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Establishing a school network from the perspective of the competences of the school superintendent – an analysis of legal solutions in the light of the recent reform of the educational system

Abstract: The local schools authorities represented by chief education officers perform pedagogical supervision and control. They also cooperate with local government units which are responsible for realization of most of the educational tasks. The latest reform of the educational system has considerably broadened the superintendents' competences in many aspects, for example as regards evaluation of schools networks. Undoubtedly, the competences of the school superintendent limit the independence of local self-governments as far as their deciding about schools is concerned. In essence, the problem concerns the creation of legal solutions that allow universal access to education. One should strive to create a network of schools, which will remain unchanged for many years. The network must ensure a sense of security in the implementation of educational benefits to residents.

Keywords: SCHOOL SUPERINTENDENT, PEDAGOGICAL SUPERVISION, LOCAL SELF-GOVERNMENT, SCHOOLS NETWORK

Introduction

The successive reform of the educational system, which was launched in 2016, has substantially changed the picture of both the structure of the system and the scopes of duties and competences of organs responsible for realization of public tasks. The local school authorities, as an organ of the complex government administration, are responsible for realization of the state's policy in the sphere of education in the area under their control.

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They cooperate also with units of the local self-government which are responsible for realization of the majority of tasks pertaining to education. The broader competences of the school superintendent in the process of adjusting the network of schools to the new school system, introduced by the Act of 14 December 2016 – Education Law¹ – have led to a limitation of the freedom of local government-based organs responsible for running schools. The range of independence of the latter in deciding about the educational policy in the area of their governance depends to a large extent on current competences of the school superintendent. The position of this monocratic office is considerable, whereas the latest reform of the educational system, paired with the transformation of the school system, strengthens it even more. The school system is closely connected with the accessibility of educational services: individuals should have the possibility guaranteed of making use of schools and educational institutions which are suitable for them and which are located in the closest vicinity of their places of abode. On the other hand, communes and counties, while creating networks, must adjust the infrastructure that they have at their disposal to the dynamically changing legal regulations. The chief education officer, as an organ of government administration, extends pedagogical supervision over schools and education centers. The competences of this organ are one of the main determinants which set the degree of independence of subjects running schools and educational institutions, which – in the majority of cases – are units of local self-governments.

Position of the school superintendent

Chief education officers function as an organ of government administration in the province. They are appointed to and removed from the post by the minister in charge of education and rearing upon the request of the voivode (province governor).² The relevant minister can also dismiss the school superintendent on their own initiative. In the literature on the subject, it is underlined that the post of school superintendent is characterized by double official subordination, that is this officer is responsible before the relevant minister in charge of education and rearing and before the voivode.³ The school superintendent implements directions of the edu-

¹ The Act of 14 December 2016 Education Law (*Journal of Laws* of 2018, items 996 and 1000), hereafter referred to as “EL”.

² With reference to the legal doubts relating to “appointing” as the source of employment of the school superintendent see: M. Pilich, *Prawo oświatowe oraz przepisy wprowadzające* [Education Law and introductory regulations], Warszawa 2018, p. 266-267.

³ D. Kurzyna-Chmiel, *Oświata jako zadanie publiczne* [Education as a public task], Warszawa 2013, p. 174.

cational policy of the state set out by the Ministry of Education in the area of the province and, additionally, are themselves controlled by the minister regarding the quality of supervision and coordination of pedagogical matters and actions. The minister's managing competences are clearly seen in being equipped with powers of issuing recommendations and orders which bind the school superintendent, e.g. as regards realization of the state's educational policy on the territory of the province. On the other hand, the relations between the chief education officer and the voivode are determined by counting the first into the personnel of consolidated state administration in the province. According to the definition contained in Art. 4, point 17 of Education Law, the head of the local school authorities in the province is the school superintendent at the same time.⁴ In consequence, the school superintendent is not a fully independent organ and is subordinated to the voivode as their superior. However, according to the principle of consolidating administration, which was expressed in Art. 13, para 1 of the Act on the Voivode and State Administration, the voivode executes his/her duties being assisted by the provincial office as well as by organs of the consolidated state administration, which he/she is in charge of.

The entirety of the government administration in a province is extremely diversified and not uniform. As M. Chmaj states, "the organization of the government administration in the area of a province is not performed by organs of uniform character, which would be connected with one another by uniform bonds of dependences. The structure of the administration is complex and includes, among others, functioning on three levels of the basic division of the independent local self-government which possesses its own competences or which tends to depart from the sector-oriented administration in favor of establishing a local center in the form of the voivode, concentrating competences, coordinating actions of different organs and bearing responsibility."⁵ Among the types of the school superintendent's responsibilities, the political responsibility – particularly clearly visible in the scope of shaping the educational policy in the province – is worth emphasizing.

As a matter of principle, organs of the consolidated government administration carry out their tasks and exercise their competences with the help of the provincial office unless the law states otherwise. It is local school authorities that make one of such exceptions, functioning as independent offices, although they are linked to the auxiliary apparatus of the voivode. Local education authorities make it possible for school superintendents to

⁴ The Act of 23 January 2009 on the Voivode and government administration in the province (*Journal of Laws* of 2017, item 2234), hereafter referred to as "AVGA".

⁵ M. Chmaj, *Administracja rządowa w Polsce* [The government administration in Poland], Warszawa 2012, p. 133.

execute their duties assigned to them and to exercise their competences. This is carried out mainly with the participation of deputy-superintendents and other people employed in the entities, who act on behalf of the school superintendent and are paid for from the means at the disposal of this official. Debates on making the school superintendent an organ of unconsolidated administration keep recurring. It seems, however, that the present location of the school superintendent within the structures of the government administration and this official's close relations with both the minister in charge of education and rearing and the voivode do not offer sound foundations for execution of such plans. This is confirmed by the content of Art. 57 AVGA, according to which establishment of organs of unconsolidated administration can follow exclusively on the power of an act if this is justified by the all-state character of executed tasks or the territorial range of actions exceeding the area of one voivodeship (province).

Main competences of the school superintendent

Without a doubt, the principal competence of the school superintendent is to exercise pedagogical supervision.⁶ This extends over all types of schools and education institutions, with the exception of these that are supervised by relevant ministers, although even there the school superintendent controls the teaching of general education subjects.⁷ The Act on Education Law does not introduce the definition of pedagogical supervision, still the term is used in the specialist literature. In the opinion of M. Pilich, this consists in constant and systematic examination by authorized personnel or organs of the state, of conditions and effects of the statute activity run by schools and institutions, as well as in exerting an influence by these officials or organs on the supervised entities with the aim to secure the proper realization of statutory tasks assigned to the latter.⁸ Pedagogical supervision consists in:

– observing, analyzing and evaluating the course of processes of educating and rearing, and also effects of didactic, rearing and care activity, as well as other statutory activities of schools and education centers;

⁶ See more in D. Kurzyna-Chmiel, *Nadzór pedagogiczny jako specyficzny rodzaj nadzoru* [Pedagogical supervision as a specific type of control], „Przegląd Prawa i Administracji” no. 76, Wydawnictwo Uniwersytetu Wrocławskiego 2007, p. 113.

⁷ The legal exclusions with reference to the supervisory competences of the school superintendent include also public all-national teacher training centers supervised by the minister in charge of education and rearing, while teacher training centers as well as schools and institutions of the individual branch character fall under the supervision of relevant ministers.

⁸ M. Pilich, *op. cit.*, p. 292; the Provincial Administrative Court in Warsaw expressed a similar opinion in its judgement of 25 January 2012, V SA/Wa 1268/11, LEX no. 1139709.

- assessing the state and conditions of didactic, rearing and care activity, as well as other statutory activities of schools and education centers;
- providing aid to schools and centers, and teachers in carrying out their didactic, rearing and care tasks;
- inspiring teachers to improve the existing or to implement new solutions in the process of educating, with the application of innovatory programs, organizational or methodological actions, the aim of which is development of students' competences.

A task of vital importance to perform by the school superintendent is, as already mentioned, realizing education policy of the state, which is a particularly important sphere in formation of this official's relations with units of the local self-government that realize – within the limits of law in force – their own education policy in the area of their statutory activity. In compliance with Art. 51, para 1, item 5 EL, the school superintendent is obliged to cooperate with organs of units of the local self-government in creation and realization of regional and local education policy remaining in accordance with the state education policy. As M. Pilich observes, “as regards this cooperation, the school superintendent should not go beyond their function of an organ of government administration and cannot support actions which would be incompatible with the aims and assumptions of the policy set out on the central level and recommended by the minister in charge of matters of education and rearing.”⁹ The Constitutional Tribunal defines the role of the school superintendent as a professional cooperation with persons and organs running schools and education centers.¹⁰ Additionally, the competences of care and support held by this official are worth underlining. They manifest themselves in aiding schools and centers, as well as teachers, in carrying out their didactic, rearing and care duties. These competences are the more significant in the face of changes that are continually made in the education law, the knowledge of which – in turn – is an indispensable condition behind the proper work of schools, education institutions and teachers.

The chief education officer's competences are precisely indicated in the regulations of law, which results from the constitutional principles of democratic rule of law and limiting public authority. The legislator, in Art. 58 EL, provides for the condition that whatever interference from a supervising organ with the didactic, rearing and care activities of a school or an education center is, it can be executed exclusively on the basis of the principles included in this act. It seems that this 'interference' ought to be under-

⁹ M. Pilich, *op. cit.* p. 277.

¹⁰ The sentence of the Constitutional Tribunal of 8 May 2002, K 29/00; Judgment of the Supreme Administration Court of 5 December 2006, I OSK 1377/06, LEX no. 320841.

stood in a broad way and is to concern all the actions related to the scope of supervising actions.

The position of the school superintendent in relation to the local government is also influenced by the prohibition of combining this post or that of deputy-superintendent with the mandate of a councilor in organs that constitute units of the local self-government, which was introduced into Art. 51, para 3 EL. Sanctions for a breach of this regulation are specified in Art 383 of the Act on Elections Code.¹¹ In accordance with this regulation, an organ constituting a unit of the local self-government adopts a relevant resolution within one month, beginning with the day when the cause of expiry of the mandate occurred. If such a resolution is not taken, the voivode issues the substitution resolution (Art. 98a, para 2 AGSG;¹² Art. 85a APSG;¹³ Art. 86a, para 2 AVSG¹⁴).

The latest reform of the education system, which was initiated in 2016, has strengthened the position of the school superintendent in relation to local government organs in charge of educational institutions. The return of centralistic concepts in the organization of this department of administration is visible especially in equipping the superintendent with broader competences in the process of cooperation, precisely speaking – agreeing on a joint standpoint with relevant organs of the local self-government. For instance, there appeared the necessity of obtaining the positive opinion by the organ of pedagogical supervision (beside the procedure of establishing a network of schools, which is its main focal item), also in the process of their liquidation, transferring – on the power of an agreement – a school with fewer than 70 students to a non-public subject, or founding a public school by a physical or legal person that is not a unit of the local self-government.

Schools network

The network of schools, and – precisely – its appropriate definition, is one of the guarantees of securing common accessibility to education. The above-mentioned accessibility can initially be defined as children's, youth's and adults' capability of participating in formal and informal education, care and rearing process offered in different education institutions, on dif-

¹¹ The Act of 5 January 2011 (*Journal of Laws* of 2017, item 15 as amended).

¹² The Act of 8 March 1990 on *gmina* (commune) self-government (*Journal of Laws* of 2018, items 994, 1000), hereafter abbreviated to "AGSG".

¹³ The Act of 5 June 1998 on *powiat* (county) self-government (*Journal of Laws* of 2018, items 995, 1000), hereafter abbreviated to "APSG".

¹⁴ The Act of 5 June 1998 on voivodeship (province) self-government (*Journal of Laws* of 2018, items 913, 1000), hereafter abbreviated to "AVSG".

ferent levels of educating.¹⁵ The notion of accessibility is closely connected with the state's education policy,¹⁶ which should suitably respond to social needs. The issues relating to the schools network should always be consulted with different environments. As T. Bąkowski rightly notices, "good administration is administration that constantly and appropriately reacts to transformations going on in the surrounding area which it serves, it is administration adjusting its structures and also ways and methods of acting to current needs of addressees of this activity."¹⁷ Changes in regulations, generally speaking, as regards the scope of establishing networks should not grow out of politics, but "out of abilities of people who animate the functions of state organs to decode the need for a change of legal regulations and serving the values accepted in the given legal order to be fundamental."¹⁸

It is also worth paying attention to the vital issue connected with a schools network, that is problems of the local government related to financing public tasks in the sphere of education system, which are growing more and more serious.¹⁹ Securing suitable means by the state would certainly limit the noticeable attempts to make changes in the network, like combining schools or their liquidation, resulting in particular from economic motives. Planning the local self-government education policy, including network of schools, unfortunately begins with "a discussion on the possibilities of minimizing the difference between the height of the subsidy and the outlays borne by local governments."²⁰

Undoubtedly, the current competences of the school superintendent, regarding establishment of schools networks are significant. This, simultaneously, means restricting the freedom of the local government organs which are responsible for running schools. The successive, one can say, cyclical strengthening of the role of the chief education officer in the sphere of relations with units of the local government running schools and education centers was commenced together with the act amending the Act on

¹⁵ Quoted by D. Kurzyna-Chmiel in *Oświata jako zadanie publiczne...*, p. 47.

¹⁶ A. Błaś, Państwo prawa i polityka administracyjna [The rule of law and administration policy], In: J. Łukasiewicz (ed.), *Polityka administracyjna*, Rzeszów 2008, p. 144.

¹⁷ T. Bąkowski, In: *Organizacja administracji publicznej z perspektywy powierzonych jej zadań publicznych* [The organization of public administration from the perspective of tasks entrusted to it], Warszawa 2015, T. Bąkowski (ed.), p. 15.

¹⁸ Cf. A. Błaś, Wprowadzenie [Introduction], In: *Pewność sytuacji prawnej jednostki w prawie administracyjnym*, Warszawa 2012, p. 18.

¹⁹ Dealing with this issue see: C. Trutkowski, *Kształtowanie polityki oświatowej samorządów lokalnych* [Shaping the education policy of local self-governments], „Samorząd Terytorialny” 2015, no. 1-2, p. 44 ff.; R. Raszewska-Szałcka, *Szkoła publiczna jako zdecentralizowany podmiot administracji publicznej. Studium administracyjnoprawne* [State-run school as a decentralized subject of public administration. An administration-legal study], Wrocław 2019, p. 158.

²⁰ C. Trutkowski, op. cit., p. 44.

the education system of 29 December 2015 entering into force, that is on 23 January 2016.²¹ The regulations giving the school superintendent the right to issue the positive opinion on the compliance of the plan of public schools network, accepted by organs constituting units of the local self-government, with the conditions stipulated in Art. 17, paras 1, 2 and 5 on the Education system (i.e. securing the distance to schools provided in the Act) were changed.²² It is worth noting that – at the same time – the rights of passing opinions on plans of public work of teacher training centers also became strengthened.

The principles behind the organization of schools networks are indicated in the regulations of the Education Law. The network determines the location of public schools in the area of operation of the given local self-government unit. According to Art. 39, para 2 of this act, the distance between child's home and the school cannot exceed: 3 km – in the case of pupils attending Grades 1-4 of the primary school and 4 km – in the case of schoolchildren in Grades 5-8 of the primary school. If, however, the distance from home to school functioning in the district of the child's residence, exceeds those indicated in the act, the commune is responsible for securing free-of-charge transport and supervision during the passage, or is obligated to return the cost of child's transfer by means of public communication in the case of the child's parents organizing the passage on their own, and until the pupil turns 7 years old – this also includes the fare paid by the accompanying adult. The commune can organize transport and care of children whose place of residence does not exceed the distances mentioned in the Act, which was confirmed by the Constitutional Tribunal upon having analyzed the wording of Art. 17 of the Act on the education system in force earlier, which corresponded – regarding the essence – to the current Art. 39 EL. It was stated that the need to take into account the distance between the child's home and the school does not have the character of the legislator's absolute order, but is solely a directive referring to the most appropriate construction of a schools network. The alternative solution which the commune has at its disposal, is to provide transfer to the given district school²³ for children realizing the duty of obligatory school attendance. In order to complement the list of duties on the part of communes, it is also necessary to point to the obligation to secure free-of-charge transport and care during it for disabled schoolchildren, which is far more extensive than that organized for able schoolchil-

²¹ *Journal of Laws* of 2016, item 35.

²² The Act of 7 September 1991 on district schools (*Journal of Laws* of 2017, items 2198, 2203, 2361), hereafter referred to as "ADS".

²³ The sentence of the Constitutional Tribunal of 30 September 1997, K 6/97, OTK 1997, no. 3-4, item 38.

dren and can take until the age of 25 years in the case when the students attend rehabilitative-rearing classes.²⁴

The issue of school network returned in the public debate in connection with challenges posed by the implementation of the education system reform, which was commenced in the school year 2016/2017. It was in particular the process of liquidation of the middle school (junior high) and return to the 8-grade primary school that forced units of the local self-government to make changes in this respect. The basic determiner in the proper formation of the network is such a distribution of schools that all the children residing within the given network should have the possibility of realizing the obligation of compulsory school attendance secured. It also needs aiming to establish schools with the full organizational structure – ones that function in one building or within close location of it. The commune board accepts the plan of network of public primary schools run by the commune and also determines the boundaries of state-run (public) primary schools districts, with the exception of special schools that are based in its area. In the case of state-run primary schools run by other organs, delineation of the district boundaries follows in agreement with these organs. On the other hand, the county should build the network in a way that makes it possible to effectively realize the obligation of school attendance or the duty of education. Public secondary and special schools run by the county are placed within this network, as well as schools of the same type, but run by other subjects than the county, are included. This is done in order that children and youth living in the area of the county or staying in health centers should be able to fulfil the duty of compulsory school attendance or compulsory education, respectively.

Broader competences of the school superintendent in the process of adjustment of schools networks to the new school system introduced with the Act of 14 December 2016 – Education Law – were written in the act of the same day – regulations introducing the Act of Education Law.²⁵ According to Art. 208 of the latter, the superintendent has received the competence to pass the opinion on the decision taken by the commune board, concerning the project of adapting primary and middle schools network to the new school system and – in compliance with Art. 215 – on the decision by the county board, concerning the project of adapting secondary and special schools network to the new school system. What is significant regarding these alterations is the strengthening of the school superintendent's role in deciding about the shape of the network (that is the necessity of ob-

²⁴ For a broader treatment of the problem see: D. Kurzyna-Chmiel, Niepełnosprawność jako źródło specyfiki regulacji oświatowej [Disability as a source of the specifics of educational regulations], „Samorząd Terytorialny” no. 5, 2018, p. 37.

²⁵ *Journal of Laws of 2017*, items 60, 949, 2203, hereafter referred to as “AIREL”.

taining the positive opinion instead of one that can be called ordinary, as it was in the previous legal order). Generally, co-deciding with reference to realization of public tasks, including those related to the education system, is not a rare occurrence. “The legislator introduces them with a number of goals to achieve, mainly to engage in the decision-making process subjects whose role is important in the given period, particularly from the point of view of perceiving the education policy of the state. This goal is achieved – as illustrated by the example of the chief education officer – through the official’s role in different aspects of the whole education system, which is suitably formed by regulations of law.”²⁶ “Seeking opinion” belongs to actions contained within the formula of “coordination”. The opinions do not have the autonomous character and are passed on matters which are part of the responsibilities of the organ passing the opinion.²⁷ “Seeking opinion” consists in turning by the relevant organ to another one or other ones with the request to express their opinion on the given issue.²⁸

The opinion mentioned above ought not to be treated as an administrative decision. This standpoint is confirmed by the case law, for instance “The school superintendent’s opinion taken by organs of pedagogical supervision within the scope of the office’s competences, irrespective of whether it is extensive and detailed, is not an administrative decision or a resolution which regulations of the code of administrative proceedings apply to, including those with reference to justification of the settlements. By opinioning a case [...] the school superintendent presents their standpoint as an entitled organ of government administration that realizes the education policy of the state. Thus, the motives which the organ of pedagogical supervision presents in their opinion have solely a clearly substantial value, whose evaluation should not be an element in the scope of control of legality of the very opinion itself, exercised and executed by the administrative court.”²⁹

The legislator clearly determined the scope of issues subject to opinioning by the school superintendent. It is therefore not acceptable to apply an extending interpretation in this respect. Public education services of the local self-government are executed on an independent basis and any interference in the scope of realization of own tasks is possible only by means of a relevant act. This standpoint finds its confirmation in the sentence passed by the Constitutional Tribunal on 8 May 2002 (file ref.

²⁶ D. Kurzyna-Chmiel, *Oświata jako zadanie publiczne...* [Education as a public task...], p. 309.

²⁷ *Ibidem*, p. 305.

²⁸ M. Ofiarska, *Formy publicznoprawne współdziałania jednostek samorządu terytorialnego* [Public-law forms of cooperation between units of the local self-government], Warszawa 2008, p. 67.

²⁹ The judgement of the Provincial Administrative Court in Rzeszów of 11 March 2014, file ref. no. II SA/Rz. 1344/13, LEX no. 1453042.

no. K 29/00) which clarifies that “both the bases of local government’s activity and limitations of this activity can be introduced in the form of an act. [...] In the formal aspect, the guarantee of independence is establishment of the principle of exclusiveness of the act-based form of introduced restrictions in relation to normalizing issues connected with the order, scope of services and the manner of functioning of the local self-government. The legal framework of activity of the local government is thus – in the opinion of the Tribunal – legally determined by acts and – at the same time – exclusively by means of acts.”³⁰

In accordance with the provisional regulations (208 AIREL), the chief education officer opined the resolutions in question within 21 days. This regulation must be acknowledged to be *lex specialis* with reference to the regulations of the AGSG and the APSG (Art. Art. 89, 98 and Art. Art. 77b and 85, respectively). The regulations of the respective acts on the local self-government were applicable only with reference to the scope that was not regulated by the AIREL.³¹ In compliance with their content, the school superintendent’s not expressing an opinion within 21 days resulted in acknowledging that they accepted the content of the resolution in the wording presented by the given unit of the local government.

Special attention is drawn by the types of opinion which the school superintendent had the right to express in the light of the provisional regulations. That means that they could be positive, “conditionally” positive and negative. The first made it possible for units of the local government to pass the final resolution concerning adjustment of the schools network to the new order of the school system. In the case of the second type – the positive but “conditional” opinion – there were recommendations which should be taken into consideration in the final resolution. Taking them into account led to acknowledging that the resolution received the positive opinion, while – on the contrary – not taking them into account resulted in acknowledging the opinion to be negative. When the opinion was negative, it meant that the schools network proposed in the resolution of the given unit of the local self-government could not be accepted. Here, it is worth reminding that not taking into account the school superintendent’s opinion is a breach of law, which results in launching the control procedure by the voivode. It also needs stressing that the school superintendent is not an organ of control over the local self-government. This view dominates in the literature on the subject³² and corresponds to the case law of the Con-

³⁰ The sentence of the Constitutional Tribunal of 8 May 2002. File no. K 29/00, OTK-A 2002, vol. 3, item 30.

³¹ To the same effect: the judgement of the Provincial Administrative Court in Gliwice of 20 January 2017, IV SA/GI 437/17, LEX no. 2297688.

³² D. Kurzyna-Chmiel, *Oświata jako zadanie publiczne* [Education as a public task],... p. 174; the opposite point of view is presented by P. Chmielnicki, *Świadczenie usług przez samorząd te-*

stitutional Tribunal, which is still valid. “The school superintendent is not an organ of control over the local self-government in the understanding of Art. 171, para 2 of the Constitution of the Republic of Poland, since this regulation precisely enumerates these organs.”³³ However, it should be observed that there exist organs which, even though they are not organs of control impacting the local self-government, in view of the above stipulations they do hold certain supervisory competences. As B. Dolnicki states, “apart from supervisory organs enumerated in the Constitution and local governments’ resolutions, there may appear organs which – in an indirect way – will have competences of controlling the local government. For instance, Art. 89, para 1 of the Act of 8 March 1990 on the commune self-government [...] has it that a concrete regulation of law can make the validity of settlement proposed by a commune organ dependent on its approval, agreement or opinion issued by another organ. This is also connected with the obligation to submit the settlement to this organ.”³⁴ This opinion was also confirmed by the Constitutional Tribunal in their sentence of 8 May 2002 (file ref. no. K 29/0).³⁵ And even though this concerns opinions on combining schools, its essence can be referred to also to other issues opinioned by the chief education officer. In the opinion of the Tribunal, “Polish education system is an integral whole which consists of the sum of a variety of tasks and competences that have been distributed among many subjects, each of which is assigned particular tasks and competences defined by regulations of law. The function which the school superintendent performs concerning the issue of combining schools has nothing to do with this official’s supervision over a unit of the local self-government, yet the competences assigned to this post legitimize the school superintendent to issue a binding opinion in this respect [...] if one were to accept that applying supervisory competences by the school superintendent was one of the instruments of control wielded by government administration over the local self-government, only from this point of view it should be acknowledged that after the Constitution came into force, the regulations determining these competences would have to be seen as contradicting it.”

As it was mentioned earlier, the school superintendent, although not being an organ supervising the local self-government, does hold “certain

rytorialny w Polsce: zagadnienia ustrojowoprawne [Providing services by the local self-government in Poland: polity-legal issues], Warszawa 2005. p. 301-303.

³³ D. Kurzyna-Chmiel, *Oświata jako zadanie publiczne...* [Education as a public task...], p. 174

³⁴ B. Dolnicki, *Nadzór nad samorządem terytorialnym* [Supervision over the local self-government], In: J. Jagoda (ed.), *Organizacja i funkcjonowanie samorządu terytorialnego w Polsce i w Niemczech. Analiza prawnoporównawcza. Organisation und Funktionsweise der Selbstverwaltung in Polen und in Deutschland. Rechtsvergleichende Analyse*, Warszawa 2018, p. 243.

³⁵ The sentence of the Constitutional Tribunal of 8 May 2002, File ref. no. K 29/00, OTK-A 2002, vol. 3, item 30.

supervisory competences” with reference to the latter. Additionally, the regulations accept the existence of the only criterion of control, which is legality. This, for instance, excludes assessment of effectiveness of changing the schools network. The Provincial Administrative Court in Łódź aptly expressed their opinion concerning the attempt to broaden the boundaries of the school superintendent’s supervision in the context of the legal solutions included in Art. 208, para 3 AIREL,³⁶ by stating the following: “There is no doubt that the criterion of supervision over the local self-government is one of compliance with the law, which results from the regulations [...] of Art. 171, para 1 of the Constitution of the Republic of Poland, as well as Art. 85 AGSG. It is true that the legislator made use – while defining the scope of evaluation contained in the school superintendent’s opinion – of the notion of “in particular”, still this notion does not mean that this “in particular” could only point to one criterion of supervision, as – at the same time – the superintendent could – in a binding manner – evaluate a resolution in the control procedure also on the basis of other criteria.³⁷ The interpretation of Art. 208, para 3, with the inclusion of the content of Art. 171, para 1 of the Constitution, does not allow assuming other criteria of supervision held by the school superintendent beyond legality. The formulation “in particular” contained in this regulation, does not allow broadening the criteria of control with, for instance, purposefulness, effectivity, or even justifiability of usage of school classrooms in individual schools.”

The force of resolutions concerning the change in schools networks in connection with the transformation of the education system is of temporary nature: it covers the period between 1 September 2017 and 31 August 2019. The regulations impose the obligation of passing new resolutions by communes in the year 2019, regarding the networks of state-run elementary schools as well as determining the boundaries of school districts. This obligation refers also to counties and is linked to the fact that from 1 September 2019 middle (junior high) schools ceased to operate (that is 3-year comprehensive secondary (high) schools and 4-year technical schools – on the power of law – transformed into 4-year comprehensive secondary schools and 5-year technical schools, respectively).³⁸

³⁶ The Provincial Administrative Court in Łódź, with the judgement of 28 June 2017, III SA/Łd 409/17 LEX no. 2333563, repealed the decision of the School Superintendent in Łódź, concerning the resolution of the City Council of Łódź, which dealt with adaptation of the elementary and middle schools networks to the new order of the school system.

³⁷ The judgement of the Provincial Administrative Court in Krakow of 11 July 2017, file ref. no. III SA/Kr 496/17, <https://www.orzeczenia-nsa.pl>

³⁸ The transformation relates also to certain complexes of schools composed of a secondary school and a middle school, or a secondary technical school and a middle school, which – on the

As far as the school superintendent's duty to co-decide about the shape of the schools network is concerned, the regulation of Art. 39, para 8 EL sustains the necessity of obtaining the positive opinion from this organ. The legislator resigned from the possibility of issuing the conditionally positive opinion by the school superintendent. However, the only criterion of the supervision exercised by this office still remains legality. Undoubtedly, entrusting concrete subjects responsible for realization of a public mission with competences is unvaryingly important. Broadening the scope of competences of one (i.e. chief education officer) in relation to another (i.e. units of the local self-government) determines the range of their actual responsibility.

Conclusion

Without a doubt, the duty to take quick decisions with regard to schools networks and their changing, which has been imposed on communes and counties in recent years, must be evaluated negatively. Units that carry out education-related tasks are right to expect stability and solidity with reference to the ways of organizing educational services. On the other hand, the liquidation of middle schools was accompanied by numerous social protests, since this issue proved of great importance to a large part of society. As it is rightly emphasized in the specialist literature, in the relations between a contemporary state and its administration, on the one side, and its citizens, on the other one, there often arises disharmony which is visible in social displeasure (among others in the form of protests participated in by parents, schoolchildren and teachers) with the activity of administration in charge of providing services.³⁹

The latest reform of the school system gave rise to the necessity of introducing changes into the existing network of schools. Due to the fast pace of introducing the reform, the alterations had to follow very quickly. The regulations which empower the school superintendent to issue the opinion about the compliance of the public schools network accepted by legislative organs of the local self-government with the conditions relating to maintenance of permitted distances to schools, have changed, too. The evident strengthening of the role of the chief education officer in the process of cooperation with units of the local self-government based in the examined area, writes into the centralistic character of the reform. The educational

power of law – beginning with 1 September 2019 turned into 4-year secondary comprehensive schools and 5-year secondary technical schools.

³⁹ J. Posłuszny, O nowej koncepcji administracji świadczącej [On the new concept of services-providing administration], In: J. Posłuszny (ed.), Aktualne problemy administracji i prawa administracyjnego, Przemyśl-Rzeszów 2003, p. 296.

policy of the local government is considerably dependent on the school superintendent's co-deciding.

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USTALANIE SIECI SZKOLNEJ Z PERSPEKTYWY KOMPETENCJI KURATORA OŚWIATY
– ANALIZA ROZWIĄZAŃ PRAWNYCH W ŚWIETLE OSTATNIEJ REFORMY OŚWIATY

Streszczenie: Oświata podlega ciąglem zmianom. Ostatnia reforma związana z likwidacją gimnazjów i wprowadzaniem nowej struktury szkolnej zrodziła konieczność szybkich zmian przepisów i stworzenia nowej sieci szkolnej przez gminy i powiaty. Ustawodawca zwiększył kompetencje kuratora oświaty we współdziałaniu w zakresie tworzenia sieci. Niewątpliwie kompetencje kuratora oświaty, będącego organem administracji rządowej ograniczają niezależność samorządu w podejmowaniu decyzji w tak ważnej społecznie sprawie. Należy potęgować zarówno tempo zmian przepisów jak i konieczność dokonywania zmian w sieci w tak krótkim czasie. Podważa to bowiem zaufanie obywatela do państwa i tworzonego w nim prawa.

Słowa kluczowe: KURATOR OŚWIATY, NADZÓR PEDAGOGICZNY, SAMORZĄD TERYTORIALNY, SIEĆ SZKOLNA