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ACTIVITIES II

**Decentralisation - Local government - Region**

Ladies and Gentlemen,

Last time, we looked at the differences between public administration and private administration, and saw the multiplicity of approaches to the latter. Today, we shall take a further step and, starting from the concept of decentralisation, we shall go through its particular form, namely self-government, and finally come to the concept of region, the content of which we shall examine. Let us therefore get down to business.

It is no secret that decentralisation is the opposite of centralisation. In the same way, it should be no secret that decentralisation is associated with the concept of deconcentration and centralisation with the concept of concentration. What deserves special attention, however, are the aspects that **1)** representatives of different scientific disciplines fill these terms with different content, **2)** ideal decentralisation is a utopia [**Raadschelders 1994, no. 6, pp. 11 - 12**].

In the most general terms, the concept of centralisation can be understood as a system in which there are many sub-elements, but a certain unity is given to all of them by a single element at the very top. This last element unifies all the others, making them into a non-symmetric system that is mobile, but coherent, with the main objective of providing top-down or centrally managed efficiency. Moreover, the purpose of a centralised system may be to ensure the functioning and maintenance of itself or, in the second case, to achieve objectives that are partly or wholly outside itself. In the organisational sphere of administration, such an arrangement sometimes ensures managerial efficiency and even effectiveness. It is also worth noting that there is an increasing degree of centralisation in the European Union, and the reason for this is the growing area of shared administration.

Neither does centralisation have to manifest itself identically everywhere. Nowadays, from the perspective of administrative law, it manifests itself mainly through **1)** strict legal separation of tasks and competences at each organisational level of administration, **2)** the

possibility to deconcentrate them to lower level bodies, **3)** maintaining hierarchical subordination in the sphere of realisation of these competences [Boć 2013, pp. 171 - 172].

I will leave aside the phenomenon of concentration in public administration structures. It is the opposite of deconcentration, to which I will now turn. The latter can be characterised as follows - **1)** it is a quantitative expression of centralisation, **2)** from a static point of view it is an expression of current distribution of competences among particular bodies of administrative apparatus, **3) from a dynamic point of view** it is a process of transferring competences from one subject to another or from one subject to several subjects. Thus, it is a movement of competences [Boć 2013, p. 173].

Finally we have decentralisation. This process consists, according to F. Saint-Quen, primarily in transferring certain state competences either to municipalities or to regions or to both levels in parallel [Saint-Quen1991 , no. 6 , p. 5].

According to Ch. Pickvance, the most decentralised system is one that cedes many functions to local authorities, leaves them in complete control of the functions and in which there is no central funding. Moreover, decentralisation is a multidimensional concept and its relationship to democracy more empirical than axiomatic [Ch. Pickvance 1996, no. 9, pp. 26 and 40].

In general, based on the views of both Polish and Western literature, it may be assumed that **1)** individual administrative entities have specific competences, **2)** these competences are established or transferred from higher authorities by way of a law and exercised in an independent manner, **3)** to the above extent they are only subject to verification supervision by competent authorities [Boć 2013, p. 178]. Additionally, it is necessary to indicate the existing forms of decentralisation of public administration. In this case, there is no single catalogue common for all countries, so I will take as an example the forms of decentralisation occurring in Poland. These include, among others, territorial and **professional** self-government/**association**, administrative establishments increasingly often called public ones, state, municipal and private enterprises if they perform functions in the field of public administration, public benefit organisations, other social organisational entities (e.g. foundations) [Boć 2013, pp. 179 - 180].

For the moment, we will focus on local government, which will be essential for us because of the later, fundamental issues relating to the regions.

We can look at local government from at least two perspectives. Interestingly, in political terms it will be *freedom to the state* and in legal terms *freedom from the state*. Relevant here is the principle of subsidiarity, which implies the need to distribute decision-making

powers among the various actors and to introduce self-responsibility of the legitimate decision-makers for their actions. On the other hand, this principle entails the need to coordinate actions and to maintain joint responsibility at the same time.

F. E. Schnapp also draws attention to the principle of equality. Paradoxically, it also means consent to certain inequalities. The reason for this is that allowing the creation of self-governing institutions with their own tasks and competences means at the same time accepting the resulting inequalities due to different political priorities. Members of different local government institutions may therefore be treated unequally.

Due to the fact that the local government has legal subjectivity, it must have its own tasks to perform. These tasks are divided into three groups: **a)** own tasks - statutory, performed on their own behalf and on their own responsibility, **b)** commissioned/ordered tasks - statutory, but performed on behalf of and on the responsibility of the government administration, **c)** entrusted tasks - by means of a voluntarily concluded agreement.

Now we turn to the elements of self-government, which will be characterised in detail later in the lecture. For we distinguish between **a) the authority to legislate, b) the authority of personnel, c) the authority of finance and taxation, and finally d) the authority of organisation [F. E. Schnapp 1991, no. 7-8, pp. 4 - 7].**

In the perspective of European integration, the importance of local self-government is not insignificant either. As R. von Ameln wrote, *Europe must also be built from the bottom up, in towns, communes and districts, so that it does not become a technocratic, centralist entity that is distant from its citizens.* It is also worth noting that this necessity is independent of the degree of development of local self-government, which increases significantly with integration **[R. von Ameln 1995, no. 6, p. 31 - 32].**

J. Ślugoński lists the essential features of self-government as corporate in nature, i.e. the possibility for citizens to manage the affairs of their self-governing community by law, obligatory membership, performance by the self-government of tasks belonging to public administration, decentralisation, and recognition by law of the separate interests of a given self-governing corporation **[Ślugoński 2012, pp. 199 - 200].**

Meanwhile, let us return to the issue of self-government authority. Earlier, he mentioned the systematisation adopted by the German author. F. E. Schnappa. Nevertheless, due to the similar content of various systematisations presented in the literature, I will allow myself to discuss more extensively the conception of J. Korczak **[e.g. Korczak 2012, p. 45 and others; Kroński 1932, p. 8]:**

- 1) **Task-based authority:** its scope encompasses all the own tasks and commissioned tasks of the local government. As the author writes, the manifestation of the authority seems to be more in the sphere of own tasks, however, also in the sphere of commissioned tasks nothing diminishes this authority, because it is the unit to which the execution of the task has been commissioned, which has the power to execute it, and in this scope also enjoys legal protection no less than in the execution of own tasks.
- 2) **Property authority:** consists in the disposal of communal property components by individual local government units through their bodies and organisational units created for this purpose.
- 3) **Financial authority:** it distinguishes between **budgetary authority**, i.e. the public power manifested in the decentralisation of resources redistributed by local and regional budgets and the decentralisation of the powers to raise funds, constituting the revenues of the budgets of local government units, to perform their tasks, and in the autonomy of expenditure. Budgetary authority extends to independent execution of the budget both in terms of raising the revenues stipulated therein and making the expenditures stipulated therein. Hence, we may speak separately of the **spending authority**, derived directly from the budgetary power on the grounds that the local government unit, implementing the budget binding upon it, is authorised to incur the budgetary expenditures stipulated therein.
- 4) **Fiscal authority:** its content consists of **a)** lawmaking powers covering the power to enact legislation introducing taxes or shaping elements of their construction (e.g. rates); **b) the authority to** collect revenue from individual taxes, **c) the authority** to administer individual taxes.
- 5) **Personal authority:** in the literature it is understood as the independent creation of members of collegiate bodies and holders of monocratic bodies, but also in terms of the election of personnel within these bodies, and finally in terms of employment in offices constituting their auxiliary apparatus and other organisational units of local government units.
- 6) **Administrative authority:** in a broader sense, it is divided into **constitutional authority**, **authority to make acts of local law** and **organisational authority** (consisting of independence in the selection of the organisational and legal form to carry out the tasks of the local government unit). In a narrower sense, it means in

turn the autonomy of local government bodies to deal with individual matters within the scope of public administration by way of administrative decisions.

The European Charter of Local Self-Government is important for local government in Europe. The following issues are addressed in the various provisions:

- 1) the rank of the internal legislation defining the principle of local self-government,
- 2) definition of local government,
- 3) the scope of the right to local self-government,
- 4) protecting the borders of local communities,
- 5) freedom to determine internal organisational structure,
- 6) the status of local government employees,
- 7) the status of representatives elected to the representative bodies of local communities,
- 8) administrative supervision of local government,
- 9) local government finance,
- 10) the right of association,
- 11) the right to judicial protection.

In addition, there are two types of provisions. Those that leave the internal legislator considerable leeway and those that do not. On top of this, a party to the Charter has the option of deciding whether or not to apply the Charter in its entirety. It should be noted that its application under Articles 13 and 16 may be excluded for certain local or regional communities or specific territories. The party may also indicate in a positive manner to which communities the Charter applies, or indicate in a negative manner to which communities it does not apply [**Szewc 2003, no. 1-2, pp. 135 and 138 - 139**].

It is now time to move on to the regions. There is a point to be made here, namely that the idea of a Europe of the Regions should, according to its proponents, lead to a situation where the regions share power above all with the European institutions. The nation states, on the other hand, would have little or no significance. This also raises the problem of good governance.

The regions themselves can be divided into three types: **a)** classic unitary states without regional self-government structures (sometimes with state administration), such as the United Kingdom, Denmark, Sweden and Greece; **b)** states in which regional self-government is increasingly autonomous, such as France, the Netherlands, Portugal and now Poland; and **c)** so-called regionalised unitary states, such as Italy and Spain. Finally, **d)** the so-called regionalised unitary states, such as Italy and Spain, where it is worth emphasising that regional

self-government has constitutional status, a high degree of autonomy and significant legislative authority; and e) federal states, such as Germany, Austria and Belgium, which to a large extent share powers with regional self-government, which is precisely regulated by the constitution. In these countries, the regions also enjoy a great deal of independence, especially in the legislative sphere. This is of course linked to the decentralisation process [Jeffery 1997, p. 5; cited after: Głębocki 2001, no. 7-8, pp. 79-80].

In literature one can also find at least several different approaches to the concept of region. Below I will quote some definitions [e.g. Gorzelak, Jałowiecki 1998, pp. 20 - 22; cited after: Lemańska 2008, pp. 135 - 136]:

- 1) **region in the static sense** - it is an artificial construction created to systematise reality. This group includes regions whose creation was intended to improve the management of regional development in a given country. In this sense, a region can mean both a territorial division and a purely economic division;
- 2) **a relict region**, i.e. a **region** with special characteristics resulting from the past;
- 3) **region in the political sense** - they have their own distinctive past, like the relict regions, but have retained their political distinctiveness in the process of the formation of modern nation states. Consequently, they continue to function as units with greater or lesser autonomy. The historically developed ones often also retain their linguistic and national identity, thus constituting an important factor in the organisation of the country;
- 4) **Sociological regions** - i.e. **regions** distinguished on the basis of the inhabitants' sense of national identity; finally,
- 5) **regions in the ethnic sense** - i.e. those formed because of ethnic, linguistic or cultural distinctiveness.

Finally, it is worth highlighting a certain correlation that can be seen here. Let us note that, like local government, the regions are an even more far-reaching form of territorial decentralisation. We also note that their status may vary from country to country, just as the basis for their delimitation may differ. In what follows, we will devote more attention to the issue of governance and then gradually combine the different strands. In the meantime, I invite you to the section devoted to independent work.

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