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The Polish law regulations of decentralization of the official authority  
Decentralizacja władzy publicznej i jej przejawy na gruncie polskich regulacji prawnych

### **Streszczenie**

Zgodnie z przyjętym tytułem, przedmiotem rozważań zostały objęte czynniki warunkujące decentralizację władzy publicznej w Polsce. Wybór tego tematu jest usprawiedliwiony przynajmniej z dwóch powodów. Po pierwsze, jedna z politycznych zasad funkcjonowania kraju wprowadziła w życie, według Konstytucji Rzeczypospolitej Polskiej - decentralizację władzy publicznej, jako wyraz zaspokajania indywidualnych potrzeb obywateli. Po drugie, mija 25 rocznica funkcjonowania z samorządu lokalnego w Polsce, co stanowi podstawę dla podsumowania jego funkcjonowania.

Aby przeanalizować wybraną problematykę, retrospekcji zostanie poddany najpierw historyczny dorobek literatury zagranicznej, dotyczący podstaw i usprawiedliwiający decentralizację władzy publicznej w Polsce. Powtóre zaś, zostaną poddane pod rozwagę polskie regulacje prawne i literatura przedmiotu świadcząca o decentralizacji władzy publicznej ze szczególnym uwzględnieniem ich funkcjonowania także na gruncie wypracowanej linii orzeczniczej.

Przedstawione krótkie rozważania dowiodą tego, że decentralizacja władzy publicznej w formie przekazywania pewnych praw dla jednostek była dopuszczalna wyłącznie z jednoczesnym przyznaniem im autonomii. Ponieważ samodzielność działania jest rzeczywistą poręczycielką publicznej realizacji zadań.

Oczywiście 25 lat funkcjonowania samorządu lokalnego w Polsce należy odczytywać jako pełny sukces, który nie jest jednak wolny od pewnych mankamentów. Są one w pewnym stopniu naprawiane lub wyjaśniane przez judykaturę albo literaturę przedmiotu.

**Słowa klucze:** decentralizacja, zadania publiczne, autonomia, samorząd lokalny.

## Abstract

According to the accepted title, with subject of deliberations included in hereby drawing up, determining determinants confirming the decentralization of the official authority in Poland will be. One should recognize choice about this subject in every respect justified at least from two reasons. Firstly, one of political principles of functioning of the state implemented by the Constitution of the Republic of Poland - decentralization of the official authority, lets for simpler getting to know appropriate needs of individual citizens. On the other whereas, is passing 25 anniversary of functioning of the local self-government in Poland what the rise to certain summaries and conclusions constitutes.

In order to move chosen issues closer, first historical achievements of foreign literature, concerning bases and justifying the decentralization of the official authority will be analysed. In second whereas, self-reliances applying in Poland to regulations attesting to the decentralization of the official authority and her signs towards the functioning of self-government units, with particular reference to of their functioning. One's support also in the developed judicature and Polish doctrine will find moreover drawing up.

Presented very short dissertations proved it, that the decentralization of the official authority in the form of handing sure entitlements over for self-government units was possible exclusively with simultaneous granting them self-reliances. Because the self-reliance of action is an actual guarantor of the public execution of tasks about so-called character self-government. What behind it is going, there is at the lack of this self-reliance no speech about causing the decentralization of the official authority.

How he results from appointed regulations, applying in Poland to conclusions *de lege lata* one should accept years, that fully are using up issues of the decentralization of the power, as well as self-reliances of self-government units this way. The merit in this respect is sitting down above all on provisions of separate acts resulting from the constitution, political acts, as well as provisions specifying signs of the self-reliance of the functioning of the local self-government in Poland.

Of course in Poland one should read out 25 years of functioning of the restored local self-government as the full success, at least not free from certain shortcomings. Due to their lack of clarifying a need more and more more frequent to come to the judicature or literatures on the subject exist, hence as the demand *de lege ferenda* it would be possible to accept full

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I. The need of the decentralization of the official authority has an age-old tradition coming mainly from Western European countries<sup>1</sup>. For her one should find the genesis above all in France thanks to two statesmen, propagating different admittedly, but concerning the decentralization of the power, views: of Marquis d'Argenson and Anne Robert of Jacques Turgot<sup>2</sup>. First from them demanded regarding communes as so-called democracies i.e. public-legal corporations; of granting them the freedom; above all laws of the free election of commune bodies and laws of the tax collection commune. In communes because, searched out the source of meeting the local needs.

Second however demanded basing of the administrative system on communes although pointed out also to the need of leading higher council associations. At the service for

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<sup>1</sup> K. Łokucijewski, *Teoretyczne i ustrojowe przesłanki samorządności terytorialnej* (w:) *Prawoznawstwo a praktyka stosowania prawa*, Wydawnictwo Uniwersytetu Śląskiego Katowice 2002, s. 251 – 269.

<sup>2</sup> J. Lemańska, *Koncepcja samorządu terytorialnego* (w:) *Prawo do dobrej administracji*, Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego, Warszawa – Dębe 23 – 25 września 2002r., Warszawa 2003, s. 451.

you and under his control. Communes and these council connections should were to accomplish administrative activities, as state agencies, passed on to them.

Opinions voiced by them, coincident communes in the free and autonomous idea *pauvoir municipal*, found confirming in the act from 14 December 1789, reconciling the self-reliance of action of communes with carrying out tasks, passed on to them by the state. For her regulations not only confirmed the decentralization of the official authority for communities - being supposed to settle own matters "*fonctions propres*", but also obliged them to deal with matters being involved in the Civil Service, however delegated for communities "*fonctions déléguées*"<sup>3</sup>.

The idea of the decentralization of the official authority wasn't also alien to XIX-centuries for Prussia. She found confirming in the municipal Statute from 19 November 1808, of act created by Lorenzo von Stein'a. In frames of accepted there regulations, the urban commune was recognised exactly as the essence political, being supposed to function in its heart of hearts of social self-reliance. The city was supposed to manage its matters independently via chosen organs as the community, given the own life and consisting of the whole of citizens. Not that much creating public-legal corporations from cities was an intention of the legislator, how many pulling municipal citizens for the participation in the civil service. The citizen had, through public action in frames of the commune self-government to learn feelings with member of a state organism and to add for possible more late activity in the national representation<sup>4</sup>.

The system of the decentralised authority, in the continental presentation, was also in England implemented in the XIX century. a reform of the management board of the care originated her on poor in 1834 and reform of the system of municipal cities in 1835. First from them caused creating local offices of the care above poor, surrendered up to the management of the central agency; second appointing deputies of all city dwellers, paying taxes to city councils, formed oligarchical board of municipal cities, based on various privileges in place, uniform organization of all municipal cities, based on the democratic principle.

II. the Idea of the decentralization of the official authority was current also in Poland, thanks to a few theoreticians of the law. Amongst activity of Jerzy Panejko outweighed. This author, formulating comprehending the decentralization, already in the twentieth years,

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<sup>3</sup> D. J. Panejko, *Geneza i podstawy samorządu europejskiego*, Paryż 1926, s. 23 – 24.

<sup>4</sup> O. Gierke, *Die Steinsche Städteordnung*, 1909, s. 21, E. Meier, *Die Refrm der Verwaltungsorganisation unter Stein und Hardenberg*, 1881, s. 275, s. 347; G. Radbruch, *Admission das jurisprudence* 1924, s. 183.

pointed at appearing of the difference among the government and self-government administration. He justified her with it, that provided the government administration is based on a system of the hierarchically organised bureaucracy; as the local authorities is being carried out by local organs staying in no hierarchical ratio to any organs or it government or self-government of higher class. In addition, these local organs could come so by choice, like from the nomination; individuals or jointly organised offices could be them. According to him, the internal system of the self-government unit is a secondary thing, and a self-reliance of the local authorities is a significant feature. This self-reliance, according to J. Panejki, is an essence of what one should call the decentralization of the Civil Service. "in this meaning the decentralization is completely identical with the self-government". With turning it over "the self-government is, based on provisions of the Act decentralised administration national, exercised by local bodies, independent hierarchically for other organs and independent within the limits of the act of the general law"<sup>5</sup>.

The presented climb found its opponent in the person of Tadeusz Bigo who recognised for unauthorized treating comprehending the decentralization as the synonym of comprehending the self-government. According to him, the self-government is one type of the decentralization, because the decentralization is a broader notion. To take back it is possible her because e.g. for public spontaneous bets, for which the legal personality is a shared moment (hospital, young offenders' institution) as well as e.g. public utilities, in which legal persons aren't acting as entities of the civil service at all. Both in one, as well as the second case pointing at functioning of decentralised self-government institutions is out of the question<sup>6</sup>. Similarly however as J. Panejko he thought, that to one of types of the decentralization in the form of the self-government, two significant features comprise: the self-reliance and the management board. In his belief to such features he shows also very composition of the word which rose from words: alone and management board. From filing these two words, the author led out showing self-ordering, so self-government, as well as government entities. For him "the Self-government was a decentralization of the civil service, for which the corporations, appointed by the act were self-reliant entities"<sup>7</sup>.

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<sup>5</sup> D. J. Panejko, *Op. cit.*, s. 95 - 97.

<sup>6</sup> T. Bigo, *Związki publiczno-prawne w świetle ustawodawstwa polskiego*, Warszawa 1928, s. 149.

<sup>7</sup> *Ibidem*, s.152.

Next Henryk Dembiński accepted the dogmatic approach towards the problem of the decentralization behind German authors<sup>8</sup> recognizing in the thirtieth years, that "searching norms for the peculiar trademark of the self-government body, she is being found in the decentralization i.e. in the certain complex of norms which is characterized by it, that in developing of general norms in individualized a certain independence is granted the local authorities"<sup>9</sup>. According to him "decentralization, most generally holding the thing, in such a system of legal norms which by the central, highest source of norms allows a lot of centres, creating norms less or more is being expressed independently. In this sense the decentralization, according to the author's, is characteristic of such legal bodies as: personal union and real, federal state, autonomies ". In case of the referring decentralization to the self-government he walks "only about certain fragment of the law. It concerns the administrative decentralization ". The self-government is a body of the public Civil Service, and from other i.e. government state government authorities a decentralization is what is favouring him.

The author assumed behind Hans Kelsenem that the full form of the decentralization existed there where norms local, created by the given body, are ultimate that is not letting stand each other or replace through the main norm and independent what he/she is marking, that contents aren't describing them oneself with main<sup>10</sup>. Perfect, with opinion of the author, "the accident of the independence of the local authorities will occur then if: self-government acts before giving them aren't a) as for their contents determined in any form of official instructions, orders, orders or circulars by other state agencies, these acts after giving them are b) ultimate and valid, i.e. cannot be knocked down in terms of their legality as well as the appropriateness, neither in the course of administrative proceedings, nor by way of theses court"<sup>11</sup>.

To the need of the decentralization, and straight out Maurycy Jaroszyński showed the decentralization the idea<sup>12</sup>, which acknowledged that the self-government was just this variety of the civil service (that is national), which in the state of our times best and most effectively the idea of the decentralization is coming true by. According to him, "two his essential features have decisive meaning: the self-government consists in making independent (of

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<sup>8</sup> H. Kelsen, *Allg. Staatslehre*, p 180, A. Merkl, *Allgemeines Verwaltungsrecht*, Wien und Berlin 1927, s. 290 – 305; P. Radzewicz, *Państwo jako przedmiot poznania prawnego w świetle teorii Hansa Kelsena*, „Samorząd Terytorialny” 2003, nr 10/154, s. 3 – 16.

<sup>9</sup> H. Dembiński, *Osobowość publiczno-prawna samorządu w świetle metody dogmatycznej i socjologicznej*, Wilno 1934, s. 37.

<sup>10</sup> H. Kelsen, *Op. cit.*, s. 163 – 175.

<sup>11</sup> H. Dembiński, *Op. cit.*, s. 58 – 59.

<sup>12</sup> He treated the decentralization as the counterbalance and the medicine for the centralism and the bureaucratism of the state.

course in determined by the law border) of local factors from central authorities, what is counteracting the exaggerated centralization by; too - the self-government body in its organization is taking the civil factor into account in the widest measuring cup, are appointing him for deciding on public (...)”<sup>13</sup>. In addition how they noticed on land, doctrines of the fortieth years, you he is decentralizing his tasks, when isn't able to carry them out using own apparatus, or when is giving up consciously from performing sure tasks, seeing benefits in the different form of their realization determined<sup>14</sup>.

In our times Jerzy Starościak which put the thesis, also showed administration the positive aspect of decentralizations that sometimes far more benefit to you was sailing out of the completely different way of organising the part of administrative apparatus, than appearing in centralized structures. Taking of decentralization action sought sources in three kinds: sociopolitical - answering for ensuring the participation of citizens at the authority; economic, consisting in the pragmatic admission it isn't impossible to manage the entire state fund and technical - where the specificity of sure tasks causes, that better will be made in connecting with the entity which they concern<sup>15</sup>.

The contemporary literature on the subject also paid attention, that the decentralization could not however spell total making independent decentralised entities of you, from this the control of the State should be limited by provisions of the law. How Józef Filipek underlined "in the decentralised arrangement the place of general subordinating lower bodies to higher bodies in the certain determined framework is filling the compliance, appearing in cases closely in the act determined. The conjecture is speaking here for the lack of the compliance, the organ of the supervision has at its disposal only these means of the influence on the supervised body which clearly is granting the right him and in legally defined scope”<sup>16</sup>. Moreover, if Emanuel Iserzon paid attention, for decentralised entities their hierarchical subordinating to bodies the supervision is making the incorporation impossible. According to him, "only because organs of one system in frames of one legal personality, e.g. of you, can be built hierarchically. At the base of the hierarchical relation a principle of the obedience which is harmonizing with nature of one legal personality is sitting down”<sup>17</sup>.

Due to above how, Jan Boć noted, so the decentralization is an organizational form of administration, in which "individual administering entities have clearly defined competence,

<sup>13</sup> M. Jaroszyński, *Rozważania ideologiczne i programowe na temat samorządu*, Warszawa 1936, s. 8.

<sup>14</sup> Cz. Znamierowski, *Wiadomości elementarne o państwie*, Poznań 1946, s. 82 – 83.

<sup>15</sup> J. Starościak, *Decentralizacja administracji*, Warszawa 1960, s. 40.

<sup>16</sup> J. Filipek, *Stosunek administracyjnoprawny*, Kraków 1968, s. 119.

<sup>17</sup> E. Iserzon, *Prawo administracyjne. Podstawowe instytucje*, Warszawa 1968, s. 92 – 93.

established or handed over from other (higher) by way of organs statutory, carried out in the independent way and being subject in this respect to only a verification supervision of competent bodies”<sup>18</sup>.

Developed doctrine constituted the base for leading self-government units being aimed at decentralizing<sup>19</sup> of official authority, by sending the part of the tasks to the accomplishment to the self-government level<sup>20</sup>. Between the government and self-government rung one should regard the Polish constitution as sources of the allocation of rights and duties, which respecting deciding the European Charter of the local government (farther called also EKSL or the Card) decided principles of decentralizing the power in Poland<sup>21</sup>. Taking into account by the Polish constitution, of provisions resulting from EKSL, became necessary along with ratifying for her by Poland. With the moment of her announcing she became, in the light of the Art. of the 91 Polish Constitutions, a part of the domestic legal order, and consequently is applied directly<sup>22</sup>.

EKSL should recognize as this legislation<sup>23</sup>, which applying constitutes reply to the need to distinguish the local government from the official authority<sup>24</sup>. The word of such a need found confirming in the preamble to the Card which predicts above all, right of citizens to the involvement in managing public affairs. It is one of democratic principles<sup>25</sup>, shared for all Member States of the European Council. In the Card a belief that it is exactly on the local level this law perhaps was also expressed to be carried out in the most direct way, because the existence of the local communities equipped with real entitlements is creating conditions for ordering the citizen effective and staying all at the same time in the direct proximity.

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<sup>18</sup> J. Boć, *Prawo administracyjne* pod red. J. Bocia, Wrocław 1994, s. 138.

<sup>19</sup> M. Broł, *Teoretyczne aspekty centralizacji zadań i finansów publicznych (w:) Samorząd terytorialny w zintegrowanej Europie*, TOM I pod red. B. Filipiaka, A. Szewczuka, Uniwersytet Szczeciński, Zeszyty naukowe nr 426, Szczecin 2006, s. 65 – 68.

<sup>20</sup> Z. Gilowska, W. Misiąg, *Decentralizacja polskiego systemu budżetowego*, „Transformacja Gospodarki” nr 57 Gdańsk – Lublin 1996, s. 5 – 6.

<sup>21</sup> E. M. Komorowską, *Samorządowa integracja na drodze do Europy*, Warszawa 1997, s. 86 oraz E. Ruśkowski, *Finanse samorządu terytorialnego po reformie ustrojowej w Polsce, w świetle standardów europejskich*, „Przegląd Ustawodawstwa Gospodarczego” 1999, nr 5, s. 23 – 24.

<sup>22</sup> W. Miemiec, *Europejska Karta Samorządu Lokalnego jako zespół gwarancji zabezpieczających samodzielność finansową gmin – wybrane zagadnienia teoretyczno-prawne*, „Samorząd Terytorialny” 1997, nr 10, s. 64.

<sup>23</sup> Z. Gilowska, L. Kieres, R. Sowiński, *Samorząd terytorialny w Polsce a standardy europejskie*, Warszawa 1993.

<sup>24</sup> M. Chlipała, *Pomocniczość, decentralizacja, samodzielność jako podstawowe zasady funkcjonowania samorządu terytorialnego*, „Roczniki Nauk Prawnych” Lublin 2005, t. 15, nr 2, s. 381; T. Bąkowski, *Administracyjnoprawna sytuacja jednostki w świetle zasady pomocniczości*, Warszawa 2007; Ch. Millon – Delsol, *Zasada pomocniczości*, Kraków 1995, s. 8 – 9 oraz E. Popławska, *Zasada subsydiarności w traktatach z Maastricht i Amsterdamu*, Warszawa 2000.

<sup>25</sup> D. Beetham, K. Boyle, *Demokracja. Pytania i odpowiedzi*, Toruń 1997, s. 1.



EKSL also directly referred to the need to apply the decentralization, based on the democratic principle, equipping the authority simultaneously the local communities into the right to choose decision-making bodies with assigned competence, determining ways of carrying them out and the need to equip self-government units with essential financial means for the accomplishment of their tasks<sup>26</sup>. In this way she defined principles of the decentralization of the power which found confirming also in the Polish constitution. her Art. 15 (appropriately sec. 1 and sec. 2) directly a need to decentralize the official authority is expressing, with simultaneous showing making such a fundamental division of the country which will take into account social, economic or cultural bonds, and above all will provide the fitness of the performance of tasks for regional units public an act is defining. Moreover also an Art. of 16 sec. 2 of constitution, a right to carry the essential part of the tasks out provides for the self-government body public on behalf of own and on one's own responsibility<sup>27</sup>, additionally it was strengthened with contents resulting from the Preamble to the Constitution which is deciding, that "law essential for you (is) leaning (...) on the principle of subsidiarity<sup>28</sup> reinforcing entitlements of citizens and their community"<sup>29</sup>.

III. Determining the scope of action, understood as indicating the area of activity of self-government units, one should combine with the self-reliance it being entitled to self-government units<sup>30</sup>, being subject to a judicial protection<sup>31</sup>. A self-reliance of self-government units is the most important attribute guaranteeing the proper operation of the self-government rung. Without equipping with this attribute it is hard to imagine the possibility of the execution of tasks by self-government units. The self-government is treated as the independent and independent performance of certain functions about administrative character

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<sup>26</sup> The decentralization of administration requires the self-reliance of the performance of tasks which is subject to a control for organs of the top stair, determined by the law. A. Wiktorowska, *Prawne determinanty samodzielności gminy. Zagadnienia administracyjnoprawne*, Warszawa 2002, s. 245.

<sup>27</sup> In the sentence from 19 April 1999 (in the matter at 3 / 98), the Constitutional Tribunal emphasized the identity of the local self-government this way under the institutional, as well as functional account.

<sup>28</sup> Differently called also a subsidiarity meaning that everyone should carry the rank of the power out only these tasks which cannot effectively be carried out by the lower level or very units operating in frames of the society H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, wyd. I, Warszawa 2009, s. 130 – 134 and the verdict of the Supreme Administrative court from 27 July 2007, ref. of records akt II OSK 1084/06, LEX No. 364645.

<sup>29</sup> T. Dębowska – Romanowska, *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*, Warszawa 2010, s. 230.

<sup>30</sup> Z. Leoński, *Nadzór nad samorządem terytorialnym w świetle ustawy z dnia 8 marca 1990 r. o samorządzie terytorialnym*, Państwo i Prawo 1990, z. 12 oraz A. Mudrecki, *Samodzielność finansowa gmin w orzecznictwie Naczelnego Sądu Administracyjnego* (w:) *Funkcjonowanie samorządu terytorialnego – doświadczenia i perspektywy* pod red. S. Dolaty, Opole 1998, s. 85 – 94.

<sup>31</sup> Z. Kmiecniak, M. Stahl, *Akty nadzoru nad działalnością samorządu terytorialnego (w świetle ustaleń orzecznictwa NSA i poglądów doktryny)*, „Samorząd Terytorialny” 2001, nr 1- 2.

by the determined body<sup>32</sup>. It means that it isn't possible to point at functioning of the self-government without recognizing his operation independent, i.e. independent of nobody<sup>33</sup>.

Contemporary authors referring to meaning of the so-called self-reliance self-government<sup>34</sup>, are pointing, that "the self-government from the heart of the matter has (must have), wider or narrower, very extensive or narrowly circled sphere of independent action but in the light of law obvious sphere, in frames which superior authorities are entitled to them for exclusively (and what's more not always) supervision measures verification and for self-government - statutory instruments of the protection of this self-reliance"<sup>35</sup>. Simultaneously they are accepting, that "one should seek the self-reliance of the local self-government not in the fact of total making independent oneself from you, but bright precise determining coincidences, when the state can become involved in a sphere of activity of the self-government"<sup>36</sup>. According to Antoni Agopszowicz's a self-reliance of the commune is an autonomy in meeting the collective needs of community, of which border to appoint have provisions of the law and in part rules of social intercourse<sup>37</sup>. "A self-reliance of the commune in the execution of tasks is a self-reliance of determining its actual interests along with the possibility of effective enforcing legal interests"<sup>38</sup>.

It is possible to divide the self-government self-reliance taking diversified criteria into consideration. One should associate the essential criterion with the right of the self-government unit to the so-called organizational control, i.e. the right to determine the organization and the structure<sup>39</sup>. This criterion allows for indicating the self-government self-reliance about political character<sup>40</sup>. In order to introduce her to meaning referring to the EKSL regulation is necessary, of the Polish constitution and provisions of acts of self-government units self-government, predicting conditions of creating and functioning. Of regulations in accordance with the regulation accepted through the Card, in frames concerning constitutional bases and legal of local government, to the precedence principles were shown the local

<sup>32</sup> *Wielki Słownik języka polskiego*, Warszawa 2006, s. 897.

<sup>33</sup> *Ibidem*, s. 896.

<sup>34</sup> Date implemented by the author.

<sup>35</sup> M. Kulesza, *Samorządowy model ustroju terenowego* (w:) *Model władzy lokalnej w systemie reformy gospodarczej* pod red. M. Kuleszy, Warszawa 1982, s. 58.

<sup>36</sup> Z. Niewiadomski, *Ustrój administracji publicznej* pod red. J. Szreniawskiego, Lublin 1995.

<sup>37</sup> A. Agopszowicz, *Zarys prawa samorządu terytorialnego*, Katowice 1991, s. 12.

<sup>38</sup> I. Skrzydło - Niżnik, *Z problematyki prawnej ochrony interesów gminy w Polsce*, „Samorząd Terytorialny” 1993, nr 1 - 2.

<sup>39</sup> B. Dolnicki, *Czy polskie ustawodawstwo samorządowe odpowiada standardom europejskim*, „Samorząd Terytorialny” 1994, nr 9, s. 18.

<sup>40</sup> J. Jagoda, *Sądowa ochrona samodzielności jednostek samorządu terytorialnego*, Warszawa 2011, s. 73 – 76 oraz T. Szewc, *Dostosowanie prawa polskiego do zasad Europejskiej Karty Samorządu Terytorialnego*, Bydgoszcz - Katowice 2006, s. 90.

autonomy which he must regard the domestic law and, as far as possible Constitution<sup>41</sup>. The Polish constitution achieving one's regulations for determining the structure of the local self-government recognised, for the fundamental unit of the local self-government - commune<sup>42</sup>, at least also enabled, introduction other nameless constitutionally<sup>43</sup>, of self-government units<sup>44</sup>, which with power of distinct regulations<sup>45</sup>, they called the district and the province appropriately<sup>46</sup>.

One should combine the next kind of the self-reliance with equipping self-government units with the legal personality which is determining their property self-reliance. The Polish constitution, recognizing self-government units as legal persons, guaranteed the ownership transfer for them and of other property rights<sup>47</sup>, and consequently she regarded them as entities of property rights (including ownership transfer). Behind the sign of granted entitlements: properties and property one should acknowledge these regulations of self-government acts which individual individuals equipped to the right for holding the municipal property. It is possible to find the standard definition of this concept in regulations of the civil code<sup>48</sup>, which in Art. 44, recognised the property and other property rights as possessions. Being guided by this regulation, definitions also passed self-government bills on the base, of which a property and other property rights it being entitled are a municipal property council and other than council, for legal persons.

Besides indicated higher kinds of the self-reliance; political and property, it is possible to distinguish also so which is connected directly with financial means. Here a financial self-

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<sup>41</sup> Pursuant to Art. 2 Cards.

<sup>42</sup> Behind the Art. of 160 sec. of 1 Constitution of the Republic of Poland from 2 April 1997 from 2 April 1997, Dz. U. Nr 78, poz. 483 with the changes and with act from 8 March 1990 about the commune self-government (consolidated text. D. U. from 2013r., as amended pos. 594 with changes.)

<sup>43</sup> The Polish constitution isn't pointing in express terms at the district and as self-government units however the province is equipping them with the team of features which are confirming their self-government character. On the base B. Jaworska - Dębska, *Powiaty w systemie samorząd terytorialnego (w:) Między tradycją a przyszłością w nauce prawa administracyjnego. Księga Jubileuszowa dedykowana Profesorowi Janowi Bociowi*, Wrocław 2009, s. 245.

<sup>44</sup> Art. of 164 sec. of 2 Constitution of the Republic of Poland.

<sup>45</sup> Of the higher appointed act on commune self-government and acts: from 5 June 1998 about the powiat self-government (consolidated text D. U. from 2013r., as amended pos. 595 with changes) and from 5 June 1998 about the self-government of the province (consolidated text D. U. from 2013r., as amended pos. 596 with changes).

<sup>46</sup> L. Kieres, *Ustrój samorządu terytorialnego w III Rzeczypospolitej Polskiej (w:) Samorząd terytorialny III Rzeczypospolitej Polskiej. Materiały z konferencji z okazji 15 – lecia samorządu terytorialnego w III Rzeczypospolitej* pod red. J. Korczaka, Wrocław 2005, s. 154 i n.; J. Kowalik, *Między rywalizacją a współpracą – gmina i powiat po reformie 1998r. (w:) Dziesięć lat reformy ustrojowej administracji publicznej* pod red. J. Parachomiuka, B. Uljasza, E. Kruka, Warszawa 2009, s. 123 i n..

<sup>47</sup> Art. of 165 Constitution of the Republic of Poland.

<sup>48</sup> From 23 April 1964, consolidated text. D. U. from 2015r., as amended pos. 121 with changes.

reliance is being talked about<sup>49</sup>, which one should consider in three aspects: income, revenue<sup>50</sup> and of budget economy<sup>51</sup>. Income aspect, self-reliance financial, results straight from EKSL provisions, which in Art. 9 devoted to financial principles of the local communities<sup>52</sup>, she is regarding basic the one, that "the local communities have the right, as part of the national economic policy, to have own financial resources being enough which they can freely have at their disposal as part of exercising their entitlements"<sup>53</sup>. Simultaneously he is granting the right for at least a part of their financial resources to come from payments and community charges the local communities, of which these communities are establishing the height independently, in the scope determined by the act<sup>54</sup>. This aspect of the financial self-reliance was also confirmed with provisions of the Polish constitution. constitution, provided the share in public incomes for self-government units appropriately for tasks falling to them<sup>55</sup>, of self-government units clarified by provisions of the Act about incomes from 13 November 2003 about incomes of self-government units (consolidated text D. U. from 2016r., as amended pos. 198) what the literature on the subject is interpreting as the principle of the agreement between financial means and performed tasks<sup>56</sup>.

Next behind the aspect expenditures of financial self-reliance, according to the judicial decision of the Constitutional Tribunal and the literature on the subject<sup>57</sup> granting the right to have collected incomes at its disposal self-government units is starting to speak<sup>58</sup>. Doctrine defining this aspect of the financial self-reliance is associating him above all with the freedom of making decisions by the local authorities about the way and types of expenses<sup>59</sup>, of tasks identified with sizes fulfilled by the local self-government. Much more widely, also acknowledges that they are these are entitlements and duties of the self-government unit

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<sup>49</sup> T. Dębowska – Romanowska, *Wydatki na zadania własne gminy – granice prawne. Samorządowy poradnik budżetowy na 1997 r.. Zagadnienia ustrojowe i prawno – finansowe* pod red. W. Miemiec, B. Cybulskiego, Warszawa 1997, s. 265.

<sup>50</sup> M. Jastrzębska, *Podstawy polityki finansowej jednostek samorządu terytorialnego*, „Samorząd Terytorialny” 2000, nr 7 - 8.

<sup>51</sup> A. Agopszowicz, Z. Gilowska, *Ustawa o samorządzie terytorialnym - Komentarz*, Warszawa 1997, s. 289.

<sup>52</sup> Tytuł art. 9 Karty.

<sup>53</sup> Zgodnie z art. 9 ust.1 EKSL.

<sup>54</sup> Zgodnie z art. 9 ust.3 EKSL.

<sup>55</sup> Art. of 167 Constitution of the Republic of Poland.

<sup>56</sup> Z. Gilowska, *Finansowanie samorządu terytorialnego według ustaw o finansach publicznych oraz dochodach jednostek samorządu terytorialnego*, „Samorząd Terytorialny” 1999, nr 3, s. 54 – 55.

<sup>57</sup> W. Miemiec, *Prawne gwarancje samodzielności finansowej gminy w zakresie dochodów publicznoprawnych*, Wrocław 2005, Wrocław 2005, s. 44.

<sup>58</sup> Decisions of the Constitutional Tribunal from 3 November 1998, in the matter K 12/98.

<sup>59</sup> E. Markowska - Bzducha, *Gospodarka finansowa gmin w latach 1991-2000 a ich samodzielność (w:) Prawne i finansowe aspekty funkcjonowania samorządu terytorialnego* pod red. S. Dolaty, Opole 2000, s. 176.

referring for making expenses from budget resources of the given individual and conducting the own financial management based on own budget.

However one should tie the third aspect of the financial self-reliance with leading by self-government units the budget economy. This aspect results from the possibility of creating by self-government units of own budget, constituting the base for conducting the independent financial management<sup>60</sup>. Self-reliance this way understood, is characterizing independent (own) budget procedure separate from the budget procedure of the state. As a result of planning and the adoption of a resolution budget<sup>61</sup>, every self-government unit is passing one, own financial plan of working on one fiscal year. On his base an execution of tasks is taking place public, he is also a subject of evaluation of the six-month course of the performance and the all-year-round implementation of a resolution budget<sup>62</sup>.

Presented very short dissertations proved it, that the decentralization of the official authority in the form of handing sure entitlements over for self-government units was possible exclusively with simultaneous granting them self-reliances. Because the self-reliance of action is an actual guarantor of the public execution of tasks about so-called character self-government. What behind it is going, there is at the lack of this self-reliance no speech about causing the decentralization of the official authority.

How he results from appointed regulations, applying in Poland to conclusions *de lege lata* one should accept years, that fully are using up issues of the decentralization of the power, as well as self-reliances of self-government units this way. The merit in this respect is sitting down above all on provisions of separate acts resulting from the constitution, political acts, as well as provisions specifying signs of the self-reliance of the functioning of the local self-government in Poland.

Of course in Poland one should read out 25 years of functioning of the restored local self-government as the full success, at least not free from certain shortcomings. Due to their lack of clarifying a need more and more more frequent to come to the judicature or literatures on the subject exist, hence as the demand *de lege ferenda* it would be possible to accept full

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<sup>60</sup> Leading the independent financial management by self-government units is confirming also a plot Art. 211 sec. 4 acts from 27 August 2009 about the public finance, consolidated text D. U. from 2013r., as amended pos. 1232 with changes and Art. 51 acts from 8 March 1990 on commune self-government consolidated text D. U. from 2016r., as amended pos. 446; the Art. of 51 sec. of 1 act from 5 June 1998 on the poviats self-government consolidated text D. U. from 2015r., as amended pos. 1445 with changes and Art. 61 act 5 June 1998 on the self-government body of the province consolidated text D. U. from 2016r., as amended pos. 486.

<sup>61</sup> Art. 239 the Act of public finance.

<sup>62</sup> Art. 266 and 267 Act of public finance.

defining, not arousing the doubt of signs of the self-reliance of functioning of self-government units in Poland.