a state, i.e., communes, districts and provinces [Izdebski 2011, 95–110].

The Act of 1998 introduced a three-tier territorial division of the Republic of Poland, regulating only the issues related to establishing 16 provinces and the issue of defining the districts and provinces was left to be regulated by means of a regulation by the Council of Ministers. Alterations to the borders of communes, districts and provinces were to be specified in the same manner.

Judgment of the Polish Constitutional Tribunal of 14 December 1999, specified the expiry date of i.e., Article 5 of the Act of 24 July 1998 on the introduction of the basic three-tier territorial division of the State as of 30 September 2000 as a result of recognition its inconsistency with Article 92(1) of the Constitution in that the authorisation to issue regulations contained therein does not specify the guidelines regarding the content of those acts.<sup>8</sup>

Pursuant to the provisions of Article 7(1) of the Act on the introduction of the basic three-tier territorial division of the State, the Sejm, the Senate and the Council of Ministers were obliged to perform, no later than on 31 December 2000, the evaluation of the new basic territorial division of the state.

At the first stage, the government formed its evaluation in the form of conclusions contained in the "Evaluation of the new basic territorial division of the State," adopted by the Council of Ministers on 12 December 2000. Subsequently, the Polish Senate referred to this issue in its resolution of 11 January 2001 on the evaluation of the new basic territorial division of the state,<sup>9</sup> stating, among others, that the new basic territorial division of the state is correct and meets the assumptions of the public administration reform and the disposition of Article 15(2) of the Constitution. According to the Senate, there are no premises for introducing changes to the basic assumptions of the basic territorial division and the amendments introduced to this division in the near future should have the form of corrections, leading to acknowledgement of the existing social roles and the will of the local environments. In turn, the resolution of the Sejm of 11 May 2001 on the evaluation of the functioning of the basic territorial division of the state,<sup>10</sup> considered the new basic territorial division of the state correct; it was emphasised, however, that this evaluation did not apply to the districts created by the regulation of the Council of Ministers, and thus it is inefficient and ineffective. According to the Sejm, introduction of a new public administration reform, district and

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<sup>8</sup> Judgment of the Polish Constitutional Tribunal of 14 December 1999, ref. no. K 10/99, OTK 1999/7, item 162.

<sup>9</sup> M. P. No. 2, item 24.

<sup>10</sup> M. P. No. 16, item 249.

provincial local governments and new territorial division provides opportunity for effective public administration and may foster the construction process of a civic state.

This official evaluation was commonly considered overly optimistic. The literature emphasised the complexity of conditions of the new territorial organisation of Poland [Chojnicki and Czyż 2000, 261–77]. It has been pointed out that the scale of the introduced changes was so big, that it was impossible to avoid wide critical discussion on its criteria, rules and effects of implementation [Kachniarz 2011, 167–75]. The discussions question, among others, the efficiency and effectiveness of the new administrative structure, mainly the fact that decentralisation of public finance does not keep up with decentralisation of tasks and competences [Hardt 2003, 89–106]. Similarly, social consequence of altering the system of local self-government raise many controversies, referring to the balance of the reform of the Polish local governments, the issues of functioning of the local governments, the evaluation of the course of discussion devoted to the announced alterations [Nowak and Śliwa 2017, 241–52].

The reforms of 1998 referred mainly to the general framework of territorial division and the issue of the current changes switched to the regulation of the local self-government system acts, i.e., commune and district<sup>11</sup> local governments.<sup>12</sup> The regulations issued by the Council of Ministers on the basis of these acts raise a lot of controversy. The competence of the Council of Ministers also comprises outlining the procedure for determining changes, e.g., the procedure for submitting proposals for creating, merging, dividing, abolishing and determining the boundaries of districts, as well as for determining and changing the names of the districts and the seats of their authorities and the documents required in these matters.<sup>13</sup> The Tribunal raised that regulating this procedure is related to the scope and manner of expressing the position in this regard by the residents, which means it also has “political significance, particularly in terms of extinguishing or minimizing the conflicts which accompany such change.”<sup>14</sup>

Polish Constitutional Tribunal has criticised such regulation a number of times. For example, in the judgement of 27 November 2000,<sup>15</sup> as well as in the judgement of 5 November 2001,<sup>16</sup> the Constitutional Tribunal declared the provisions of the Regulation of the Council of Ministers on the establishment of the borders of certain communes to be inconsistent with Article 4(1) of the Act of 8

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<sup>11</sup> Act of 8 March 1990 on communal and municipal self-government, Journal of Laws of 2020, item 713.

<sup>12</sup> Act of 5 June 1998 on district local government, Journal of Laws of 2020, item 920.

<sup>13</sup> Regulation of 9 August 2001, Journal of Laws of 2013, item 1208.

<sup>14</sup> Judgment of the Polish Constitutional Tribunal of 27 November 2000, ref. no. U 3/00, OTK 2000/8, item 293.

<sup>15</sup> Ibid.

<sup>16</sup> Judgment of the Polish Constitutional Tribunal of 5 November 2001, ref. no. U 1/01, OTK 2001/8, item 247.



March 1990 on communal self-government to the extent that they concerned the establishment of the borders of communes.

In turn, in the judgment of 10 December 2002, the Constitutional Tribunal emphasised that the formal criterion for changes in the basic territorial division is to introduce them in the form of an Act.<sup>17</sup> Similarly, in the judgement of July 18 2006, it was decided that the basic territorial division of the state established based on the indicated criteria should be introduced by an Act.<sup>18</sup>

A number of rulings addressed to the Sejm and the Council of Ministers were also formulated in relation to the regulations of the Council of Ministers on changes in the basic territorial division of the state, signalling the occurrence of defects and gaps in the law, elimination of which is necessary to ensure the cohesion of the legal system of the Republic of Poland.<sup>19</sup>

The literature points out that those rulings, issued by the Council of Ministers, may be considered a special type of executive acts which are not subject to evaluation in terms of its compliance with the scope of the governing Act. Such regulation by the Council of Ministers is characterised by being complementary to the Act and its purpose should be to implement the Act, thus it may not contain any content “competitive and autonomous” with respect to the Act [Maczyński 2020, 153–65].

Legal scholars and commentators pointed out to the necessity of treating such regulation in a uniform manner, as a legislative act, establishing the standard of conduct for particular categories of recipients. The choice of such legal form by the legislator may be treated as a certain presumption that the provisions of the Regulation are of exactly such a nature [Dolnicki 2017, 56–64].

The controversies regarding the nature of legal acts concerning establishing the borders of the communes were addressed in the signalling judgment by the Constitutional Tribunal of 2018, specifying “remarks on is the identified systemic error of law consisting in the fact that that Article 4 of the Act of 8 March 1990 on municipal self-government [Journal of Laws of 2019 item 506] by providing for the form of a Council of Ministers regulation as a means of creating, merging, subdividing and abolishing communes and establishing their boundaries, prevents carrying out any control of such acts.”<sup>20</sup> The said judgment states that the discussed regulation of the Council of Ministers is of normative nature, as they provide for solutions which are not exhausted in a single application and have a direct and relatively permanent impact on local authorities, public authorities

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<sup>17</sup> Judgment of the Polish Constitutional Tribunal of 10 December 2002, ref. no. S 27/02, OTK–A 2002/7, item 92.

<sup>18</sup> Judgment of the Polish Constitutional Tribunal of 18 July 2006, ref. no. S 5/04, OTK–A 2006/7, item 80.

<sup>19</sup> Judgment of the Polish Constitutional Tribunal of 5 November 2009, ref. no. S 6/09, OTK–A 2009/10, item 153.

<sup>20</sup> Judgment of the Polish Constitutional Tribunal of 12 June 2019, ref. no. S 1/19, OTK–A 2019, item 33.

and citizens at several levels, thereby laying down rules of conduct of an abstract nature [Gubała 2020, 151–60].

Changes to territorial division at a local level refer to creating, merging, dividing, abolishing and determining the borders have multifaceted effects. For example, merging the communes is a relatively strong intervention in the basic territorial division of the state, as it leads to changing its existing structure [Bujny and Kudra 2015, 95–104]. According to Supreme Administrative Court, “when changing the borders of the commune, ownership of the property is transferred to the acquiring commune, since, in order to perform new tasks, that commune must be provided with public utility property in the commune whose scope of tasks have been reduced.”<sup>21</sup>

Consequences of the alterations causing the change in the structure of affiliation of residents to specific local communities’ concerns, among others, the right to vote. The Act of 5 January 2011, the Election Code<sup>22</sup> includes a separate chapter (section VII chapter 5), devoted to the territorial transformation of the State, which implies the legislator’s awareness that the need for such changes is inevitable [Ozimek 2013, 23].

The Election Codes stipulates that the election to the new commune or district council should be ordered and carried out within 90 days from the date of creating a new commune or district [Baranowska–Zajac 2018, 82–99].

#### 4. THE ISSUES OF PARTICIPATION OF THE LOCAL COMMUNITIES

The issue of participation of local communities in the procedures concerning changes to territorial division is a significant element of these considerations. According to the Polish Constitutional Tribunal, “in a democratic state governed by the rule of law, citizens may participate personally in the conduct of public affairs. Democracy assumes possibly wide inclusion of the citizens – in various forms – into the processes of political decision-making [...] Undoubtedly, the legislator, regulating the procedure of altering the borders of a local government, is obliged to provide those units and their citizens with the possibility to present their opinion.”<sup>23</sup>

The literature emphasises that the fundamental role of territorial division of the country is defining the territorial scope of the citizens’ participation in the public affairs, as it creates spatial foundations for articulation of public interest, social integration, economic development and serves many other important functions in organising social and economic life, as well as the private life of the citizens [Kulesza 1996, 3–4]. The science of administrative law advocates materia-

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<sup>21</sup> Decision by Supreme Administrative Court of 15 June 2010, ref. no. I OSK 1734/09, Lex no. 595285.

<sup>22</sup> The Election Code Act of 5 January 2011, Journal of Laws of 2020, item 1319.

<sup>23</sup> Judgment of the Polish Constitutional Tribunal of 18 February 2003, ref. no. K 24/02, OTK 2003, no. 2, item 11.

lization of the forms of participatory democracy: referenda and local election, as well as public consultations [Kasiński 2009, 141–53]. With regard to changes in the fundamental territorial division of the state, the regulations concerning, among others, the local referendum, should be taken into consideration.<sup>24</sup> Social sciences, in turn, emphasise that there is a visible tension between two values in the Polish conditions: namely, the tension between the need for autonomy on the one hand and the need for national cohesion on the other [Swianiewicz 2015, 29–35]

The interpretation of European Charter of Local Self-Government,<sup>25</sup> expressed by Polish Constitutional Tribunal in numerous judgments had significant impact on the shape of legal regulations concerning the changes in the basic territorial division of the state. According to the Constitutional Tribunal, the Charter explicitly stipulates the obligation of the competent state authorities to consult the public concerned on changes to the boundaries of a local community. Although the Charter leaves a high degree of freedom to the states in terms of choosing the form of these consultations, it excludes discretion, as the solutions adopted in a given country must provide for a real opportunity for the local community to express its opinion.<sup>26</sup> The criteria resulting from the provisions of the Charter are of directional nature, as they aim to be as representative as possible when it comes to listening to the voice of the local community.<sup>27</sup>

The judgments of Supreme Administrative Court followed similar direction, stating that “the change in the borders, including the change involving the abolition of a given unit must always be preceded by consultations with the public concerned, carried out in such a way as to ensure that they are as representative (universal) as possible, and may be preceded by a local (municipal) referendum, which shall be treated as a special form of consultation with the public and whose results will reflect the attitude of the local public to the proposed changes to the borders.”<sup>28</sup>

## CONCLUSIONS

The review of the views of legal scholars and commentators, legislation and judicial decisions concerning the legal grounds for formulating and altering the basic territorial division of the state contained in this paper indicate constant presence of these issues in the modern thought of the science of administrative law. This is mainly due to the role of this issues as an important element of the significant systemic transformation, initiated in 1997–1998, still developed by the

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<sup>24</sup> Act of 15 September 2000 on the local referendum, Journal of Laws of 2019, item 741.

<sup>25</sup> European Charter of Local Self-Government, drawn in Strasbourg on 15 October 1985, Journal of Laws of 1994, No. 124, item 607 as amended.

<sup>26</sup> Judgment of the Polish Constitutional Tribunal of 18 February 2003, ref. no. K 24/02, OTK 2003, no. 2, item 11.

<sup>27</sup> Ibid.

<sup>28</sup> Decision by Supreme Administrative Court of 7 August 2013, ref. no. I OSK 1371/13, Lex no. 1371979.

legislator and judicial decisions regarding constitution and judicial review of public administration. At the same time, there is a visible tendency to change the perspective and gradually move from the analysis of the territorial division of the state as an element of effectiveness of public administration to the emphasis of the significance of territorial division as the real framework of local and regional self-governance and the areas of social activity.

The important role of the Constitutional Tribunal in recognising various aspects of the constitutional concept of the basic territorial division, obliging public authorities to consider not only the requirement to ensure the ability to perform public tasks, but also to maintain and develop social, economic or cultural ties, should also be emphasised. Undoubtedly, the Tribunal's influence on improving the legislation in this regard may hardly be overestimated and is expressed in the emphasis not only of the objective (material) aspects of the identity of self-governing communities functioning within the units of the basic territorial division, but also in the recognition of the need to take into consideration the subjective (personal) aspect in the form of legal forms (consultation, referendum) facilitating the conditions for expression of a sense of local and regional identity.

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