

# The limitations of the legal independence of local self-government units

## An evaluation of 30 years of local self-government

### SUMMARY

The fact that local government has functioned for over 30 years justifies an attempt to assess the solutions adopted in 1990. Despite many amendments to the Act on Local Self-Government (now the Act on Communal Self-Government), the ratification of the European Charter of Local Self-Government in 1993, the adoption in 1997 of local government regulations at the constitutional level that meet the requirements of a democratic state of law. Despite many amendments of the Act on Local Self-Government (now the Act on Municipal Self-Government), ratification of the European Charter of Local Self-Government in 1993, the adoption of local government regulations at the constitutional level in 1997 that meet the requirements of a democratic state under the rule of law, and the establishment of poviats and voivodship self-governments in 1998, the system constructed at that time has remained essentially unchanged. This collective monograph touches upon the most significant issues regarding the role of local government in a decentralised state, and highlights the increasing intensity of attempts to strengthen the position of the government administration at the expense of local government.

This study concerns issues determining the position of territorial self-government, selected from among those of greatest importance from the point of view of the notion of territorial self-government as defined in the EKSL, i.e. the real capacity of the local community to implement a significant part of public tasks in a fully independent manner, but under the supervision of the state.

The book is divided into several chapters. The first, by Krystian Ziemiński, is a paper introducing the basic principles of local government functioning in the light of the Constitution and the European Charter of Local Self-Government (EKSL). The next chapter, written by Mariusz Szyrski, contains an attempt to determine the principles of law-making for local government. The author attempts to determine the systemic principles of law-making „in the field of systemic law relating to the performance of public tasks”. Chapter Three, written by Justyna Mielczarek-Mikołajów, deals with the problem of control and supervision regulations in terms of their fulfillment of the principles set out in the ECSL, especially in the light of the principle of proportionality. This chapter is a logical consequence of the ideas taken up in Krystian Ziemiński's chapter, because it also concerns the assessment of the implementation of the principle of proportionality introduced by the Council of Europe in Article 8(3) of the ECSL, which has been binding on Poland after its ratification in 1993, by the legislator in the Constitution and in local government system laws. In her text, Ilona Radziwon-Kamińska

takes up the important problem of determining the nature of the supervisory authorities' powers to apply *ad personam* supervisory measures. The basic issue is to determine whether the *ad personam* measures in question, as provided for in the provisions of local government system laws, meet the requirements set by the ECSCCL.

The chapter by Maria Jędrzejczak which follows concerns detailed and always controversial issues of the control and supervision of local government activity, in this case of making local law acts. The last chapter, written by Lucyna Staniszevska and Filip Lewandowski, contains comparative findings on the implementation of the ECSCCL provisions into domestic law in Poland and Germany, with particular emphasis on the role of the Brandenburg Constitution and local government laws. The authors analyse the essence of measures in the form of supervisory bodies and other bodies taking a stand, as a manifestation of interference in local government activities. These measures are widely used in the German system of local government law, where they are regarded as a special manifestation of the supervision. This prompted both authors to present Polish solutions against the background of those adopted in the German system using the example of Brandenburg, which allowed for a more in-depth analysis and for the formulation of concrete conclusions for the legislator.

Summing up the discussions presented in particular chapters, it should be indicated that the attempts made by the legislator in recent years to weaken the position of self-government, amend self-government acts, and also legislation directly shaping the role and position of self-government are in contradiction with those adopted in the EKSL. The proposal to expand and make more flexible the catalogue of supervision measures with the possibility to adjust them to a greater extent than now to the nature of the authority and the type and degree of violation of law caused by its actions is certainly worthy of consideration, and above all, of a doctrinal discussion.

*Translated by Rob Pagett*