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**THE PRINCIPLES OF UNITARISM, SUBSIDIARITY
AND DECENTRALIZATION AS A CONSTITUTIONAL
BASIS OF REGIONAL SELF-GOVERNMENT
OF THE REPUBLIC OF POLAND**

1. The article considers three main principles determining the territorial organization of the Republic of Poland – the principle of unitarism and decentralization based on the standard definition of the principle of subsidiarity. Another objective of the article is to demonstrate how these three principles influence the structure of Poland’s territorial system of government and, in particular, the regional government model.

The Constitution,¹ adopted on 2 April 1997 by the National Assembly, approved in a nation-wide referendum on 25 May 1997, and effective as of 17 October 1997 is the basic law defining, among other things, the system of central, regional, and local authorities in the Republic of Poland. However, the transformation of Polish politics and administration after 1989 was a years-long process which included almost all aspects of social and political life. One of the most important ideas was to restore regional and local government, which was absent under communism.

The most important constitutional principles that determine the system of government of the Republic of Poland, *communis opinio*, are: Poland’s existence as a democratic state ruled by law, the sovereignty of the nation, division of the government into branches and balance between the branches, the existence of civil society, political pluralism, and – most important to our discussion – the principle of unitarism and decentralization based on the standard definition of the principle of subsidiarity, declared in the Preamble to the Constitution. The latter three principles (unitarism, decentralization, and subsidiarity) are the key determinants of the territorial system of government of the Republic of Poland and, consequently, of the legal status

¹ Journal of laws of 1997, no. 78, item 483, as amended.

of its regions; they impose a certain framework within which the legislator must act, and serve as the interpretation directives for deliberations on specific constitutional and statutory solutions.

2. The definition of a unitary state found in the *Encyclopaedia Britannica* focuses on comparing the two forms of territorial organization of states: a unitary state and a federal state. According to *Encyclopaedia Britannica*, a unitary system is a system of political organization in which most or all of the governing power resides in a centralized government. It contrasts with a federal system. In a unitary system the central government commonly delegates authority to subnational units and channels policy decisions down to them for implementation. A majority of nation-states are unitary systems. They vary greatly. Great Britain, for example, decentralizes power in practice though not in constitutional principle. Others grant varying degrees of autonomy to subnational units. In France, the classic example of a centralized administrative system, some members of local government are appointed by the central government, whereas others are elected.²

The above definition of a unitary state, being an encyclopedic one, focuses on only one aspect of unitary states, namely the decision-making center. The Polish doctrine of constitutional law provides a more precise definition of a unitary state. One of the most systematic definitions of a unitary state has been proposed by P. Sarnecki who defines the following characteristics of a unitary state: 1) uniformity of organization of the government, which means that there is only one government in the state, that the government serves the purpose of preserving and developing the state, and that no other public authorities that are not a part of the uniform government exist in the state; 2) uniformity of the legal status of the state's population, due to the fact that only one citizenship is in place, which is an expression of the public law bonds between the population and the integrated state structure; 3) integrity of the state's territory, which means that there are no divisions in its territory (which is possible in only very small states) or that the divisions only serve the purpose of enhancing the functioning of the only government present in the state.³

² "unitary system." *Encyclopaedia Britannica*. *Encyclopaedia Britannica Online*. *Encyclopaedia Britannica*, 2011. Web. 17 May 2011. <http://www.britannica.com/EBchecked/topic/615371/unitary-system>.

³ Sarnecki, P., Uwagi do art. 164 Konstytucji RP [A commentary to art. 164 of the Constitution of the Republic of Poland], in: Garlicki L., ed., *Komentarz do Konstytucji Rzeczypospolitej Polskiej* [A commentary to the constitution of the Republic of Poland], vol. IV, Wydawnictwo Sejmowe, Warsaw 2007, p. 1.

The Polish version of the principle of unitarism of the state is based most of all on art. 3 of the Constitution which provides that: “The Republic of Poland shall be a unitary State.” Given the above definition of a unitary state, the above provision of the Constitution means that the foundation of the existence of all public authority agencies (or even all public authorities themselves) in regulations adopted by the central institutions of the state, which define the political system of the state, in a process where the Nation as the sovereign may participate directly. This also means that none of the territorial divisions of the state enjoys state-like autonomy, i.e. sovereignty.⁴

What is characteristic of unitary states is the lack of a vertical division of the legislative branch of the government between the different territorial units of the states. This is due to the definition of the subject of sovereign power in the state; in the Republic of Poland, under art. 4 of the Constitution, it is the Nation who is the sovereign – the aforementioned article provides that “Supreme power in the Republic of Poland shall be vested in the Nation.” However, what is permissible – albeit not required – in a unitary state is a vertical division of the executive branch of the government, which is the foundation of the institution of territorial self-government. If such a division of the executive branch of the government is present and meets certain requirements (to be discussed later), the state is considered to be decentralized in the understanding of art. 15 of the Constitution. The fact that the Republic of Poland is a unitary state leads to certain restrictions on the legal status of regions, consisting in limited ability to give Poland’s regions an autonomic status in the sense of giving them some attributes of sovereignty.

3. Article 3 of the Constitution defines the Republic of Poland as a unitary state; however, this principle cannot be used as the only basis for conclusions regarding the structure of the state’s territorial system of government and does not impose a single solution regarding regional government. Only a systemic analysis of the Constitution leads to the conclusion that it allows a relatively open and flexible territorial organization of the state and does not impose on the legislator the requirement to define a comprehensive and rigid form of territorial self-government or administrative division of the state. This, however, does not lead to complete freedom, as the Constitution comprises a number of provisions on this matter. One of the most important provisions is comprised in art. 15 which defines the principle of decentral-

⁴ About term decentralization see more in Jackiewicz, A., *Territorial Organization of European States. Federalism, Regionalism, Unitarism, Temida2*, Białystok 2011, p. 13–14.

ization of the government. Its first passage says: “The territorial system of the Republic of Poland shall ensure decentralization of public power.”

This principle of decentralization of the government involves a transfer of some important tasks and competences of the state government to lower-level units (mostly to the local self-government) and assurance of their autonomy in the performance of such tasks. Such a transfer should be followed by a transfer of adequate funds to perform such tasks and exercise such competences. The state government interferes with the activities of territorial self-government units only within the boundaries defined in the law. Also, there is a hierarchy where territorial self-government is subordinate to higher-level entities.⁵

Article 15 of the Constitution of the Republic of Poland defines, in passage 1, the general principle of decentralization of the government and states, in passage 2, a very important directive which requires of the legislator to pay, in defining the territorial structure of Poland, the greatest attention to the needs of decentralization of the system of government, by way of empowering the territorial self-government. This is of particular importance to the position of the units of territorial self-government, especially in their relations with the central government administration. The aforementioned art. 15 (2) provides that “The basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties.”

This provision imposes two important requirements on the legislator. First, the authors of the Constitution have decided that the territorial division of the state must ensure that the territorial units have the capacity to perform their public duties; consequently, the division should first take into account the needs of the territorial self-government and only then the needs of the central government administration.

Secondly, the provision defines the factors to be taken into account when determining the territorial divisions, namely the bonds existing in a given territory, which can be of the following nature:

- social (e.g. certain employment or ethnic characteristics);
- economic (e.g. predominance of the mining industry or agriculture with large area farms);
- cultural (a unique dialect or customs).

⁵ Winczorek, P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 1997 r.* [A commentary to the 1997 Constitution of the Republic of Poland]. Liber, Warsaw 2008, p. 21.

Such wording of the provision, where the “or” conjunction expresses an alternative, means that the bonds of a given type do not necessarily need to occur simultaneously and the presence of only one of the types suffices to meet the requirement set forth in art. 15 of the Constitution. Of course the presence of such a bond is not a sufficient condition for establishing a territorial division – it is only a *conditio sine qua non*. Other factors that can be referred to are: *raison d'état*, economic reasons, or historical traditions.⁶

As J. Jaskiernia rightly notes, the territorial division of the state, especially the territorial system of the Republic of Poland, must implement the principle of decentralization of the government as the basic idea of such a system (art. 15 of the Constitution), but it must also comply with the principle of a “unitary state.” Thus, decentralization may not go so far as to turn Poland into a federal state or to form within Poland’s territory units of a special status which do not conform to the unitary nature of the state. The requirement to decentralize the government defined in the constitution translates into the need to break up the monopolies which existed in Poland’s previous system of government, namely the political monopoly, the uniform government, the state ownership, the financial monopoly, and the monopoly of the state administration. Rejection of such monopolies is a condition for forming other entities which may exist in parallel with the central government administration and autonomously perform functions of public administration. Decentralization of the government means not only a transfer of tasks by central state bodies to lower-level units of central government administration (vertical deconcentration), but also broadening the competences of such units with regard to their autonomous decision-making.⁷

4. The constitutional provisions concerning the principle of decentralization of the public authorities and the territorial self-government are a manifestation of the principle of subsidiarity, which is an important part of the doctrine and laws of democratic states. The principle of subsidiarity is

⁶ Jackiewicz, A., Status prawny regionu w świetle konstytucji RP z 2 kwietnia 1997 r. – wybrane uwagi konstytucyjnoprawne [Legal status of region according to the 1997 Constitution of the Republic of Poland – some constitutional remarks], in: Plawgo B. ed., Polska Wchodnia – zarządzanie rozwojem [Eastern Poland – development management]. Wyższa Szkoła Administracji Publicznej, Białystok 2008, p. 142.

⁷ Jaskiernia, J., Wprowadzenie do systemu państw federalnych [Introduction to the federal states system], in: Jaskiernia J. ed., Problemy rozwoju federalizmu we współczesnym świecie [Development of federalism issues in contemporary world]. Wydawnictwo Uniwersytetu Humanistyczno-Przyrodniczego Jana Kochanowskiego, Kielce 2010, p. 18.

considered to be an implicit rule of constitutional law; therefore, it is stated expressly in only a few constitutions.

The Constitution of the Republic of Poland mentions the principle of subsidiarity in its Preamble: "...We, the Polish Nation – all citizens of the Republic, [...] hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities." Such principle of subsidiarity determines the directions for law-making and the application of laws.

The essence of the principle of subsidiarity is its emphasis on the secondary and auxiliary role of the state. The state's interference in the business of individual citizens and self-governing communities is permissible only when it is necessary. The most important consequence of the principle of subsidiarity is the requirement that decisions are to be made "as close to the citizens as possible".⁸

The principle of subsidiarity is the next example of how constitutional principles can greatly affect the structure of a territorial self-government. The commune, being the basic unit of territorial self-government, and one that is the closest to the citizens, must be burdened with the broadest possible scope of duties, as long as it is able to perform these duties effectively. Only the duties that cannot be performed by the commune can be transferred to higher-level entities of the local or regional self-government or, as an exception, to the central government.

5. The constitutional principles mentioned in this article refer to one of the most important characteristics of the system of government, namely its form. From this point of view, states can be divided into unitary and federal.⁹ What sets the two types apart is not the presence or absence of territorial divisions, which are in place in both types of states. In unitary states, territorial divisions serve solely administrative purposes and can be changed freely by the central government (the parliament). In federal states,¹⁰ on the other hand, the internal territorial divisions are usually protected by the consti-

⁸ About subsidiarity principle see more in Jackiewicz, A., *Territorial Organization of European States. Federalism, Regionalism, Unitarism*, Białystok 2011, p. 14–16.

⁹ See Jackiewicz, A., *op. cit.*, pp. 16–21 and literature cited there.

¹⁰ The matter of federal states is broadly discussed in: W. Suhecki, *Teoria federalizmu [The theory of federalism]*, Warsaw 1968. One of the systematic definitions of a federation is given by A. K. Wojtaszczyk in: K. A. Wojtaszczyk, "Państwo współczesne" [The contemporary state], in: K. A. Wojtaszczyk, W. Jakubowski W., eds., *Spółczesność i polityka. Podstawy nauk politycznych [Society and politics. Tenets of political sciences]*; Aspra, Warsaw 2003, pp. 263–264.

tution and the individual units not only are elements of the administrative structure of the state but are members of the federation (confederacy) and have some characteristics of states, i.e. some powers of their government are parallel to those of the federal government.¹¹

In reference to the aforementioned vertical division of power, while in a unitary state it is only possible with regard to the executive branch of the government, in a federal state this issue is resolved in a different manner: the legislative, the executive, and often the judicial branch of the government are separated in accordance with the division of sovereignty between the federation and its parts. Thus, federal states can be described as non-centralized.¹²

It must be emphasized that Poland's Constitution relatively broadly defines the organization of the territorial division of the state, most of all by defining Poland as a unitary state which is decentralized by introducing the institutions of territorial self-government. Territorial self-government has become a very important part of the structure. Nevertheless, the Constitution does not exhaustively define the territorial division of the Republic of Poland and allows the legislator to decide on its form. Thus, it is the legislator who decides on both the territory governed by the territorial self-government and on the extent of its autonomy. However, the legislator does not enjoy unrestrained freedom in making its decisions, because

¹¹ Jaskiernia, J., op. cit., p. 17.

¹² An intermediate form of the territorial organization of a state is a regional state, which is also referred to as a state based on the autonomy of regions. Standard examples of such states are Spain and Italy. This form of statehood is characterized by the fact that regions as parts of the state have their own parliaments and executive branch, but their competences are limited and often very different, compared to those of members of a federation. This does not mean that a federalist or regionalist concept of the territorial organization of a state precludes further territorial decentralization. Most often, both the constituent parts of a federation and the regions are divided into lower, self-governing levels of public authorities. A specific form of territorial organization of a state is devolution which in Europe is present mostly in the United Kingdom. About devolution as a form of regionalism see Smith, G., *Życie polityczne w Europie Zachodniej* [Political life in Western Europe], Puls, London 1992, p. 73, Bogdanor, V., *Devolution in the United Kingdom*, Oxford Paperbacks, Oxford 1999, Jackiewicz, A., op. cit., pp. 27–28, Sarnecki, P., *Ustroje konstytucyjne państw współczesnych* [Constitutional systems of government in contemporary states], Zakamycze, Kraków 2003, p. 80, Pietrzyk, I., *Polityka regionalna Unii Europejskiej i regiony w państwach członkowskich* [Regional policy of the European Union and regions in the member states], Wydawnictwo Naukowe PWN, Warsaw 2006, p. 253, Jackiewicz, A., op. cit., pp. 27–28. The situation in the United Kingdom is also discussed in: M. Kaczorowska, *Dewolucja systemu politycznego: istota, wpływ i znaczenie – casus Zjednoczonego Królestwa Wielkiej Brytanii i Irlandii Północnej* [Devolution of the political system: the essence, the impact, and the importance – the case of the United Kingdom], in: *Ewolucja. Dewolucja. Emergencja w systemach politycznych* [Evolution. Devolution. Emergency in political systems], J. Szymanek, M. Kaczorowska, A. Rothert, eds., Wydawnictwo Elipsa, Warsaw 2007.

the Constitution (as well as international laws) includes provisions which define the limits of such freedom, such as the aforementioned principles of a unitary state, subsidiarity, and decentralization.¹³

6. The term “region” is used in the Constitution in art. 164 (2) which provides that “other units of regional and/or local government shall be specified by statute.” This is the first occurrence of the term “regional government” in Polish law; its introduction was due, perhaps mostly, to European standards.¹⁴

However, the Constitution does not define the term “regional government” and, instead, only provides a general principle of self-governing communities. One must remember that different states use different definitions of regions – with regard to their names, their position in the system of government, and the public duties they are charged with. Thus, it is impossible to develop one precise and detailed definition of a region. To find a common denominator which will facilitate the process of determining what regions are in Europe, one should refer to the definition of regional self-government that can be found in the European Charter of Regional Self-Government, which is the source of European standards in this field and should be taken into account when defining the term. Article 3 (1) of this act provides that “regional self-government denotes the right and the ability of the largest territorial authorities within each State, having elected bodies, being administratively placed between central government and local authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority, to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity.”

In Polish legal doctrine, the term is usually associated with “the highest-level unit of the state’s territorial division which most often constitutes a geographically separate area with strong historical, cultural, economic, social, and often ethnic ties, within which an autonomous, from the point of view of the region’s population, economic, social, and cultural policy is conducted to further the common interests of the area’s population.”¹⁵

¹³ About constitutional and statutory status of Polish regions see also Jackiewicz, A., *op. cit.*, pp. 233–238.

¹⁴ Banaszak, B., *Prawo konstytucyjne [Constitutional law]*, C.H.Beck, Warsaw 2008, p. 728.

¹⁵ This is how B. Banaszak defines regions in a unitary state (and differentiates between the nature of regions in unitary and federal states); Banaszak B., *Porównawcze prawo konstytucyjne współczesnych państw demokratycznych [Comparative constitutional law of contemporary democratic states]*, Wolters Kluwers Polska, Kraków 2007, p. 500.

Another important aspect of the current constitutional provisions is the assumption that the regional self-government bodies do not need to be identical, with regard to either the name or the territory, as the units of the state's administrative division implemented to facilitate the operation of the government. This is of particular importance in the context of art. 152 (1)¹⁶ which defines the voivodship (*województwo*) as the area of operation of a government administration body, the voivod (*wojewoda*). Two matters must be considered here. On the one hand, the administrative division must take into account the needs of the territorial self-government, as provided for in art. 15 and art. 16 of the Constitution which define the principles of decentralization and local self-government. On the other hand, this matter influences the way the supervisory¹⁷ power over the local self-government, provided for in art. 171 of the Constitution, is formed.¹⁸

Article 171 (2) of the Constitution enumerates the voivod as one of the supervisory bodies.¹⁹ As a result, and due to the need to make such supervisory power effective, the territorial division into regions, with the related division into voivodships (defined as the territorial units where voivods exercise their powers), has been implemented. Nevertheless, this does not mean that regions and the so-defined voivodships are identical entities, but rather, as H. Izdebski states, it means that the regions and the voivodships are coordinated, i.e. "the boundaries of regions (...) may not cut across voivodships; consequently, a voivodship may comprise one, two, or more regions."²⁰ Nevertheless, in accordance with the principle of decentralization, in the process of coordination, the territory of the regions must be defined first. Only then can the "map of regions" be used to define the territories of the voivodship.

In the light of the aforementioned constitutional principles and especially art. 163 and 164 of the Constitution, which provide that the commune (*gmina*) shall be the basic unit of local government and other units

¹⁶ Art. 152 (1) of the Constitution of the Republic of Poland: "The voivod shall be the representative of the Council of Ministers in a voivodship."

¹⁷ The English translation found on the website of the Sejm contains the word "review" (The organs exercising review...); however, it appears that the word "supervisory" would be more appropriate here.

¹⁸ Banaszak, B., *Prawo konstytucyjne* [Constitutional law], op. cit., p. 729.

¹⁹ Art. 171 (2) of the Constitution of the Republic of Poland: "The organs exercising review over the activity of units of local government shall be: the Prime Minister and voivods and regarding financial matters – regional audit chambers." See also supranote 17.

²⁰ Izdebski, H. *Samorząd terytorialny. Podstawy ustroju i działalności* [Territorial self-government. The tenets of organization and activity], Wydawnictwo Prawnicze Lexis-Nexis, Warsaw 2006, p. 68.

of regional and/or local government shall be specified by statute, it can be concluded that the authors of the Constitution have decided to introduce a model of territorial self-government with several levels,²¹ whose final form was defined in a statute. Nevertheless, regardless of which model is chosen, one level of territorial self-government is required on the local level, and one on the regional level.²²

This requirement was implemented in 1998 in a number of statutes which reformed the territorial structure of the state. Of special importance from the point of view of this paper are the Act of 5 June 1998 on voivodship self-government,²³ the Act of 5 June 1998 on the district self-government,²⁴ and the Act of 24 July 1998 on the introduction of a three-level territorial division of the state.²⁵ In these acts (which raised many controversies), the legislator decided to establish, in addition to the commune-level territorial self-government which had been in place since 1990,²⁶ two additional levels of territorial self-government, namely the district (*powiat*) (a local-level structure) and the voivodship (*województwo*) (a regional-level structure). One should keep in mind, however, that the constitution formally allows also for more than one level of regional self-government. Thus, it would formally be possible to “add” another level of regional (or local) self-government.²⁷ Considering the experiences with the functioning of the current model of territorial self-government, this appears to be impossible; more likely is the elimination of district self-government.

²¹ Article 164 of the Constitution is commented this way among others by Sarnecki, P., *Uwagi do art. 164 Konstytucji RP* [A commentary to art. 164 of the Constitution of the Republic of Poland], in: Garlicki L., ed., *Komentarz do Konstytucji Rzeczypospolitej Polskiej* [A commentary to the constitution of the Republic of Poland], vol. IV, Wydawnictwo Sejmowe, Warsaw 2007; and Winczorek P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 1997 r.* [A commentary to the 1997 Constitution of the Republic of Poland], Liber, Warsaw 2000, p. 216.

²² A completely different potential problem which may occur in the case of constitutional provisions which require the legislator to regulate a given matter – as is the case here – is the issue of potential responsibility in the case of failure to observe such a duty. Poland’s legal system does not have any provisions which would impose sanctions in the case of failure to take action by the legislative bodies, such as shortening the term of the parliament. It is also impossible to hold liable the persons elected to the legislative bodies.

²³ Consolidated text: Journal of laws of 2001, no. 142, item 1590, as amended.

²⁴ Consolidated text: Journal of laws of 2001, no. 142, item 1592, as amended.

²⁵ Journal of laws of 1998, no. 96, item 603, as amended.

²⁶ Commune-level self-government was reestablished by the Act of 8 March 1990 on territorial self-government (consolidated text: Journal of Laws of 1990, no. 16, item 95) – this statute, after the higher levels of the territorial self-government were introduced, was called the Act on commune-level self-government.

²⁷ Izdebski H., *Samorząd terytorialny...* [Territorial self-government...], op. cit., p. 68.

In the course of the government administration reform of 1998, a decision was made to make regions, defined as units of territorial self-government, identical with regard to the territory, as the voivodships, defined as the areas where the voivods exercise their powers. Consequently, regions currently have a dual nature: they are both self-government and government administration entities.

As mentioned before, the Constitution refers to statutes in many matters concerning territorial self-government. This is also true with regard to the bodies of the units of territorial self-government. Art. 169 of the Constitution provides for a general model which is applicable on all levels of self-government. According to this regulation, units of local government shall perform their duties through constitutive and executive organs. Because the Constitution does not define any other units of territorial self-government other than the commune (*gmina*), the names of such organs are not defined in the Constitution and are left to be defined in relevant statutes. The aforementioned act on the voivodship self-government provides that the constitutive organ is the voivodship parliament (*sejmik*) and the executive organ is the voivodship government (*zarząd*) headed by the voivodship marshal (*marszałek*).

The Constitution does provide that elections to the constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. With regard to other matters, such as principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, the Constitution refers to a statute; currently it is the new Election Code adopted on 31 January 2011.²⁸ The Constitution does not define, however, how the executive organ is to be elected and dismissed and only provides that the principles and procedures for the election and dismissal of executive organs of units of local government shall be specified by statute.²⁹

The Constitution does not regulate the structure of the regional self-government and refers to statutes, but it does provide that the internal organizational structure of units of local government shall be specified, within statutory limits, by their constitutive organs.

Of key importance to defining the position of Poland's regions in the system of government is, besides the aforementioned constitutional prin-

²⁸ Journal of laws of 2011, no. 21, item 112.

²⁹ Art. 169 (3) and (4) of the Constitution mentions local self-government bodies but this appears to be the result of an oversight of the legislator and, consequently, this provision should also apply to regional self-government bodies.

ciples, the principle of the self-governing nature of the units of territorial self-government set forth in art. 165 (2) of the Constitution.³⁰ The principle is often referred to in verdicts of the Supreme Administrative Court and the Constitutional Tribunal which regard it as the essential characteristic of self-government as a separate public entity. The verdicts allow a rather precise decision of the aforementioned self-governing nature.

The self-governing nature of the self-government is regarded most importantly as freedom of action within the limits defined in the relevant statute, which is of particular importance with regard to performance of public duties. The Supreme Administrative Court has defined the essence of the self-governing nature (of a commune) in the following manner: “the self-governing nature of a commune means that within limits set forth in relevant statutes a commune is not subordinated to anyone’s will and that within such limits it takes legal and factual actions, following solely its own will expressed by its elected bodies. Thus, the self-governing nature is circumscribed by the borders defined in relevant statutes which precisely identify the field where the self-governing nature can be exercised.”³¹ Consequently, if the limits (boundaries) defined in the relevant statutes determine the scope of a region’s self-governing nature (as well as that of other units of territorial self-government), the statutes, according to the Constitutional Tribunal, need to “establish the legal framework in which the self-governing nature can be exercised in a unitary state.”³²

This leads to the conclusion that the self-governing nature of a region – regarded as an objective area – cannot be fully or partly (to an extent that affects the very essence of it) abolished, but at the same time it is not absolute and may be restricted. Such restrictions, however, must meet some formal, procedural, and material criteria so as to not violate the essence of the self-governing nature established by the Constitution. The formal criteria are met when the restrictions concerning matters related to the organization, scope of duties, and ways of functioning of the region are regulated in a statute – in observance with the principle of exclusivity of a statute as the instrument to implement restrictions on self-governing nature. The material criterion allowing for restricting self-governing nature is the requirement that the need for such restrictions be justified by “the

³⁰ Art. 165 (2) of the Constitution of the Republic of Poland: “The self-governing nature of units of local government shall be protected by the courts.”

³¹ Verdict of 4 February 1999, II SA/Wr 1302/97, Decisions Pertaining to Self-Government 2000, no. 3, item 97.

³² See: verdict of the Constitutional Tribunal of 4 April 1998, K 38/97, OTK ZU 1998, item 31.

purposes defined in the constitution and the protected values; the priority of protection of such values over the protection of self-governing nature of territorial self-government shall be determined by the legislator.”³³ In the event of such a conflict between self-governing nature and other purposes and values defined in the constitution, when determining whether and to what extent restrictions on self-governing nature are reasonable, one must take into account the principle of adequacy of the objective justifying such restrictions to the measure to be used by the legislator and the principle of proportionality which means that the legislator’s interference should not be excessive, i.e. should not exceed the boundaries necessary for the protection of the values justifying such interference (the Constitutional Tribunal refers to this principle as prohibition of excessive interference). Restrictions on the self-governing nature of a region may be legally imposed only if the aforementioned formal and material criteria are fully met.

Protection of the self-governing nature of regions and other units of territorial self-government is based most of all on judicial control of the government administration, which is assured by the Polish system of administrative courts, with regard to the acts of law adopted by the review bodies. However, as B. Banaszak states, the constitutional provision that guarantees judicial protection of the self-governing nature of territorial self-government stands on its own and can constitute a basis for the self-government’s claims to be enforced in common courts of law, administrative courts, or the Constitutional Tribunal.³⁴

Given the above, we should focus on the means to protect this constitutional principle “aimed” against the legislator and guaranteed by the Constitutional Tribunal.

Being a part of the judiciary branch of the government and charged most of all with assuring conformance of laws to the constitution, the Constitutional Tribunal responds to complaints claiming lack of conformance to the Constitution (or a ratified international treaty whose ratification required prior acceptance expressed by way of a statute) of acts of law enumerated in art. 188 of the Constitution, namely statutes, international treaties, and laws adopted by central government bodies.³⁵ According to art. 191 of the

³³ See: verdict of the Constitutional Tribunal of 8 May 2002, K 29/00, OTK-A 2002, item 30.

³⁴ Banaszak, B., *Prawo konstytucyjne* [Constitutional law], op. cit., pp. 734–735.

³⁵ This catalogue does not include acts of local law; their legality is considered by administrative courts and art. 191 does not apply to them.

Constitution, the entities enjoying the right to initiate such a procedure can be divided into two categories:

- so-called general legitimacy entities (in accordance with the terminology recommended by Z. Czeszejko-Sochacki³⁶) which may question any act (norm) regardless of its content (unlimited objective scope), such as the President of the Republic of Poland, a group of 50 members of parliament, and the Ombudsman;³⁷
- so-called special legitimacy entities which may question only those acts or norms that pertain to the scope of their activities; in addition to three other groups of entities, the legislator enumerated the constituting entities of the territorial self-government as belonging to this category.³⁸

Consequently, regions, through voivodship parliaments, may follow this procedure, which is an excellent instrument to protect the regions' self-governing nature in the law, especially that the decisions of the Constitutional Tribunal are universally applicable and final (art. 190 (1) of the Constitution). The practice shows, however, that this institution is used rather rarely.³⁹

The detailed constitutional and statutory provisions discussed above demonstrate that Poland's territorial system of government does implement the constitutional principles of unitarism, subsidiarity, and decentralization. However, the material content of the principles is fairly broad: defined as a framework related to the system of government, they are quite attractive

³⁶ Czeszejko-Sochacki, Z., Trybunał Konstytucyjny PRL [The Constitutional Tribunal of the People's Republic of Poland], Książka i Wiedza, Warsaw 1986, p. 102 ff; the author uses the term "general legitimacy" and "limited legitimacy and then recommends the terms "comprehensive legitimacy" and "special legitimacy;" see: Czeszejko-Sochacki, Z., Garlicki, L., Trzeciński, J., Komentarz do ustawy o Trybunale Konstytucyjnym z dnia 1 sierpnia 1997 (Dz.U. nr 102 poz. 643) [A commentary to the Act on the Constitutional Tribunal of 1 August 1997 (Journal of Laws no. 102, item 643)], Wydawnictwo Sejmowe, Warsaw 1999, p. 104. The most commonly used terms in the doctrine are "general legitimacy" and "special legitimacy", see, e.g. Garlicki, L., Polskie prawo konstytucyjne [Polish constitutional law], Liber, Warsaw 2004, p. 383, Kryszewski, G., Trybunał Konstytucyjny [Constitutional Tribunal], in: Grzybowski, M., ed., Prawo konstytucyjne [Constitutional law], Temida2, Białystok 2008, p. 336.

³⁷ Other entities in this group are: Speaker of the Sejm, Speaker of the Senate, Prime Minister, 30 senators, First President of the Supreme Court, President of the Supreme Administrative Court, Prosecutor General, President of the Supreme Chamber of Control.

³⁸ Other entities in this group are: National Judicial Council, national labor union bodies, national bodies of organizations of employers and professional organizations, churches and other religious associations. The term "matters covered by the scope of their activities" is discussed in: Garlicki, L.: Uwagi do art. 191 Konstytucji RP [Comments to art. 191 of the Constitution of the Republic of Poland, in: Garlicki L., ed., Komentarz do Konstytucji Rzeczypospolitej Polskiej [Commentary to the Constitution of the Republic of Poland], vol. V, Wydawnictwo Sejmowe, Warsaw 2007.

³⁹ The regional assemblies exercise this right a few times a year.

to the legislator because they enable him to use them as a foundation for system of government models that are quite different from one another with regard to such elements as, for example, the administrative division of the state, the structure (the number of levels of local and regional government), the competences of the different entities, and the ways to protect their autonomy. Because the Constitution does not define many detailed solutions, the “skeleton” formed by the three aforementioned constitutional principle is *de iure* fairly flexible and the concept of territorial system of government in this regard is open and susceptible to statutory modeling. Thus, the existence of the Polish model of regional government is guaranteed in the constitution and protected by it mostly based on those three principles; nevertheless, as the above discussion indicates, the legislator has been given extensive possibilities to shape the legal status of Poland’s regions.

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