From 14-17 January 2009, a scientific conference was held in the halls of the Royal Castle in Niepołomice, on the subject of 'The Local Government Appeal Boards as a Guarantor of the Right to Good Administration', which was organized by the National Representation of the Local Government Appeal Boards and the Editorial Board of Casus legal quarterly led by Madam Professor Krystyna Steniawska, who is also a Chairperson of the aforementioned organization.

The right to good administration is a theoretical issue that has become more prominent, following the adoption by the European Parliament on 6 September 2001, of the European Code of Good Administrative Behaviour, otherwise known as the European Code of Good Administration.

Among the events dedicated to this issue, one should first refer to the Convention of Chairs in Administrative Law and Administrative Proceedings, which took place from 21-25 September 2002 in Warsaw-Debe and the publication of the proceedings from this convention by the Cardinal Stefan Wyszyński University in the book entitled 'The Right to Good Administration' (Warsaw 2003. pp. 687).

The conference held in Niepołomice was an appropriate continuation of the studies on the right to good administration, this time in the context of the axiology of the course of administrative instance and the right to the two-instance system of administrative proceedings.

The two-instance nature of the administrative proceedings in the light of the provisions of the Constitution of the Republic of Poland of 2nd April 1997, was the topic of a paper presented by Professor dr hab. Paweł Sarnecki, which was published in issue No. 50 of the 'Casus' quarterly on pp. 9-13. The axiology of the two-instance course of administrative instance was given extensive treatment in a presentation by Professor dr hab. Jan Zimmermann. He emphasized the fact that since the administrative course of an instance is one of the fundamental elements of good administration, then the appeal boards destined to discharge the competence of an instance, are the entities best placed to implement the notion of good administration.

Among the major factors contributing to this role are: relative independence, thoroughness and objectivity in adjudicating, due to the principle of deciding the administrative hearings in panels comprising three members with relevant qualifications (e.g., higher education, work experience and high levels of professional expertise).

As regards the two-instance system of administrative proceedings, a further reflection comes to mind. The two-instance system of administrative proceedings existed in the 2nd Polish Republic. The Ordinance of the President of the Republic of Poland of 22 March 1928 on administrative proceedings stipulated, in Article 82 that 'The party has the right to appeal only to one instance and the immediate superior to the body issuing the decision in question, unless any statute enacted after 14 September 1923 provides otherwise'. This ordinance was still in force after World War II up till the end of 1960.

In the Polish legal order, the necessity to have the two-instance system of administrative proceedings seemed beyond doubt. Therefore, in the Code of Administrative Proceedings (hereinafter abbreviated as 'CAP'), which in its 1960 wording did not include the principle of two-instance proceedings among its general principles (Articles 1 through 13).

In the 1970s, the two-instance system was subject to significant restrictions, as decisions in individual cases in the area of state administration issued by a voivod, or by a mayor (city president) of a city administratively separated from voivodship, were deemed final. This practice also applied to decisions issued in the first instance. This provision was initially introduced by the Act of 22 November 1973 amending the Act on people's councils.

During the discussions on amending the Code of administrative proceedings conducted in the years from 1977-1979, a number of postulates were formulated to complement the list of general principles of the Code. Once again it was to permit the admissibility of legal remedies against decisions issued in the first instance, with the main emphasis being on setting a principle of two-instance proceedings in those cases considered in the first instance by voivods and mayors (city presidents) of those cities administratively separated from the voivodships.

The Act of 31 January 1980 on the Supreme Administrative Court concerning the amendment to the Act on the Code of administrative proceedings, implemented this postulate. The explanatory statement to the draft of the Act envisaged that the principle of a two-instance system of administrative proceedings will be a further manifestation of a strengthening law and order. The statement reads: 'Placing this principle in the general part of proceedings grants it the status of a norm regarding the basis of the political system. This norm should be interpreted as a means to monitor the correctness of the decisions issued by the authorities of a stated administration, implemented both in the interest of the party and in the general public interest'. In the Bulletin No. 728/of the VIIth term of the Polish Parliament, where the reports by the Commission of Administration, Economy and Environment, and by the Commission of Legislation submitted during the session of 21 January 1980 were published, it was stated that the draft of the legislation providing for a universally applied two-instance system in administrative proceedings had earned widespread support.

On the day when Article 15 was added to the CAP, Article 57 para. 2 of the Act of 25 January 1958 on peoples' councils granting final status to the administrative decisions of the voivods and mayors (city presidents) of the cities administratively separated from voivodships, ceased to be in force.

With the entry into force of the Act of 31 January 1980, i.e. on 1 September 1980, the decision issued by a voivod is subject to appeal to the relevant minister. At the same time, a provision was added, stip-
Taking into consideration the subject of the article, one should present the following issues: 1) concepts of the right to good administration, 2) legal status of the Local Government Appeal Boards and their activities in the context of the right to good administration.

II

The issue of the right to good administration has already a long history. From the axiological point of view, the right is, undoubtedly, viewed among the basic human rights, including the right to live in a “good state”. In a dictionary of synonyms, under the entry “good” the following synonyms are listed: “gentle (…), kind-hearted, (…), understanding, lenient, comparative, liberal, tolerant, humane, humanitarian”, along with a reference to the following entries: cordial, friendly, merciful, guarded. One may agree that a state characterised by such features is close to people’s dreams of a good state. However, a mere reference to these humanitarian values, unsupported by any real “executive measures” would be nothing more than a collection of “reasonable” slogans. Therefore, in order for these “human longings” for a good state to be brought to reality, they should be supported by the key tool, namely the law.

The origins of efforts to formalise the basic rights related to a human being can be traced as early as in the Constitution of the United States of America of 1787 (in particular in the Preamble thereto) as well as in the French Declaration of the Rights of Man and of the Citizen (“Déclaration des Droits de L’homme et du Citoyen”), dated 26 August 1789 (especially in the construction of “unalienable and sacred rights of man”).

Subsequent centuries, on the one hand, saw extension of a discussion on human rights and a good state, yet, on the other hand, state practice, in particular what happened during World Wars I and II, was, to speak very moderately, quite far from enhancement of the human right to a good state or, even more so, to good administration. Experience of those times revealed, however, a need to make more vigorous efforts to work out mechanisms designed to foster enforcement of human rights. These views translated into adoption of: the Universal Declaration of Human Rights (adopted by the UN General Assembly on 10 December 1948 in Paris), the European Con-
The principles of good administration became the subject of interest also of the Council of Europe, this being manifested by numerous recommendations, including, *inter alia*, the Recommendation of the Committee of Ministers, dated 12 May 2004, on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights, in particular with regard to the so-called good administrative practice. Account should be also taken here of the most recent “product” by the Council of Europe in this respect, namely Recommendation CM Rec. 2007/7 right to good administration.  

And finally, it should be added that, undoubtedly, the principle of good administration, and indirectly also the right to good administration, has been and still is largely affected by the principle of subsidiarity, referred to in the Preamble to the Constitution of the Republic of Poland of 1997 as well.  

In parallel with a development of the principles of good administration a debate was held on whether the basic human rights could be understood to include the human right to good administration. What should be particularly noted in this regard is the discussion on the so-called generations of human rights, where it was agreed that the right to good administration should be classified as one of the third-generation human rights, generally referred to as solidarity rights that express a certain concept of living within a community; as a consequence, these (the rights concerned – EB) cannot be made real without a joint effort of all the public life actors”.

These discussions coincided with the works on the *constitution on human rights in the European Union*, which led to the drafting of the Charter of Fundamental Rights, adopted on 7 December 2000 on the European Council’s summit in Nice and subsequently incorporated in the Treaty of Lisbon pursuant to Article 6 as an integral part thereof (13 December 2007). Thus it forms part of the primary law of the European Union. In the Charter of Fundamental Rights the right to good administration is addressed in Article 41. The construction of said right is, however, peculiar. To be specific, the name of that right is verbalised in the title of Article 41, whereas in Section 2 Items a-c and in Sections 3 and 4 the “constituent” parts of the right are specified (and, since there is no “in particular” expression here, one should assume that the enumeration of the rights and obligations contained in that provision is finite).  

According to the provisions of Article 41 of the Charter of Fundamental Rights, the right to good administration includes (in general): 1) the right to be heard, 2) the right of every person to have access to his or her file, 3) the right to claim compensation for any damage caused by any activity of public administration, 4) the right to write to institutions of the European Union in one of the languages of the Treaty (hence including Polish) and to receive an answer in the same language, 5) the obligation of the administration to give reasons for its decisions. Therefore, it follows from the foregoing that, contrary to a widespread opinion, the right to good administration as provided for in the Charter of Fundamental Rights is not a right “to everything”; conversely, in Article 41 both the object and the limits of that right are explicitly defined.  

On this background, an interesting problem arises, related to the relationship between the principles of good administration, well-established in the case law of the courts of the European Union (compiled for the purposes of the European Union institutions in the European Code of Good Administrative Behaviour) and the right to good administration as formulated in Article 41 of the Charter of Fundamental Rights. In particular, a question arises of whether the right to good administration being a part of primary law continues to be exemplified in the rights specified in Article 41 of the Charter, or whether the right to good administration will also include the right to those types of administrative behaviour that are not explicitly enumerated in Article 41, but follow from the case law of the courts of the European Union. What should be noted here is the fact that the scope of behaviour expected of administration institutions referred to in the case law as part of good administration is much wider than one specified in Article 41 of the Charter of Fundamental Rights (the text of the European Code of Good Administrative Behaviour, drafted based on that case law, can serve as a good example here).  

Although it is difficult to foresee in which direction the practice employed by the EU courts will develop, it seems that some reconciliation of the content of the right to good administration as provided for in Article 41 of the Charter of Fundamental Rights with the principles of good administration as laid down in the case law (and in the European Code of Good Administrative Behaviour) should be attempted so as to in-
corporate the expected principles of good administration within the scope of the right to good administration under the concept of said right defined in Article 41 of the Charter of Fundamental Rights. Thus, the principles of good administration, set forth in the case law of the Community courts, as well as the right to good administration as provided for in the Treaty of Lisbon would be compatible with each other, and this would substantially enhance the position of entities invoking the right to good administration.

The construction of the right to good administration is a complex one. Theoretically, the right could be formulated without any specific examples (in the form of a sui generis general principle) or as in the case of the European laws referred to above, in the form of a right formulated with the method of detailed enumeration. Such a construction of that right mutatis mutandis resembles the construction of the ownership right under civil law where, on the one hand, it is verbalised exactly and on the other hand, the right to good administration too) form a conglomerate of positivised human rights. In this concept, the right concerned is some sort of a meta-right situated on a higher level of abstraction and crowning normative regulations.9

III

The origins of today’s Local Government Appeal Boards go back to 1990 when in Article 81 of the then-valid Act on Local Government the existence of Appeal Boards at Regional Assemblies was provided for.10 Then, a separate regulation addressing that institution was adopted in the Act of 12 October 1994 on Local Government Appeal Boards.11 Pursuant to Article 1 para. 1 thereof, LGABs are “higher-tier authorities within the meaning of the Code of Administrative Proceedings and the Act of 29 August 1997 – Tax Law (…) in individual cases related to public administration and falling within the scope of competencies of local government entities (…)”. As a rule, therefore, the Boards are, as denoted by their very name, (second-instance) authorities of appeal against decisions issued by public local government entities as the first instance (although LGABs also have competencies of first-instance authorities, these are of minor importance in terms of the scope of cases examined). While playing that role, LGABs re-examine cases and decide the cases anew according to the principles set forth in the regulations concerning appeals procedures, contained in the Code of Administrative Proceedings and in the Tax Law.12 Looking from this angle, i.e. from the point of view of the scope of cases resulting from the application of the law, LGABs participate in the implementation of the right to good administration as manifested in the right of a party to appeal against an administrative decision, namely to demand re-examination of the case by an authority other than the one which examined the same first. While examining the appeal and deciding the case again taking into account the decision already issued by the first-instance authority, LGAB may point out to errors made in the first-instance proceedings and do so also from the perspective of the principles of good administration and the content of the right to good administration. Local Government Appeal Boards, deciding cases based on the applicable law, are bound in their decision-making process by the law of the European Union and, hence, obliged to re-examine cases in the course of the appeal proceedings also in this context with account taken of the first-instance decision already issued. In this sense, the Local Government Appeal Boards indeed play the role of a sui generis “guarantor” of the right to good administration.

The Local Government Appeal Boards are bound by the principles of good administration and the right to good administration also “internally”, i.e. with regard to the activities pursued within their own organisational structure. This can apply to compliance with the principles of good administration in such aspects as the information flow, the suitable internal organisational structure, correctly defined procedures for receipt and dispatch of official documents (including, in particular, ones received from parties to the proceedings) with the use of IT technologies which facilitate the parties’ participation in official procedures, as well as a number of other good administrative practices contributing to a proper performance of the key competencies which, undoubtedly, include the jurisdictional activity. On the whole, the internal activity must be subordinated to the primary goal, pursued in accordance with the principles of good administration, namely enforcement of the citizen’s right to such good administration.

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ENDNOTES:
1 S. Skorupka, Warsaw 1971, pp. 30-31
3 Although the Treaty of Lisbon to some extent admits a different classification system than the EC Treaty, the essence of the measures set forth in Articles 6 and 10 of the EC Treaty was transposed to the former, as a result of which the principles of good administration and the case-law of the Community courts in this respect will remain well-established in the primary law.
4 www.coe.int
5 Further on this subject see: T. Bąkowski, Administracyjnoprawna sytuacja jed- nostki w sieciu zasad mônomicznych [Situation of an Individual in the Con- text of Administration and Law in the Light of the Subsidiarity Principle], 7 Wolters Kluwer 2008, and the literature referred to therein.
10 The author is the Head of the Chair of Administrative Law at the Faculty of Law and Administration of the University of Gdańsk.

POLISH PRESIDENCY 2011
A typical constituency in voivodship assembly (sejmik) elections includes five powiats and elects seven councillors. This does not mean, however, that each powiat has a councillor in the assembly. In such a constituency, three or four parties divide the seats among themselves. This means that the number of seats per party ranges from one to three and therefore candidates from individual powiats compete for seats within each party. This competition has two stages: during the drawing up of tickets and during the campaign itself. Ultimately, it largely determines the electoral chances of individual candidates.

In 2006, 316 out of the 561 voivodship assembly councillors who won seats were placed in the first slot on the ticket. This is 56 percent of all councillors, i.e. almost twice the percentage for Members of Parliament. 126 more councillors (22 percent) were candidates who held slots from two to five on their parties’ tickets and those were seat-winning slots in the case of their parties. The term “seat-winning slots” means slots on the ticket whose numbers correspond to the number of seats won by the ticket in question in the constituency examined. The remaining 119 seats (21 percent) were won by candidates from further slots that were not seat-winning ones. Conversely, this means that 21 percent of candidates from seat-winning slots failed to secure seats, i.e. 79 percent of candidates from seat-winning slots won seats.

This is a percentage similar to that observed in parliamentary (Sejm) elections. This also means that among candidates from non-seat-winning slots, only 1 out of 66 got elected; the number of seats per 100 candidates from seat-winning slots is almost fifty times higher than the number of seats per 100 candidates from non-seat-winning slots.

The practical outcome of this mechanism is rational behaviour by candidates who seek to obtain a seat-winning slot, since this is considered the key to success during the election. On the other hand, securing such a slot does not appear to guarantee a seat. Therefore candidates who are further down the ticket try to overtake those from seat-winning slots and the result is not a foregone conclusion. These attempts mostly leverage local identity – support from voters who vote for the party in question in the powiat and choose “their” candidate instead of the ticket leader. In this manner, a “tournament of towns” of sorts starts, consisting in internal rivalry within individual tickets. This mechanism leads to serious distortions in local representation – the situation in constituency No. 1 in the Greater Poland Voivodship will be the case study here.

Constituency No. 1 in the Greater Poland Voivodship elects seven councillors. It covers eight powiats, including the Piła powiat with the largest town in the entire constituency, i.e. Piła. In the table below, the breakdown of votes cast for councillors in the 2006 election by individual powiats is shown. Each row corresponds to one councillor and the percentage of votes he or she got in individual powiats is shown. Cases where the councillor in question won more than 50 percent of votes to a single powiat are shown in light grey. Dark grey denotes cases where the councillor in question won more than 50 percent of his or her votes in a single powiat.

It is clear that all ticket leaders have their bastions in the powiat that includes Piła, which is the largest town in the constituency. This means that for four out of seven councillors, this powiat remains the main point of reference. On the other hand, no councillor owes more than 15 percent of their votes in total to the Chodzież, Oborniki and Wągrowiec powiats despite the fact that almost one third of votes in the constituency were cast there, which should translate into their key importance to at least two councillors. Overall, the representation of those powiats in the regional assembly measured as the importance of votes cast there for the councillors elected, amounts to 27 percent of notional representation for the Chodzież powiat, 39 percent for the Oborniki powiat and 50 percent for the Wągrowiec one. At the same time, the Piła powiat has a representation of 166 percent and the Czarnków-Trzcianka powiat – of 120 percent.

These significant differences in representation in the regional assembly may be explained by the fact that each powiat (or possibly a pair of neighbouring powiats) votes for its “own” candidate on each ticket. Candidates from the Piła powiat were placed in the first slot on all tickets and candidates from other powiats on the Civic Platform, Law and Justice tickets, candidates from the second largest powiat in the constituency (the Czarnków-Trzcianka one) emerged victorious from this rivalry. Although in both cases they were placed in number four slots (not seat-winning ones), they managed to defeat candidates in higher slots who hailed...
from smaller powiats. Zbigniew Ajchler, the winner of the second seat for the Left and Democrats ticket, owed his election mostly to the Szamotuły powiat and to some extent also to the Miedzychód one, which was the smallest powiat in the constituency.

In general, it has to be said that those powiats that helped ‘‘heir’’ candidates win the internal competition are represented in the regional assembly and those whose candidates were defeated found themselves outside the scope of interest of elected councillors. In subsequent elections, the candidates elected will try to strengthen their positions in their niches – this is the most rational choice. They can be sure that the remaining powiats will have their ‘‘own’’ candidates to challenge them again and those candidates will pose the greatest threat to their seats.

Since the ‘‘tournament of towns’’ proceeds in a very similar manner on each ticket, the aforementioned discrepancy between the powiats emerges. The Piła powiat has four councillors, since it won a seat for each of the four tickets – this despite the fact that it accounts for less than one fourth of the entire population of the constituency. The Czarnków-Trzcianka powiat has two seats from two tickets with the highest support while the Szamotuły and Miedzychód powiats combined have one councillor. On the other hand, the Chodzież, Oborniki, Wągrowiec and Złotów powiats do not have a single councillor that owes as much as 20 percent of votes to them; for the Chodzież powiat, the figure is less than 5 percent.

This does not mean that those powiats simply had weaker candidates – local candidates there won several times the number of votes of those candidates who were ultimately elected. In the Chodzież and Oborniki powiats, the best candidate won seven times as many votes as the best of the councillors that were elected; in the Wągrowiec powiat, the ratio was four to one. However, owing to the relative size of those powiats even the strongest local candidates are defeated by those from larger powiats on each ticket.

In a model situation, there would be on average seven seats per a constituency of five powiats and four parties and the largest powiat would get four seats, the second largest powiat two seats, the third largest powiat one seat, while the candidates from the two remaining powiats would be defeated in internal competition within each ticket.

The current system, on the other hand, leads to a situation where most voters in regional assembly elections do not vote for any of the councillors elected – in Lesser Poland, only 30 percent of the votes cast in the election were for those who ended up in the assembly. This makes voters unhappy as well – in rural powiats, around 15 percent of voters in regional assembly elections cast invalid votes.

The councillors elected by this system obviously focus on maximising benefits to their electoral base, but this is just a small fraction of the population of the voivodship or powiat in question. In this manner, the very idea of self-government is being undermined. Moreover, councillors are not personally interested in placing the best possible candidates from all powiats on tickets. To some extent, their personal success depends on just the opposite. Even if a valuable candidate from a powiat that has not hitherto been represented is placed on the ticket, influential councillors want to limit his or her electoral niche as far as possible – this usually results in including a candidate from the second largest locality within the powiat on the ticket. In this manner, the key rivalry takes place within a triangle – the ticket leader vs. two local candidates. If neither of the two local candidates wins by a large margin, a candidate from the neighbouring powiat who did not face this...
kind of political competition in his or her own niche emerges a victor.

This state of affairs fosters pathological relationships within political parties. Journalists from the local media report that their contacts with candidates in local government elections are mostly limited to hearing denunciations of their colleagues who are on the same ticket. Not only that – the only cases reported by the media where electoral posters are torn down concern internal rivalries, since mathematically the contest within the ticket itself matters much more for the candidate’s ultimate success.

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HISTORY OF LOCAL GOVERNMENT IN POLAND: AN OUTLINE

MAGDALENA SIMLAT-RZEPECKA

The systemic transformation that has been underway in Poland since 1989 has involved, inter alia, the restoration of local government. The concept of local self-government is not a new one, however. For a long time, local government has enabled the public to become autonomous actors and satisfy the needs related to collective life at the local and group levels. The position of local government within the state, which was reflected in its organisational structure, in the scope of the powers it was granted and in the degree of its independence from central government administration, depended on the prevailing political system. Therefore the importance of local government in Poland has varied from significant to less so over the centuries.

Middle Ages

In the Middle Ages, there was no local government in its modern sense either in Poland or in Western Europe. On the other hand, estate self-government (samorząd stanowy) existed, which was reflected in the transfer of some of the ruler’s prerogatives to certain estates. The estates in question used the powers granted to them to further their own interests independently of those of the state.

In Poland, municipal (urban and rural) local government (samorząd gminny) and provincial local government (samorząd ziemski) developed.

Origins of urban and rural local government can be found in the process of incorporation of towns and villages under the German law. The legal basis for both types of local government was a private contract between the founder (zasadźca) and the local lord or the ruler of the state. Under a contract of privilege, public authority that included administration, judiciary and legislation, was vested in the alderman (wójt) in towns and in the village headman (sołtys) in rural areas.

In the Middle Ages, towns were founded around fortified settlements, close to rulers’ castles. Polish towns adopted either of two German legal systems: the Magdeburg or Lübeck laws. Coastal towns embraced the Lübeck system, while Magdeburg was the legal and organisational model for most towns in Lesser and Greater Poland. Moreover, some towns in Silesia were incorporated under Flemish laws.

In medieval times, the town was a separate municipality (gmina) that constituted an autonomous unit within the framework of the state. In the beginning, it was represented by an alderman who was a vassal of the monarch or of whoever else ruled the town; the alderman’s office and his remuneration were a fief. The alderman’s duties included presiding over juries, policing the town, collecting rent, preparing the town for defence and directing defensive measures. In the second half of the 13th century, town councils began to form in larger Polish towns; initially, these only had judiciary powers. A council included several councillors and a mayor; it was appointed by the patriciate, which sought to gain independence from the alderman and the town’s ruler. From the 14th century onwards, the patriciate tended to take over the alderman’s office by way of lease, pledge or purchase. The town council assumed the alderman’s competences and thus gained full powers, becoming the chief local government authority in towns. Councillors elected the mayor, jurors, the court officer and other town officers from among themselves. Councils issued resolutions (Willkürs) that concerned the markets held, security, order and civil and criminal laws. It should be stressed, however, that urban local government was an estate-based and not a territorial one, since its authorities were dominated by the patriciate that pursued its own interests.

Simultaneously, villages were incorporated under the German law. Pursuant to a settlement permission, the local lord concluded a contract with the village organiser – the founder. The settlement document constituted legal grounds for village organisation. The recipient and executor of the document was the founder, i.e. the village headman, and its contents excluded vil-
The situation of urban local government was similar. Privileges granted to the nobility limited the burghers' powers; townspeople were prohibited from purchasing and owning land or holding state offices. Prerogatives of urban local government were curtailed as well owing to the stronger position of starosts (royal officials) who from the 15th century onwards gained the right to approve the composition of town councils and supervise the activities of town authorities, particularly with respect to finances. Provincial local government exercised by the nobility was based on regional assemblies (sejmik). Those assemblies were the basic authority within the framework of the nobles' local government and constituted the most important way in which the nobility participated in the political affairs of the state. From the end of the 14th century onwards, regional assemblies included the council of lords (rada panów ziemi) and the rest of nobles. As the nobles became increasingly active in political affairs, the separate council of lords began to lose significance and the assembly gradually became increasingly active in political affairs, the separate council of lords began to lose significance and the assembly gradually came to express the views of all nobles. The regional assemblies' importance grew after 1454, i.e. after the Nieszawa Privileges had been granted to the king from issuing new laws or calling the pospolite ruszenie (similar to the later French levée en masse) without their prior consent. The shifting of decision-making powers regarding major state issues to representatives of the nobility gave rise to the era of nobles’ democracy.

Modern Era

The Urban Ordinance of 17 April 1791 (On Our Royal Cities in the States of the Commonwealth) adopted by the Four-Year Sejm (the lower chamber of the Polish Parliament that remained in session from 1788 to 1792) was of major importance for local government in the late Polish-Lithuanian Commonwealth. This Statute was incorporated into the 3rd of May Constitution of 1791; it imposed uniform regulations on all royal towns and cities, eliminating systematic differences between them. Its City Laws chapter included a statement that cities had the right to freedom, i.e. to their own scope of local powers. The City Statute introduced a modern organisation to Polish towns and cities, restoring their autonomy with respect to organisational structures as well as social and economic activity. A uniform internal city political system and uniform urban court framework were introduced. Towns and cities no longer had the right to issue statutes or resolutions. City laws applied to all inhabitants including the nobility. Separate resolution-passing assemblies and executive authorities (city offices) were introduced. In smaller towns, a single assembly that included those who held land was formed, while in larger cities that were divided into powiats, powiat assemblies congregated. Moreover, general assemblies were summoned for entire cities. Executive authorities in towns and cities were elected ones. In smaller towns, the town office was headed by the alderman and in large cities, the city office was headed by the president together with councillors, but aldermen were additionally elected in powiats. A higher-level urban local government was also created; the country was divided into twenty-four regions called departments (wydziały) in which departmental assemblies operated; a representative of each department, in turn, sat in the Sejm as the burghers’ representative. At the same time (in 1791), the Four-Year Sejm established the Commonwealth Police Commission that exercised supervision over royal cities – this may be considered an example of modern state supervision over urban local government. The reform described above was, however, never implemented because Poland was partitioned. From the final partition in 1795 until 1807, towns and cities were ruled by the partitioners’ administrations without any participation from representatives of Polish burghers, while in villages, feudal lords exercised patronal authority.

It was only the Constitution of the Duchy of Warsaw, octroyed by Napoleon Bonaparte in 1807, that formulated new principles with respect to state administration. The country was divided into departments on the French model, and those comprised administrative powiats. A department was headed by a prefect who was appointed by the monarch; the prefect reported directly to the Minister of Internal Affairs and was at the same time obliged to obey orders from other ministers. Apart from the prefect, a prefectoral council operated whose members were appointed by the king. On the administrative powiat level, sub-prefects were appointed by the king pursuant to the Constitution. A sub-prefect reported to the prefect and his responsibilities involved the implementation of the legislative acts handed down to him and the supervision of their application by local authorities.

On 23 February 1809, Napoleon issued a decree concerning the provisional organisation of municipalities that introduced a modern organisation of urban and rural authorities on the French model. Municipalities in the Duchy of Warsaw had offices that consisted of the mayor, alderman and their councillors who performed local administrative duties. Mayors were appointed by the king, and aldermen by the prefect. Their responsibilities included informing inhabitants about the regulations issued by the government, prefect and sub-prefect, performing administrative duties and managing municipal property, directing public works, supervising public institutions and maintaining law and order within the municipality. Local government authorities included urban and rural councils as well as powiat and departmental ones. In major cities, councils were elected by inhabitants’ assemblies; in smaller towns, they were appointed by the prefect. Departmental and powiat councils consisted of councillors appointed by the king. It should be stressed that during the Duchy of Warsaw period, administration became significantly more developed and efficient; adequately educated professional officials began to hold managerial and executive positions. A Law School was established in Warsaw for prospective judges and officials; this was subsequently transformed into the School of Law and Administrative Sciences.
At the same time, the number and role of elected authorities that used to be dominant in the Polish-Lithuanian Commonwealth decreased. Despite its modernity, the state model introduced was a centralised one in which single-person authorities formed a hierarchy and were subordinated to the ruler.15

Following the fall of the Duchy of Warsaw, the Kingdom of Poland liquidated its systemic structures. The Kingdom’s Constitution of 15 November 1815 no longer mentioned municipal authorities and councils. It was not until 1861 in towns and cities and 1864 in villages that local government came into existence in the Kingdom. A fully-fledged modern local government only formed in the lands of partitioned Poland in the second half of the 19th century. As a result, the new local government was the product of the legislation and legal thought of the partitioning powers. Original Polish local government solutions should be pointed out nevertheless, particularly in the area and period of the so-called Polish National Revival, which was divided into rural municipalities with elected aldermen who performed administrative duties.16

The establishment of local government in Polish lands by the partitioning powers was mostly the result of internal transformations that these absolutist entities underwent, gradually becoming constitutional states under the rule of law in the process.

Local government in the lands ruled by Austria had relatively broad prerogatives, which was the result of the Austrian legislator having granted autonomy to the so-called crown lands included in the province. The Poles gained relative independence and established their own authorities and administration in the area.

In Galicia, local government operated at the municipal and powiat levels. The organisation of rural local government at the national level was stipulated in the municipal code of 1862, on the basis of which the Galician Sejm adopted a Statute on Municipalities and Manor Areas in 1866. This Statute imposed a uniform system on rural and urban municipalities. Urban and rural councils had the same powers. Each fully-fledged village constituted a municipality. In villages, elected municipal councils operated alongside municipal authorities that included the head of the municipality, two councillors and several assessors. The Municipal Statute distinguished the municipalities’ own and delegated tasks.

The first group included, inter alia, managing the municipality’s property, income and expenditure, managing municipal institutions, ensuring safety and maintaining roads as well as dealing with health matters. Delegated tasks included the promulgation of statutes, prosecuting criminals, collecting taxes and running the municipal judiciary. Municipalities were subject to dual supervision both by state authorities and higher local government bodies. The higher local government level supervised the performance of the municipality’s own tasks, while delegated tasks were overseen by a royal administration authority (starost).17

With time, the legal systems of urban municipalities diverged. The cities of Lwów (Lviv) and Kraków gained separate charters in 1870 and 1901, respectively. The local government systems of 30 Galician towns and cities and then of a further 140 localities were separately regulated as well. Towns had councils and mayors, while larger cities had city offices.

Powiat-level local government authorities included powiat councils as resolution-passing and controlling assemblies and powiat departments that were executive bodies of the councils. The councils were presided over by powiat marshals.18

In the lands ruled by Prussia, urban, rural, powiat and provincial local government existed. However, local government only dealt with matters of limited political significance such as health, welfare or roads. Moreover, the higher the local government level was, the more prerogatives it had, and at the same time the citizens’ ability to influence its conduct decreased.

After 1879, provincial parliaments headed by marshals became local government authorities in provinces. They included representatives of powiat assemblies and urban councils (which constituted urban powiats) who were elected for six-year terms. The executive body was the provincial department and the governing body – the state director (state starost) who had his own prerogatives; those included, inter alia, the supervision over local government officials.19

The resolution-passing and controlling body within the powiat was the powiat assembly (sejmik), while the executive body was the powiat department. Departments included an appointed official (starost) and six members elected by the assembly.

The starost was closely linked to government administration, particularly with respect to issuing decisions in many administrative matters; this made him the administrative court of the first instance as well.

The legal grounds for rural government in the lands controlled by Prussia were provided by the so-called Municipal Code for the Seven Eastern Provinces of Prussia of 1891. The resolution-passing and controlling body in small municipalities was the municipal assembly, while in larger villages it was the municipal representation (a kind of council). A municipal council included councillors, the village headman and jurors. The municipal government was headed by the village headman who had two deputies among the jurors.

A municipal assembly or council elected the village headman and jurors. Village councils or assemblies in small municipalities elected executive authorities for three-year terms, but their choice was subject to approval by the starost. There was no local government in manors.

In towns or cities in the lands controlled by Prussia, local government matters were regulated pursuant to the Urban Code for the Seven Eastern Provinces of Prussia of 1853. Local government authorities included the elected town or city council as the resolution-passing body and the town or city office elected by the council as its executive body. The term of office of the city council was three years, while that of the city office – six years. The town/city office included a president or mayor (depending on city/town size), his deputy and honorary councillors. The executive body had the power to approve or suspend council resolutions.20

Local government in the lands ruled by Russia was endowed with the least powers. Following the crushing of the January Uprising, Russia aimed to fully centralise and unify the Kingdom of Poland, which ruled out wider public participation in its government. As opposed to the other partitioned lands, there was no urban local government in the lands ruled by Russia – only rural local government operated. In towns and cities, appointed town or city offices governed; they consisted of a mayor and councillors and fulfilled the functions of lower-level government bodies.

Rural local government had limited powers and, moreover, local government authorities themselves were fully subordinate to the Russian administration. The 1864 Statute on the Regulations Applicable to Rural Municipalities provided legal grounds for the overall framework and scope of operation of rural municipalities.
in the Kingdom of Poland. Municipal local government authorities included the municipal assembly, the alderman, the village headman and the municipal court with jurors, while the resolution-passing body that implemented the tasks delegated by the Statute was the municipal assembly. The assembly decided on the taxes and budget and elected the alderman. The alderman performed day-to-day administrative tasks and was responsible for all government and municipal administrative duties. It should be stressed, moreover, that municipalities in the Kingdom of Poland were collective, i.e. included a number of villages; each village was a so-called gromada (cluster) – an auxiliary municipal local government unit that had its own local government bodies. As opposed to collective municipalities, single-village (individual) municipalities existed in the lands ruled by the other two partitioning powers.

It should be stressed that while local government was organised differently in each part of partitioned Poland, it fulfilled similar functions everywhere. It was the only public law institution through which the nation could decide on its own affairs and therefore provided a resemblance of state for the Poles. Local government was a school of civic values and taught people how to engage in public affairs.

Poland After Regaining Independence

Initially, separate local government systems existed depending on the partitioning power to which the lands in question had belonged. Local government organisation and functioning became more uniform only gradually; in principle, the solutions adopted in the former Kingdom of Poland were extended to the entire country.

Local government institutions of the former Kingdom of Poland were basically shaped by the legislative acts issued in the late 1918 and early 1919 – the Decree on Municipal Councils, the Decree on the Provisional Electoral Code for Powiat Assemblies, the Decree on City Council Elections, the Decree on Urban Local Government and the Decree on the Provisional Powiat Electoral Code. These acts introduced a democratic local government system at the municipal and powiat levels that was similar to the Prussian model but gave extensive powers to resolution-passing bodies: urban and municipal councils as well as powiat assemblies.

In the Constitution of 17 March 1921, it was declared that „the Republic of Poland, basing its political system on the broad local government principle, shall delegate to local government representatives an appropriate scope of legislative powers, in particular related to administration, culture and the economy” (Article 3). The Constitution provided for three local government levels that coincided with the administrative division of the state into municipalities, powiats and voivodships. In fact, the voivodship local government level only existed in three of the sixteen voivodships of the Second Polish Republic – in Silesia, Poznań (Greater Poland) and Pomerania. Moreover, constitutional promises of broad local government were never fulfilled. From 1926, the scope of local government autonomy was gradually limited, and from 1928 it was presumed that competences lay with the government administration and not with local governments.

It was only on 23 March 1933 that the Act on the Partial Change of the Local Government System made local government organisation in Poland uniform. The problem of voivodships was not solved, but a uniform local government system was nevertheless introduced in urban and rural municipalities as well as in powiats all over the country. A uniform division of local government authorities into legislative, controlling and executive ones was introduced. Terms of office for all bodies were 5 years with the exception of professional board members who were elected for 10-year terms. Legislative and controlling authorities included municipal rural and urban councils as well as powiat ones. Urban council elections were based on the five-point electoral law (i.e. were universal, direct, equal, proportional and anonymous), while municipal and powiat council elections were indirect ones. Basic council powers included appointing and controlling the board and laying down rules and standards concerning board operation. The board was an executive municipal body; in towns and cities, town or city offices operated. The board included aldermen, mayors-presidents and their deputies; in rural municipalities, two or three councillors were also included, while in towns and cities – 10 percent of the statutory number of councillors (at least three). At the powiat level, the powiat department appointed by the council remained the executive body. The department was headed by the starost who was at the same time a government authority.

It should be stressed that major cities that constituted city-based powiats from 1928, were examples of administrative dualism – city starosts as government administration authorities existed alongside city presidents as urban municipal authorities.

Rural municipalities included one or more localities. If a rural municipality included more than one locality, it was divided into gromadas. A gromada managed its own property and disposed of the income obtained from this source. Moreover, the gromada was supposed to collaborate with the municipality in the performance of its tasks. The resolution-passing authority within the gromada was a gromada council; in smaller gromadas, it was an assembly. The gromada executive authority was the headman who was elected by the council or assembly. The headman’s election had to be approved by a starost.

Provisions of the 1933 Act did not apply to the capital city of Warsaw whose local government operated pursuant to regulations that dated back to the very beginning of the newly independent Second Polish Republic. In 1934, the authorities dissolved the capital City Council and appointed their own administrative bodies: the Provisional City Board and Provisional City Council as an advisory body. It should be pointed out that Warsaw, which was a voivodship level unit, exhibited administrative dualism – apart from the city president there was a Government Commissioner for the Capital City of Warsaw who was equivalent to the voivod and to whom starosts reported.

The Constitution of 24 April 1935 maintained the three-level local government, considering the municipality to be the smallest local government unit. The Constitution, however, treated local government as part of state administration – it stipulated that state administration was exercised by the government administration, local government and economic self-government. This regulation made it possible to gradually limit the autonomy of local government. Local government was supposed to perform administrative tasks related to local needs. Limiting the local government’s competences enabled the state to be made more uniform. Moreover, the April Constitution introduced governmental supervision over local government – this was exercised by higher-level local government authorities.
People’s Republic of Poland

After World War II, communist authorities aimed to limit the role of local government. Initially, some regulations from the Second Polish Republic era were reinstated but subsequently, following the Soviet model, it was decided that local government would be abolished and replaced by a hierarchical council structure.

Between 1944 and 1950, local government operated as the third part of the local administrative system alongside government administration and national councils.

The government administration system was established pursuant to the Polish Committee of National Liberation Decree on the Procedure of Appointing 1st and 2nd Level General Administration Authorities of 21 August 1944. Starosts (1st level) and voivods (2nd level) became executive general administration authorities in powiats and voivodships. A voivod performed his duties at the head of a voivodship office and a starost at the head of a powiat one. Voivods reported to the Minister of Public Administration and the ministers whose tasks they performed; a minister issued instructions and directives to a voivod, heard appeals from his decisions and exercised supervision. A voivod was a government representative and directed the entire administration in his voivodship; he exercised general supervision over government administration officials within the voivodship. A starost was also a government representative and the authority (reporting to the voivod) that directed general administration in the powiat. In the Act on the Organisation and Scope of Activities of National Councils of 11 September 1944, the position of national councils was set forth in detail.30

Following the PCNL Decree On the Organisation and Scope of Activities of Local Government of 23 November 1944, local government was established. The important point was that pursuant to that Decree, local government operated – for the first time in Poland’s history – at all territorial division levels. Structures of voivodship, powiat, urban and municipal local government executive bodies were established; national councils became resolution-passing bodies of the local government. National councils had broad-ranging prerogatives including powers to pass resolutions (temporarily they had legislative powers as well) and to supervise, plan and evaluate local government operations. Local governments became exclusively executive bodies of national councils. The executive body of a voivodship national council was the voivodship department that was headed ex officio by the voivod or deputy voivod. The powiat department headed by a starost was the executive body of a powiat national council, the town or city board headed by a mayor or president was the executive body of an urban national council and the municipal board headed by an alderman was the executive body of a municipal national council. Members of departments and boards were elected by councils at the appropriate level; only voivods and starosts were appointed by state authorities. The scope of powers of local government included all public affairs of local significance that were not reserved for state authorities. At the same time, the matters excluded from local government competences were listed.31

This system of local administration remained in operation until the Act on the Local Bodies of Uniform State Authority came into force on 20 March 1950. The Act abolished local government whose property became state property by operation of law. Local government executive bodies were dissolved and their powers were assumed by national councils. At the same time, the councils ceased to be local government authorities. Instead, national councils became local bodies of uniform state authority and directed economic, social and cultural affairs.

The Act of 20 March 1950 was superseded by the Act on National Councils of 25 January 1958 that extended the councils’ powers and gave them certain autonomy. In this manner, the trend towards the centralisation of state management was reversed and decentralisation was encouraged to a certain degree. The 1958 regulations provided the basis for the operation of local administration until the reforms introduced between 1972 and 1975, which resulted in the significant centralisation of local management.

In connection with the reforms introduced, the territorial and administrative division changed considerably. Initially, gromadas were replaced by municipalities of twice their size, and important organisational changes were introduced into the structure of municipal national councils. Legislative functions were separated from executive ones and presidiums were replaced by heads of municipalities who were state administration authorities. The next reform stage was the abolishment of powiats and voivodships, which were replaced by new units that were called voivodships but their powers were closer to that of the former powiats owing to their number (49) and their resulting abilities to implement public tasks. The disappearance of powiats made the management of fragmented administration and local economy more centralised. Finally, the organisational structure of national councils and local state administration authorities was established in 1975. Most powers of the abolished powiat level authorities were assumed by basic level administrative authorities, while the rest were performed by voivodship level ones. Local state administration authorities at the voivodship level included voivods and presidents of cities that were voivodship capitals, while at the basic level they included heads of municipalities, heads of towns and municipalities, heads of towns, presidents of cities and heads of city districts.

Local state administration authorities performed the functions of executive and managing bodies of national councils and state administration authorities. Moreover, the voivod was the representative of the central government within the voivodship.32

Officially, local government was reinstated by the Act on the System of National Councils and Local Government of 20 July 1983. Pursuant to the Act, councils became local state authority bodies, basic social self-government bodies and local government bodies. However, the Act did not introduce a de facto local government, since it did not ensure the councils’ independence with respect to their property and finances. Urban and rural municipalities remained merely users of state property.33

Post-1989 Revival of Local Government in Poland

The need to revive local government in Poland was already emphasised in the Programme of the Independent Self-Governing „Solidarity” Trade Union adopted on 7 October 1981. In the document section entitled Self-Governing Republic, prerequisites for the establishment of a true local government elected in free elections and endowed with broad-ranging powers were stipulated. However, the aforementioned Act on the System of National Councils and Local Government of 20 July 1983 failed to introduce a genuine local government system.34
The revival of local government in Poland was preceded by Round Table talks. Within the Team for Political Reform, the Sub-Team for Associations and Local Government was formed and finally the Working Group for Local Government Issues was established.

The introduction of local government into state structures was preceded by the adoption of four legal acts. Legal grounds for changes concerning the status and structure of local authorities and state administration were provided by the 29 December 1989 amendment (Journal of Laws [Dz. U.] No. 75/1990 item 444) to the 1952 Constitution of the People’s Republic of Poland that stated that “the Republic of Poland guarantees the participation of local government and the free operation of other forms of self-government” (Article 5). Another constitutional amendment of 8 March 1990 (Journal of Laws [Dz. U.] No. 16/1990 item 94) introduced a chapter on local government into the Constitution (Chapter 6, Articles 43–47). This regulation provided for local government at the municipality level and stated that local government was the primary manner of organisation of public life within municipalities. Municipalities were to satisfy collective local community needs, be endowed with a legal personality, perform their own public tasks and tasks delegated by government administration within the scope stipulated by statutes. Municipality inhabitants were to elect councils that were municipal legislative bodies. Councils, in turn, were to elect the municipalities’ executive bodies. Municipalities had the right to their own property and other property rights (municipal property) and their income was supplemented by subsidies. Municipal autonomy was to be protected by courts. Another Act establishing the organisational framework of local government was the Act on Local Government (Act on the Direct Elections of Aldermen, Mayors and Presidents of Cities of 20 June 2002 (Journal of Laws [Dz. U.] No. 113/2002 item 984), the principle of direct elections of single-person (and not collective as before) municipal executive bodies has been introduced into the legislation concerning the Polish political system.

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ENDNOTES:

1 S. Wójcik, Samorząd terytorialny w Polsce w XX w., Lublin 1999, p. 35.

2 Ibid., p. 43.


4 S. Wójcik, op. cit., p. 44.

5 J. Bardach, B. Leiniosdorski, M. Pietrzak, op. cit., p. 45.


7 Ibid., p. 54.

8 J. Bardach, B. Leiniosdorski, M. Pietrzak, op. cit., p. 106.

9 S. Wójcik, op. cit., p. 55.

10 M. Kallas, op. cit., p. 157.


12 S. Wójcik, op. cit., p. 56.

13 M. Kallas, op. cit., p. 211–212.

14 S. Wójcik, op. cit., p. 78.


16 S. Wójcik, op. cit., p. 55. The Republic of Kraków (Free City of Kraków) existed from 1815 until 1846. It was created by the Congress of Vienna and controlled by the three neighbouring states: the Russian Empire, the Kingdom of Prussia and the Austrian Empire. It had a special status and enjoyed broad autonomy. Following the Kraków Uprising, the city’s territory was renamed the Grand Duchy of Kraków and incorporated into Galicia.

17 M. Kallas, op. cit., p. 270–271.


19 Ibid., p. 253.

20 S. Wójcik, op. cit., p. 83–84.

21 Ibid., p. 99–100.

22 H. Izdebski, Samorząd..., p. 68.

23 Ibid., p. 70.


26 H. Izdebski, Samorząd..., p. 72.

27 S. Wójcik, op. cit., p. 140–141.

28 H. Izdebski, Historia..., p. 151–152; H. Izdebski, Samorząd..., p. 73.

29 S. Wójcik, op. cit., p. 143–144.


31 Ibid., p. 407–408.

32 Ibid., p. 483–488; H. Izdebski, Samorząd..., p. 77.

33 S. Wójcik, op. cit., p. 229.

34 M. Kallas, op. cit., p. 524.

35 Since 1999, as a result of the introduction of higher local government levels, this Act has been called the Act on Municipal Local Government.