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INTERNATIONAL CO-OPERATION WITH LOCAL AND REGIONAL COMMUNITIES OF OTHER STATES AS A TASK OF A POLISH MUNICIPALITY

I

The European Charter of Local Self-Government (ECTG) [Dziennik Ustaw, 1994; see Gilowska et al., 1993], like the European Charter of Regional Self-Government [see Sowiński, 1998] and the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities [Dziennik Ustaw, 1993] formulate the right of territorial self-government units to co-operation and association both domestically and internationally. This right is expressed clearly in the Constitution of the Republic of Poland – in Art. 172 [Dziennik Ustaw, 1997a].

Passing over an important, and often arising, distinction between “local and regional communities (societies)” – (discussed in the European Charter of Self-Government), and “territorial self-government units” – (discussed in the Constitution of the Republic of Poland); and also between “the right to co-operation”, and “the right to association” (which is clearly distinguished both in European acts and Polish legislation), I want to draw attention here to a peculiar transformation undergone due to entitlement to international co-operation, created by the Conventions on Self-Government and the Constitution of the Republic of Poland, becoming an obligation expressed in the Act of 8th March 1990 on Municipal Self-Government [Dziennik Ustaw, 2001b] and in the Act of 5th June 1998 on the Self-Government of a Province [Dziennik Ustaw, 2001c]. After amendments of the former introduced in 2001, the tasks of

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a municipality now include "co-operation with local and regional communities of other states and co-operation with non-governmental organisations".

I am passing over the theoretically important issue of distinguishing between the tasks of a municipality that are obligatory in character and – a contrario – those that are not obligatory. This distinction has a certain significance in our discussion, but it does not change the position of international co-operation as statutorily imposed on municipalities, included within the scope of a municipality's competency and the duties of its authorities.

The consequences of this transformation will occur on at least three, or even four, levels: 1) economic, 2) legal, 3) political (understood as the expression of a certain idea), and finally 4) social [Sowiński, 2000, 243 ff.].

II

Until international co-operation was recognised as a municipality's task, there were no doubts that from an economic point of view the justification of initiating and maintaining co-operation with a given foreign partner could only have a favourable effect on a Polish municipality. Under previous legislation, expenditure on international co-operation without any advantage for a local community in the form of concrete economic or social effects (which also could be calculated in a purely economic dimension) had to be considered irrational – and in some situations even harmful (bringing about losses). Municipal authorities maintaining such international co-operation ran the risk of being accused of wastefulness and improper use of budgetary means.

The necessity of calculating costs and benefits, also in international co-operation, is obvious from the economic point of view and must be illustrated in the form of a balance sheet. Arguments of prestige or presence in the international community cannot eliminate calculations of economic efficiency. Particularly when international co-operation is treated as an instrument (method) of achieving the aims and fulfilling the tasks of a municipality.

Recognition of international co-operation as a municipality's task (and additionally expressed in their basic catalogue of tasks included in the Act on Municipal Self-Government) changes the character of justification for such co-operation. It loses its instrumental features and becomes more an aim in itself. Thus, strictness in assessments and calculations of the economic legitimacy of initiated co-operation must give way (at least to a certain degree) to a not so strictly measurable assessment of the re-

alization of a duty to maintain international co-operation as a collective need of a community.

In this state of affairs, expenditure on international co-operation that is not balanced by income will not be treated as a loss, but as an outlay necessary to satisfy a collective need that must be statutorily satisfied by a municipality.

This difference is evident: both in an ideological and arithmetic sense. After accepting the legitimacy of this view, the new legislation may become an easy justification for the authorities of a municipality take actions exposing a community to considerable expenditure that will not bring about any long-term benefits (e.g. budgetary savings, benefits of mutual investments, access to external financial means on preferential conditions, making profit, acquisition of know-how) as co-operation can be placed as an aim in the resolutions of the collective bodies of a municipality.

Application of a broad interpretation of the definition of "trans-frontier-international co-operation" contained in the Madrid Convention can be particularly dangerous. Let us recall that according to this Convention co-operation is "any activity aimed at reinforcement and development of contacts between local governments of different countries". These "activities" undoubtedly include "town-hall tourism", very popular with Polish municipalities, giving mainly personal experiences (less often splendour) to members of municipal bodies and their officers going on repeated visits to foreign partners.

III

At a legal level the inclusion of international co-operation in the catalogue of fundamental tasks of a municipality has consequences related to the legal system, international law, and civil law. I consider these more extensively in a different study [Sowiński, 2000].

Recognition of international co-operation as a municipality's task has, not in principle, changed the situation at a level of international and civil law.

As far as issues related to the legal system are concerned, as a result of the changes discussed here, the issue of statutory determination in the model of the legal system of self-government is becoming more significant. Polish legislation should finally set what role is ascribed to self-government in a) exercising power, b) performing public tasks, c) managing a given territory, d) performing social and organisational functions for local communities, e) creating conditions for the realisation of social,

economic, individually or collectively, projects; or f) performing other aims, tasks, and functions.

The seemingly small change of a municipality's tasks mentioned here brings with it important effects. A Polish municipality is becoming an area of statutorily directed administrative influence on a municipal community. Municipal authorities obtain the possibility of establishing the duties of a municipal community and to decide about inhabitants' behaviour. Municipal bodies are becoming executors of international policy, and not just subjects that are supposed to create conditions for individual and group activities. We have a similar situation as in the case concerning the role of self-government resulting from the tasks of self-government in the field of job creation, for which contained in Art. 10 of the Act of 20th December 1996 on Municipal Economy [Dziennik Ustaw, 1997] (but of course with evident differences in forms, methods, and the scope of activities taken).

Statutory transformation of a concept of territorial government, the manifestation of which is an introduction of co-operation with local and regional communities of other countries and co-operation with non-governmental organizations to the tasks of a municipality, finds its completion in tasks concerning "public education" (Art. 7, Paragraph 1 Point 8 of the Act on Municipal Self-Government), "pro-family policy" (Art. 7, Paragraph 1, Point 16 of the Act on MSG), "supporting and spreading an idea of self-government" (Art. 7, Paragraph 1, Point 17 of the Act on MSG) imposed on a municipality. The tasks mentioned above (introduced by the Act on MSG in 2001 [Dziennik Ustaw, 2001]) change the original legal shape of a municipality's obligations to the state and municipal community. At the same time they make concrete changes in the organisation of municipal authorities and administration, as well as in a reconstruction of the concept of municipal budgets.

At the level of administrative law issues of the limits of interference (supervision, co-operation, joint decision-making, etc.) from state administration in municipal bodies performing foreign co-operation as statutory tasks appear. Let us draw attention here to far reaching (in my opinion too far reaching) rights of the Minister of Foreign Affairs to interfere in the right of municipalities to join international self-government organisations. The legal means granted to this Minister show the characteristics of supervisory means. It evokes a question regarding the conformity of some of the stipulations of the Act of 15th September 2000 on the Principles of Accession of Territorial Government Unit to International Associations of Local and Regional Communities [Dziennik Ustaw, 2001d] with Art. 172, Item 2 of the Constitution of the Republic of Poland.

IV

At a broadly understood political level, the recognition of international co-operation as a municipality's task strongly influenced by declarations of the authorities of European organisations and Polish authorities is adapted to the European integration programme and expresses an intention to strengthen and deepen it. It is almost a normative consequence of the Declaration of State Leaders and Governments of Europe of 18th November 1993, fundamental to such co-operation, according to which the creation of a tolerant and rich Europe does not only depend on co-operation between states. It is also dependent on transfrontier-international co-operation expressed in the Madrid Convention and its additional protocols.

On the other hand, however, treating international co-operation as a task-duty results in the violation of a thin line between a political will to participate in "the European community of municipalities" and a normative order, similar to regulations on environmental protection or even municipal utilities.

At the political level discussed here the subjects of all rights and duties are: "local communities", "self-government community", "inhabitants of a municipality", "citizens". It is obvious that at an executive level decisions on the tasks of a municipality (and as a community) are taken by its bodies. Each instance of co-operation, and in particular international co-operation, requires a choice of a partner impossible to evoke by legal norms. By introducing international co-operation to the statutory catalogue of a municipality's tasks, it is reduced to the category of technical activities with a clearly instrumental character. At the same time, a local community is treated as an organisation (in the understanding of praxiological sciences), whose tasks and methods can be determined.

In this form, the obligation of municipalities of international co-operation should be treated as too far reaching interference of the legislator (state authorities) in the sphere of organisational autonomy – which includes deciding about the way of performing a municipality's tasks.

V

At a social level – strictly connected with the political level discussed above – the issue of the needs of self-governmental community's and "competitiveness" of social preferences (in this case with a visible environmental character) is given prominence over economic and political preferences. What are considered here is not the preferences in choosing partners for co-operation, but preferences are simply making choices. In

this perspective – bearing in mind the idea of self-governance and autonomy granted to local governments, it must be stated that the will and inclinations of local communities may question each economic and political calculation of international co-operation.

Taking into consideration Art. 166 of the Constitution of the Republic of Poland, it is obvious that the legislator, considering international co-operation as a task of self-government, considered it as serving in the fulfilment of a municipality's needs. The constitution gains additional force on the basis of the first sentence of Art. 7, Item 1 of the Act on Municipal Self-Government. On the basis of this regulation, international co-operation must serve the fulfilment of collective needs of a municipality.

The final result of co-operation between units of territorial self-government is contact between people. It can be treated as a form (type) of satisfying the need to affiliate, need of new experiences, and also to understand and be understood by others. The appearance of such needs and their intensity are, for obvious reasons, differentiated both at the level of an individual and a group. There is no doubt, however (passing over the question of how potentially deep these needs are in us), that they can be manifested in the form of expected activities only in certain circumstances, described in classical studies on the theory of human needs. The need for co-operation, like other higher social needs, may be satisfied in various spatial and cultural circles. The need of international co-operation is (in the present state of the spatial expansion of mankind) the highest level of such contacts, or the furthest sphere of its satisfaction. Establishing an obligation in this respect, the legislator not only orders the development of this need, but also states – or at least standardises – the means of its satisfaction.

When performing tasks determined in the act as co-operation with local and regional communities of other countries, bodies of a municipality should act not only for their foreign partners, but also, or perhaps mostly – for the members of their own community and their public institutions. In this way municipal bodies will become subjects stimulating the level of aspirations and satisfaction of needs, firstly individual ones and then collective ones – or, which seems quite possible, firstly collective ones, and then individual ones.

The attitude to the legislator's activities in this issue may be ambiguous, and the assessment of the regularity of municipal bodies' activities may be diverse. In any case, the principle of not deciding in advance what is good for each of us and for local communities should be observed.

VI

Being obliged to undertake international co-operation, Polish territorial self-government units should be included in the system of activities of public administration directed at foreign partners. In this system, apart from self-government units, among which the leading role is played by provincial assemblies, local state administration bodies and state central bodies function as well. Foreign affairs at the central level are overseen by the President of the Republic of Poland – as the highest representative of the Republic¹ and the state's representative in international relations;² the Council of Ministers, in particular the Prime Minister, are obliged to “carry out foreign policy”,³ and also – in the sense of a concept and its realisation – above all the Minister of Foreign Affairs [Dziennik Ustaw, 1999]. The Minister of Foreign Affairs performs the role of co-ordinator of the foreign policy of the state bodies, both governmental and self-governmental. To this end, the Section of Transfrontier Co-operation functions within the Department of European Institutions of the Ministry of Foreign Affairs.

One peculiarity of the Polish foreign ministry – with no equivalent in Europe – and probably also outside of our Continent, is the division of competency in foreign issues between the Ministry of Foreign Affairs and the Committee for European Integration (Act on CEI). Art. 1 of the Act of 8th August 1996 on the Committee for European Integration [Dziennik Ustaw, 1996] recognises it as the superior body of the state administration for programming and co-ordinating policy in cases connected with Poland's integration into the European Union and co-ordinating the administration's activities in receiving foreign help.⁴ The Committee for European Integration has an obligation to co-operate with self-governmental bodies aiming at the participation of these bodies in European Union structures. There is an obvious difference between cross-border co-operation of local and regional communities, and the participation of self-governmental bodies and their representatives in the institutional structures of the Union. There are no doubts, however, that the Committee for European Integration has an obligation of at least promoting Polish self-government organisations – and indirectly Polish territorial government units – in Union structures and the Union inter-

¹ See Art. 126 of the Constitution of the Republic of Poland.

² See Art. 133 of the Constitution of the Republic of Poland.

³ See Art. 146 of the Constitution of the Republic of Poland.

⁴ See Art. 1 of the Act on CEI.

national organisations of local and regional communities within the Union [Official Journal of CEI, 2000; see also Sowiński, 2002].

Probably the most important body, from the point of view of the system of activities of public administration, directed at the international activities of a municipality is the province governor. Their competences in this respect results from both Art. 15 Point 5 of the Act of 5th June 1998 on the State Administration in a Province [Dziennik Ustaw, 2001a] (the province governor is the representative of central government to representatives of provinces in foreign states) and Art. 15 Point 7 (co-operation with bodies in other countries and international government and non-government organisations). The way province governors act in this respect is determined by a resolution of the Minister of Foreign Affairs – issued as an amendment of the old Act on Local Bodies of State Administration in a Province [Polish Monitor, 1997] – on which such activities can be based until new long-term regulations are issued.

A province governor performs an important role in the assessment of draft agreements regarding international co-operation of territorial government handed over to the Minister of Foreign Affairs, as well as drafts of resolutions about their accession to international associations of local and regional communities [Dziennik Ustaw, 2001d]. This issue is a separate problem going beyond the subject of this study, but of course closely connected with it [Sowiński, 2001, 105 ff.].

A disputable issue is if and in what scope a province governor can perform control, supervisory, and co-ordination functions in foreign co-operation carried out by municipalities for various reasons. In this respect a moderate view should be expressed, one that requires a clear statutory authority for stating the kinds of entitlements. At present, according to Polish legislation, a province governor has no directly determined competencies of a supervisory, control or co-ordination nature in the sphere of international co-operation between local government units. Supervisory activities can be performed, though using general principles for a governor's supervision over municipalities. As far as co-ordination is concerned, it could take place to a certain degree on the basis of authorisation given to a province governor by the Minister of Foreign Affairs, or the Committee for European Integration within the scope of its activities.

With respect to self-government authorities the most prominence in the legislation is given to international co-operation of provinces. This is regulated in Chapter 6 of the Act on the Self-Government of a Province, which imposes on the Province Assembly an obligation of passing "Priorities of International Co-operation of Provinces". The analysis of the legal status of a province at the level of international law and the role of

the "Priorities" mentioned in the performance of the tasks of a provincial community goes beyond the scope of this study. Let us only draw attention to the fact that the present legislation lacks a clear-cut basis for recognising the binding character of "Priorities" and agreements concluded by provincial bodies on municipalities. This would be against the authorisation from Point 7 of the Preamble of the European Charter of Regional Self-Government, and in particular with Art. 4 Item 2 of this charter, according to which competency given to local authorities, including municipalities, is supposed to be full (complete). In other words, municipalities should have full freedom of action in each case that is not excluded from their competences. The rationality of carrying out international co-operation by municipalities in a different way or even contrary to provincial "Priorities" is a separate problem.

Conclusions

Recognition of international co-operation by the legislator as a task of a municipality influences the assessment of the character of this co-operation. On this legal basis, it is becoming more an aim in itself than a means (instrument, method) of achieving other aims and tasks.

The transformation discussed also influences the change of political and legal concepts of territorial self-government, which is also a result of changes in progress in this respect.

The obligation of municipalities to undertake international co-operation resulting from current legislation on self-government should be assessed as excessive interference of the legislator (state authority) in the sphere of the organisational autonomy of municipalities.

Current legislation weakens the requirement of calculating economic benefits from initiating co-operation with foreign partners by Polish municipalities. Co-operation of Polish municipalities with foreign partners is now aimed at per se satisfying collective needs of a municipal community.

In spite of the already comprehensive regulations concerning co-operation of public authorities with foreign partners, it is still too early to comment on the existence of an internal (domestic) system of international co-operation.

The state administration is presently operating under conditions of a lack of clarity concerning competency and principles of international and foreign co-operation. Mutually independent self-government units and authorities are not eager to create their own system of co-operation.

A paradox of Poland's public life is that in many cases – as it seems – units of territorial self-government and bodies of the state administration co-operate with foreign partners better than between themselves.

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