

**POLISH - UKRAINIAN COOPERATION
OF LOCAL GOVERNMENT UNITS**

*Paulina Jaszczuk**

ABSTRACT

Cooperation between neighboring countries, Polish and Ukraine has a rich history. If you want to talk about the cooperation of local government units between the two countries you must also make a comparison of the legal systems of both countries in this field. The aim of the article is therefore the analysis of the legislation governing the functioning of local government units in the cross-border cooperation and also attempt to compare them and draw conclusions and assessment of cooperation between local Polish and Ukrainian .

Key words: local government units, cross-border cooperation, region, euroregion

OPERATION OF LOCAL GOVERNMENT IN POLAND

Basis of functioning of local self-government defines are defined in the Constitution¹ and law of local government.

In terms of local government in the Polish legal system in the last twenty years there occurred very significant political changes. The most important is the reform of the territorial division and territorial adminis-

* PhD Candidate, John Paul II Catholic University of Lublin, Faculty of Law, Canon Law and Administration, paulina_jaszczuk@tlen.pl

¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz. U. Nr 78, poz. 483 z późn. zm.

tration in 1998, which is regulated by aforementioned Acts local². Those are the Act of 24 July for the introduction of the three-tier division of the country³; Act of 5 June 1998 Province Self-Government⁴ and the Act of 5 June 1998 county government⁵.

The law concerning the introduction of the three-tier division of the country has established 16 provinces. This regulation assumes also the identity of the region and the province, causing dualism administration at this level, manifested by the fact that the government administration represents the province governor and the local government bodies - council, together with the management of the province. As regards abolition and creation of provinces there is required statutory form, while in the case of counties, any changes are made by the Council of Minister. It is necessary to take into account the efforts to improve the conditions for the exercise of public tasks of a provincial and preserving regional ties both social, economic and cultural⁶.

Regarding the smallest unit of territorial division, which is municipality, it exists since 1990 on grounds of Local Government Law⁷. This regulation indicates the cooperation with local and regional communities as one of the tasks of the municipality. Local governments play a huge role in the creation of the creation of cross-border cooperation, and their competence in this area sometimes referred to as "grassroots diplomacy." Their task is to establish cross-border cooperation, moreover, they belong to international organizations whose mission is to bring together local governments. Regulatory cooperation at the municipal level can take many forms. About 75% of the compounds twin municipalities based their

² Zbigniew Bukowski, Sławomir Kamosiński, *Przeszłość i teraźniejszość samorządu terytorialnego w Europie Środkowej*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego, Bydgoszcz 2013, p. 112.

³ Dz. U. z 1998 nr 96 poz. 603 z późn. zm.

⁴ Dz. U. z 2016 poz. 486 j.t.

⁵ Dz. U. z 2016 poz. 814 j.t.

⁶ Zbigniew Bukowski, Sławomir Kamosiński, *Przeszłość i teraźniejszość samorządu terytorialnego w Europie Środkowej*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego, Bydgoszcz 2013, p. 112-113.

⁷ Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym, Dz. U. Nr 16, poz. 95 ze zm.

cooperation on a partnership agreement or a cooperation agreement. The subsequent period, characterized by the acquisition of the EU funds, was associated with a form of cross-border partnership⁸.

The most important event in the development of local self-government was the administrative reform, which began on 1 January 1999 and introduced a three-tier territorial division of the country into municipalities, counties and provinces⁹.

Analyzing the legal regulations on local self-government it should be emphasized that the primary role in the cooperation with other countries play a province whose principal role is to set goals of development and coordinate the activities of other entities in the areas which are the subject of local governments concern. The role of local regions - gives them the possibility of cooperation with foreign partners. However, the main barrier is relatively low budget allocated to international cooperation, which makes it impossible in many cases to develop cooperation and achieving concrete benefits¹⁰.

Important from the point of view of cooperation are the priorities of international cooperation of the province. They are determined by a resolution of the local government, which should be taken as the exclusive jurisdiction of the regional council of the province. Making resolutions is the responsibility of the regional government. Resolution voivodship parliament is measure of internally applicable law. "Priorities" can be passed with the consent of the minister responsible for foreign affairs. The resolution in this case require absolute majority of statutory members voivodship parliament¹¹.

Foreign contacts you can make essentially in three ways. The first is an agreement signed with foreign regions, they may have the nature of

⁸ Marcin Szewczak, *Administrowanie rozwojem regionalnym w systemie prawa administracyjnego*, Wydawnictwo KUL, Lublin 2013, p. 276 – 277.

⁹ Katarzyna Owsiak, *20-lecie samorządu terytorialnego w Polsce a perspektywy jego rozwoju*, Zeszyty Naukowe Uniwersytetu Szczecińskiego Nr 620 – Ekonomiczne problemy usług 2010, nr 61, p. 264.

¹⁰ Rudolf Wawrzyniec, *Intensywność współpracy polskich województw z regionami partnerskimi w Niemczech i na Ukrainie*, [w:] Zeszyty Naukowe Uniwersytetu Szczecińskiego Nr 620 – Ekonomiczne problemy usług - 2010, nr 61, p. 373 – 374.

¹¹ Małgorzata Stahl, Barbara Jaworska-Dębska, *Encyklopedia samorządu terytorialnego – dla każdego ; część 2 – Zadania i kompetencje*, Wydawnictwo Difin, Warszawa 2011, p. 434.

a contract, letter of intent, or a declaration of cooperation. Another form are the intergovernmental agreements which is signed by the Polish government, and their content can indicate specific regions. The third form is an informal cooperation. All activities undertaken in this regard by local governments must be consistent with domestic law and foreign policy¹².

According to the art. 3 of the Act of 15 September 2000 'The principles of joining the local government units to international associations of local and regional authorities'¹³, affiliation with the association can not be connected with transfer on his behalf or on behalf of any of the members the public tasks acceding government entities or property or property rights to intangible assets available to that entity. However, the article 4 the Act indicates, that the body of a local government unit shall obligatorily take the resolution to join the association by an absolute majority of votes of the statutory composition. This resolution shall enter into force after obtaining the consent of the Minister for Foreign Affairs. The local government passes a resolution to the minister responsible for foreign affairs through the province governor, joining his opinion. The minister responsible for foreign affairs agrees to join the association or refuse such consent by an administrative decision.

The Minister may withdraw consent when you get a incompatibility between the objectives of foreign policy and the policy of the association. Withdrawal of consent takes place in the form of a decision as a result of initiated proceedings in this regard. Also, refusal to consent to join the international association must be taken an administrative decision. Minister announces in the Official Journal of the Republic of Poland Polish Monitor the list of local government units, which joined or co-created association in the previous calendar year. So an international association whose activities or policies will be incompatible in any way with the Polish

¹² Rudolf Wawrzyniec, *Intensywność współpracy polskich województw z regionami partnerskimi w Niemczech i na Ukrainie*, [w:] Zeszyty Naukowe Uniwersytetu Szczecińskiego Nr 620 – Ekonomiczne problemy usług - 2010, nr 61, p. 376.

¹³ Ustawa z dnia 15 września 2000 r. o zasadach przystępowania jednostek samorządu terytorialnego do międzynarodowych zrzeczeń społeczności lokalnych i regionalnych, Dz. U. Nr 91, poz. 1009.

foreign policy , or will be an obstacle in fulfilling its obligations, will not be able to be a partner for the Polish association of local government units¹⁴.

ADMINISTRATIVE DIVISION OF UKRAINE

Moving on to the issues related to Ukraine, it should be recalled that the administrative division of Ukraine is the remnants of a time when the state was one part of the Soviet Union. Therefore, the main principles of the division are centralization and a high degree of complexity. Among the territorial units of Ukraine in accordance with the Constitution stands out circuits, rural areas, towns and neighborhoods in the cities, urban-type settlements and villages, however the basic units are towns and villages. Although the legislation does not regulate issues related to the change in the status of individual units, it is due to the local activists initiatives that, some small villages come from rural councils, and are divided into regions, which cause the constant grinding process¹⁵.

The Constitution of Ukraine¹⁶ in Chapter IX regulates the territorial organization of the state. Article 132 of the Constitution lists the basic principles, which include the unitarity and integrity , harmonious combination of centralization with decentralization , and balanced socio - economic development of regions, taking into account among other factors such as the historical, economic, ecological and cultural traditions.

Interesting is also the existence of enclaves other towns or villages in the territory of cities and territorial structure, which is so complicated that the doctrine indicates that there is a four- or three-stage structure. Moreover, the territorial scope of individual units is unclear. According to the Constitution, the sphere of units activity is determined by administra-

¹⁴ Bogdan Dolnicki, *Ustawa o samorządzie województwa. Komentarz.*, WKP, 2012, LEX.

¹⁵ Karol Dąbrowski, Martyna Jurzyk, *Funkcjonowanie samorządu terytorialnego w Polsce i na Ukrainie*, [w:] *Samorząd terytorialny w Polsce i na Ukrainie*, red. M. Karpiuk, Wydawnictwo Iuris, Poznań – Kijów 2013, p. 256.

¹⁶ Konstytucja Ukrainy uchwalona na piątej sesji Rady Najwyższej 28 czerwca 1996 r., Konstytucja Ukrainy. Tłum. Ewa Toczek. Warszawa, Wydawnictwo Sejmowe, 1999, Urzędowy Kurier, No 129-130, 13.VII.1996.

tive boundaries of the settlements. However, none of the regulation does not indicate the legal definition of “locality“ and “administrative unit”¹⁷. Most of the settlements, which are located in Ukraine account for approx. 30-40 % of its territory, which means that a large part of it is beyond the powers of local government¹⁸.

At the level of Ukrainian regions and districts, councils do not have their executive bodies, which causes fully dependent on the state administration. This is connected with the necessity of delegation of local government units to the local structures of the central administration. These regulations allow to draw conclusions that there is no complete self-government, but only its imitation¹⁹.

Local government bodies have legal personality, moreover, they are entitled to ownership rights and other property rights. Autonomy of local government units as well as in Poland is, subject to judicial protection. As a result of municipalisation of common property with legal force or by legal action arises assets of individual local government units²⁰.

POLISH AND UKRAINE COOPERATION

The rules concerning Polish and Ukrainian local government are set out in the European Charter of Local Self-Government of 15 October 1985²¹. Among the principles that determines the existence of self-governments there are the rules of civil society, independence and self-reliance, decen-

¹⁷ Karol Dąbrowski, Martyna Jurzyk, *Funkcjonowanie samorządu terytorialnego ...*, p. 255–256

¹⁸ Ibidem, p.257

¹⁹ Tomasz Michalski, Aleksander Kuczabski, *Uwarunkowania procesu transformacji na Ukrainie*, Acta Universitatis Lodziensis. Folia Geographica Socio-Oeconomica 2014, nr 17, p.310.

²⁰ Mykola Bondaryev, *Samorząd terytorialny obwodu Zaporoskiego*, [w:] Samorząd terytorialny w Europie – studia z nauk administracyjnych, red. P. Szreniawski, Lublin 2009, p.61.

²¹ Europejska Karta Samorządu Lokalnego, sporządzona w Strasburgu 15.10.1985 r. z dnia 15 października 1985r., Dz. U. 1994 nr 124, poz. 607.

tralization and public administration dualism. Both countries declared the ratification of the Charter, but their implementation is different²².

By 1994 Poland has concluded a series of treaties, agreements and arrangements with all neighboring countries. As regards the regulation of Polish relations with Ukraine, there was adopted the Treaty on good neighborhood, friendly relations and cooperation between the Polish Republic and Ukraine on 18 May 1992 in Warsaw. The parties undertook to cooperate primarily in the political, economic, ecological, cultural, scientific and legal. Each of these aspects has been developed in details in the Treaty. In addition, they stressed the need for further development of direct contacts and cooperation between individuals and administrative - territorial, including border areas²³.

Poland in accordance with Article 13 of the Polish Constitution is a unitary state, and the regional tendencies are mainly carried out at the level of provinces. Unlike in Ukraine, where are functioning the autonomous regions, that is Autonomous Republic of Crimea, and two separate cities - Kiev - the capital, and Sevastopol - the place of stationing of the Russian Black Sea Fleet²⁴.

The basic form of cooperation between Polish and Ukrainian self-governments became the Euroregion. The main factor for such cooperation is the proximity of the location and common history linking the two countries. On Polish territory there are 16 Euroregions, of which 2 on the Polish - Ukrainian border. These are the Euroregions Bug and the Carpathian Euroregion, which after Polish accession to the European Union became a border Euro-regions of the Union²⁵.

Cross-Border Association Euroregion Bug exists since 1995 and it consists of province Lublin in Poland, Brest in Belarus, the circuit Volyn

²² Karol Dąbrowski, Martyna Jurzyk, *Funkcjonowanie samorządu terytorialnego ...*, p. 254–255.

²³ Paulina Łazutka, *Specyfika prawna euroregionów ze szczególnym uwzględnieniem euroregionów polsko – ukraińskich* [w:] *Regiony w prawie i praktyce. Polska – Ukraina*, red. Krzysztof Skotnicki, Katarzyna Włazłak, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2015, p. 104.

²⁴ Karol Dąbrowski, Martyna Jurzyk, *Funkcjonowanie samorządu terytorialnego ...*, p. 256, 258.

²⁵ Paulina Łazutka, *Specyfika prawna euroregionów ...*, p.102.

and two regions of Lviv oblast in Ukraine. Association was established in September 1995 in Lutsk, Ukraine. In May 1998, under the annex to the Euroregion was also included Biała Podlaska province and Brest in Belarus. In May 2000, the Euroregion Bug assumed additional areas, that is Sokal and Zolkiewski belonging to Lviv region²⁶.

Euroregion "Bug" is an agreement on mutual cooperation without creating a separate organization equipped with a legal personality, even though it has the appropriate organizational structure, which includes: Council of the Euroregion composed of 30 people, 10 from the Belarusian, Polish and Ukrainian, the Bureau of the Council Euroregion, one representative from each party, including the Secretariats offices in Chelm, Brest and Lutsk, and an Audit Committee consisting of 6 people, 2 of each of the parties, moreover, appointed the five working groups²⁷.

Carpathian Euroregion was established on February 14 in 1993. The representatives of regional border areas of Polish Republic, Slovakia, Hungary and Ukraine signed an agreement in Debrecen on the establishment of the Interregional Association Carpathian Euroregion. Its mission is socio-economic development by supporting the development processes in the field of territorial cooperation. Carpathian Euroregion organizes and coordinates activities for the development of cooperation between members in the fields of economy, ecology, culture, science and education²⁸.

Polish regions take the cooperation with partner regions in Europe, but most of the contracts concluded partnerships with circuits in Ukraine.

It is worth noting that although the majority of partnerships with Polish regions initiated by the Ukrainian side, it must be noted, that there is the lack of comprehensive approaches to the cooperation undertaken after the administration circuits Ukrainian, due to insufficient informing residents about referring for cooperation with the Polish provinces and

²⁶ <http://www.euroregionbug.pl/index.php/zwiazek-transgraniczny-euroregion-bug/informacje-ogolne> (dostęp z dnia 2 sierpnia 2016 r.)

²⁷ Wojciech Orłowski, Jacek Sobczak, *Wpływ akcesji Polski do Unii Europejskiej na pozycję i funkcjonowanie samorządu wojewódzkiego*, w: *Kadry dla gospodarki transgranicznej*, Mieczysław Kowerski, Izabela Pieczykolan (red.), Wyższa Szkoła Zarządzania i Administracji w Zamościu, Zamość 2012, s. 34.

²⁸ <http://www.karpacki.pl/euroregion-karpacki/> (dostęp z 2 sierpnia 2016 r.)

the lack of translation pages sites that provide information to potential customers or investors²⁹.

SUMMARY

In conclusion, the cooperation of local government units and the Polish Ukraine faces barriers related to differences resulting from changes in the system, which indicates the desire to build on the legal regulations in force in Poland in adjusting to the process of transformation of Ukraine. However, such cooperation brings many benefits, allows the exchange of experience in many areas of daily life as well. It also allows for closer ties between the neighboring countries, and very importantly helps to prevent mistakes previously made by others. It is also worth considering what shape and what form of cooperation should take of cooperation between states in order to take full advantage of all the benefits that may result from interconnections and initiatives so that the effects of cooperation contribute to the common good.

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²⁹ Rudolf Wawrzyniec, *Intensywność współpracy polskich województw ...*, s. 382.

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