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On local self-government in the Czech and Polish constitutions

1. Introductory remarks

The rebirth of modern Czech and Polish local self-government took place after the collapse of socialism¹. In this process, the anchoring of local self-government in norms of constitutional rank was crucial. This is because it guided further local government reforms in both countries. Although the issue of local self-government in Poland has already been discussed in many works², but there is

¹ See also: S. Kubas, *Samorząd terytorialny w Republice Czeskiej. Kwestie ustrojowe i społeczny odbiór funkcjonowania samorządu*, Opinie i komentarze FRDL. Samorząd terytorialny na świecie. Opinion No. 2/2022, p. 1.

² See specifically: *Konstytucyjne umocowanie samorządu terytorialnego*, eds. M. Stec, K. Małysa-Sulińska, Warszawa 2018; *Samodzielność ustrojowa samorządu terytorialnego w Polsce.*, red. K. Skotnicki, Łódź 2020; *Komentarz do art. 15, 16, 163-172, [in:] Konstytucja RP. Tom II. Komentarz. Art. 87-243*, eds. M. Safjan, L. Bosek, Warszawa 2018; H. Izdebski, *Komentarz do Konstytucji RP. Art. 15, 16, 163–172*, Warszawa 2020; *System prawa samorządu terytorialnego. T. 1. Samorząd terytorialny: pojęcia podstawowe i podstawy prawne funkcjonowania*, ed. I. Lipowicz, Warszawa 2022; *System prawa samorządu terytorialnego. T. 2. Ustrój samorządu terytorialnego*, ed. I. Lipowicz, Warszawa 2022; *System Prawa Samorządu Terytorialnego Tom 3 Samodzielność samorządu terytorialnego - granice i perspektywy*, ed. I. Lipowicz, Warszawa

still a shortage of works of a comparative nature³. With the present study we would like to fill this gap to some extent, pointing out the characteristic elements of Czech and Polish local government from the perspective of constitutional norms. This will form the basis for the final conclusions.

2. About local government in the Constitution of the Czech Republic

Local government is one of the pillars of public administration in the Czech Republic. The purpose of self-government - as a separate public entity in the state - is its self-governance, which "cannot be abolished in whole or in part prejudicial to its essence," which does not mean that it cannot be limited by law⁴. Self-government is determined by the separate territory within which local government bodies exercise authority. In the Czech Republic, the carriers of local self-government (i.e. public law entities representing local self-government) are the so-called local government units (tzv. *územní samosprávné celky*), which are located at two levels:

- 1) municipalities (tzv. *obce*), as basic units of local government
- 2) regions (tzv. *kraje*), as higher units of local government (Article 99 of the Czech Constitution).

Thus, the Czech legislature introduces a bilateral division of territorial self-government. The importance of territorial self-government in the Czech Republic, as one of the basic pillars of public administration, is emphasized - although only in a framework way - in the legal regulation with the highest legal force - the Constitution of the Czech Republic⁵. This confirms the essential role of local

2023; *Komentarz do art. 15, 16, 163-172*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, ed. P. Tuleja, Warszawa 2023.

³ Comparative works are worth noting, e.g.: *Samorząd terytorialny w Europie Środkowej i Wschodniej*, ed. M. Barański, Toruń 2009; *Samorząd terytorialny w Polsce i w Portugalii. Analiza prawno-porównawcza*, ed. B. Dolnicki, Warszawa 2015; *Modele administracji samorządowej w wybranych państwach europejskich*, ed. J. Podgórska-Rykała, M. Borski, Sosnowiec 2017; A. Wierzbica (ed.) *Nadzór i kontrola nad samorządem terytorialnym w Polsce i w Austrii*, Warszawa 2018; B. Dolnicki, *Nadzór nad samorządem terytorialnym*, [in:] *Organizacja i funkcjonowanie samorządu terytorialnego w Polsce i w Niemczech. Analiza prawno-porównawcza. Organisation und Funktionsweise der Selbstverwaltung in Polen und in Deutschland. Rechtsvergleichende Analyse*, ed. J. Jagoda, Warszawa 2018.

⁴ CT judgment of 4.05.1998, K 38/97; OTK 1998, no. 3, item 31; see also: CT judgment of 23 October 1996, ref. K/1/96, OTK 1996, T. II, item 36; CT judgment of 15.12.1997, K 13/97, OTK 1997, No 5-6, item 69.

⁵ I.e. Constitutional Act 1/1993; also Constitution of the Czech Republic *Ústava České Republiky* Constitution of the Czech Republic of 16 December 1992 Translation: Maria Kruk-Jarosz (access: https://biblioteka.sejm.gov.pl/wp-content/uploads/2015/07/Czechy_pol_010811.pdf, 25.11.2023).

government not only within the organization of public administration itself, but also as an element of the existence of a democratic state under the rule of law. Such a reflection emerges after analysing the jurisprudence of the Czech Constitutional Court, which legitimately recognized local self-government as an indispensable element in the development of a democratic state under the rule of law, guaranteed by Article 1(1) of the Czech Constitution. According to this norm, the Czech Republic is a sovereign, unitary and democratic state under the rule of law based on respect for human and civil rights and freedoms.⁶ The constitutional legitimacy of self-government is also evidenced by other norms. In Article 8 (found in the so-called Basic Provisions, Chapter One), the self-governance of local government units is guaranteed and Article 87(1) provides the Constitutional Court with the authority to repeal laws or individual provisions thereof if they are inconsistent with the constitutional order. In addition, of significant importance is a separate chapter, the seventh (Articles 99-105), within the framework of which the legislature has - to some extent - clarified the constitutional position of local self-government. These regulations provide the basic framework ("contours") for the existence and functioning of local government.

A more detailed elaboration of this issue is left to regulation at the level of ordinary laws or sub-statutory provisions, i.e. supplementing the framework constitutional anchoring of local self-government, and thus enabling the real functioning of local self-government. Several articles of the Czech Constitution (relating to the legal regulation of local self-government (Articles 100(1), 101(4), 102(2) and 105) emphasize the principle of legality as the basic principle for the operation of bodies. Local government units, as defined in Article 100 (1), are territorial communities of citizens who are entitled to self-government.⁷ These units have - similar to the state - their own elements: territory, population and public corporation status.⁸ While Article 99 defines the basic structure of local government, Article 100 (1) contains - to some extent - the characteristics of local government units, guaranteeing their right to self-government and allowing interference only under the conditions set forth in Article 101(4).⁹ These units may act independently but within the limits of the law.¹⁰ In addition - as

⁶ See, for example, the decision of the Constitutional Court of the Czech Republic, Pl.ÚS 34/02 of 5 February 2003 (53/2003 Journal of Laws).

⁷ Resp. law defines when they are administrative districts.

⁸ Cf. podobnie Sládeček, V., Mikule, V., Syllová, J., *Ústava České republiky. Komentář*. Praha : C.H. Beck, 2007, p. 850.

⁹ Cf. Bahýlová, I., Filip, J., Molek, P., Podhrádký, M., Suchánek, R., Šimíček, V., Vyhnanek L., *Ústava ČR - Komentář*. Praha : Linde Praha, 2010, p. 1387.

¹⁰ See more e.g. § 7 Section 1 in connection with § 31-60 of the Act on municipalities, i.e. Act No. 128/2000 Journal of Laws on municipalities (establishment of a municipality) or § 2 Section 1 in connection with § 14-28 of the Act on regions, i.e. Act No. 129/2000 Journal of Laws on regions (establishment of a region).

complementary - note the delegated powers under which they carry out state administration delegated to them or their bodies by law.¹¹ According to Article 105, local government bodies may be entrusted with the performance of state administration only when provided by law. This article thus provides the constitutional basis for the delegated powers of municipalities and regions. The Czech Constitution thus explicitly provides for the participation of local government units in the execution of state administration on the basis of statutory authorization.

The relationship between municipalities (as basic units) and regions (as higher units) is defined by Article 100 (2). A municipality is part of a higher unit of local government. This is an a priori system provision that creates the legal framework for the further organization of legal relations in the field of local government. The special powers of municipalities and regions are established mainly through ordinary laws. At the same time, the control mechanisms of the regions as higher units of local government with respect to the municipalities as basic units should be singled out.¹² Also of importance is Article 100(3) of the Czech Constitution, which prejudices the form of creation or abolition of a higher unit of local government. Such a possibility is provided for by constitutional law. It is worth noting that while municipalities, as basic units, can be created or abolished on the basis of a law, higher units of local government can only be created and abolished on the basis of a constitutional law. The creation of higher units of local government was established only under Constitutional Law No. 347/1997 Coll.¹³ Under this law, 14 higher units of self-government were established, with the stipulation that their boundaries can only be changed by law.

According to Article 101(1) of the Czech Constitution, a municipality is self-administered by a representative body - the council (*ch. zastupitelstvo*). Article 101(2) similarly provides for a higher unit of self-government. These provisions accentuate both the right of individuals to self-governance and prejudice the key position of municipal and regional councils in the implementation of local government. These are the basic organs of municipalities and regions, from which the other municipal and regional bodies derive.

Local government units, according to Article 101(3), are public corporations that can own their own property and manage their own budgets. This provision establishes, at the constitutional level, the legal subjectivity of local government

¹¹ See specifically § 7 Section 2 in connection with § 61-66d of the Act on municipalities or § 2 Section 2 in connection with § 29-30 of the Act on regions or § 2 Section 1 and 3, § 4 Section 2 and § 5 in connection with § 16-18 and 31-33 of the Act No. 131/2000 Journal of Laws, on the capital city of Prague.

¹² See likewise Klíma, K a kol. *Komentář k Ústavě a Listině*. 2. Vydání. Plzeň : Aleš Čeněk, 2009, p. 787.

¹³ Resp. of Constitutional Act No. 347/1997 Sb. on the establishment of higher units of local government and on amending the Constitutional Act of the Czech National Council No. 1/1993 Sb. on the Constitution of the Czech Republic. This constitutional law removed Article 103 of the Constitution of the Czech Republic, according to which the name of the higher local government unit is decided by the council.

units with the right to acquire property and manage according to their own budget. In this way, local government has the ability to regulate and manage part of public affairs with the help of local authorities within their competence and in the interest of the local community. At the same time - on the basis of Article 101(4) of the Constitution - the state may interfere in the activities of local government units only when the protection of the law requires it, and only in the manner prescribed by law.

The Czech legislature in Article 102 (1) and (2) also regulates the appointment of the representative body. Members of this body are elected by secret ballot, on the basis of universal, equal and direct suffrage¹⁴, and the term of office of the body is four years. It is also assumed that the law specifies the conditions for ordering elections to the representative body before the expiration of its term. This confirms the democratic nature of local government at the constitutional level, guaranteeing elected councils as the primary bodies of municipalities and regions. The conditions for exercising the active right to vote, the organization of elections to municipal councils, and the scope of judicial review of elections to municipal and regional councils are further regulated by the Law on Elections to Municipal Councils and the Law on Elections to Regional Councils.¹⁵

Also of note is Article 104(1) of the Czech Constitution, under which the competencies of councils can only be established by law. The competencies of municipal councils are determined by the Municipalities Act and the Prague Capital City Act,¹⁶ while the competencies of regional councils are determined by the Regions Act.¹⁷ According to Article 104(2) of the Czech Constitution, the representative body of a municipality decides on local government matters, unless they are entrusted by law to the council of a higher local government unit. This is a primary means of limiting the undesirable duality in the exercise of the right of self-government by municipal councils and regional councils. The specific determination of public matters within the councils' competence is therefore entrusted to the legislature, i.e. the law, and not to the constitution, i.e. constitutional law.¹⁸ The councils may, within the limits of their powers, issue generally binding decrees (Article 104(3) of the Czech Constitution). This provision is linked to the provision of Article 79(3) of the Czech Constitution, according to which local government bodies¹⁹ may, on the basis and within the limits of the

¹⁴ See Article 102 Section 1 of the Constitution of the Czech Republic.

¹⁵ Resp. in Act No. 491/2001 Coll. on Municipal Council Elections and Amendments to Certain Laws and Act No. 130/2000 Coll. on Regional Council Elections and Amendments to Certain Laws.

¹⁶ Resp. Resp. § 85 to 86 of the Municipalities Act; with regard to the powers of the Prague City Council and the Prague City District Council, cf. § Sections 59 and 89 of the Act on the Capital City of Prague.

¹⁷ Resp. § 35 až 37 zákona o krajích.

¹⁸ See Bahýlová, I., Filip, J., Molek, P., Podhrádký, M., Suchánek, R., Šimíček, V., Vyhnanek L., *Ústava ČR - Komentář*. Praha : Linde Praha, 2010, p. 1432.

¹⁹ Also ministries and other administrative bodies.

law, issue legal regulations if they are authorized to do so by law. While Article 79(3) refers to the power to issue regulations under delegated authority, Article 104(3) deals with regulations under independent authority.

The constitutional scope of local self-government and its important role in the constitutional order in the Czech Republic is underscored by Article 87(1) of the Czech Constitution, which also provides for the protection of local self-government through the Constitutional Court, which decides constitutional complaints by local self-government bodies against unlawful state interference with the constitutionally guaranteed right of local self-government, as defined in Article 8 of the Czech Constitution.²⁰ In this context the Constitutional Court Law²¹ specifies that a constitutional complaint, sometimes referred to as a "municipal constitutional complaint," may be brought by a municipal council or the council of a higher local government unit (regional council) if it claims that an individual's guaranteed right to self-government has been violated by unlawful state intervention.²²

3. About local government in the Constitution of the Republic of Poland

Local government finds a special place in the democratic system of the Republic of Poland. The legislature determines to a large extent the direction and scope of the regulation of local government. Within the framework of this study - due to the specificity of the comparative approach - we will focus on signalling the norms in this area. Of primary importance are the regulations contained in Chapter I "The Republic" - particularly Articles 15 and 16 - and the rather extensive Chapter VII (Articles 163 - 172), devoted entirely to local self-government. In addition, these regulations should be evaluated taking into account the basic constitutional principles, headed by the principle expressed in the preamble to the Constitution of the Republic - subsidiarity, the principle of the common good (Article 1 of the Constitution of the Republic) and the principle of a democratic state of law (Article 2)²³.

Article 15 (1) determines that the state's territorial system ensures the decentralization of public power, which boils down to the delegation of public tasks for implementation to the local level, the use by local bodies of property and powers that guarantee their independence, as well as the ability to decide on public affairs and have adequate financial resources to implement their own

²⁰ Resp. art. 87 sec. 1 letter c) of the Constitution of the Czech Republic.

²¹ Resp. § 72 sec. 1 letter b) of the Act No. 182/1993 OJ on the Constitutional Court.

²² See likewise Filip, J., Holländer, P., Šimíček, V., *Zákon o Ústavním soudu. Komentář*. 2. Vydání. Praha: C.H. Beck, 2007, p. 500.

²³ See also: H. Izdebski, *Konstytucyjny model samorządu terytorialnego*, PiP 2022, No. 10, pp. 276-291.

policies²⁴. It also involves the basic territorial division of the state with the division into local government units - made, however, not arbitrarily, but taking into account social, economic or cultural ties and the ability to perform public tasks (para. 2)²⁵.

In turn, Article 16(2) entrusts the local government with participation in the exercise of public power, with the proviso that it performs - within the framework of the laws - a significant part of public tasks in its own name and on its own responsibility. This principle is related to the principle of decentralization of public power, as referred to in Article 15(1) of the Constitution of the Republic of Poland²⁶. However, as the Constitutional Court rightly pointed out, decentralisation cannot be read - "in isolation from the interpretative context constituting a consequence of the totality of constitutional principles and values constituting the state system"²⁷. This concerns the problem of the limits of decentralization²⁸. This requires the definition of appropriate relations between the scope of tasks and powers of the various links within the power structure in conjunction, in particular, with the principle of the common good (Article 1 of the Constitution of the Republic of Poland), thus taking into account the need to maintain a balance between the needs and interests of a local nature on the one hand (found in the competencies granted to local communities), and on the other hand the needs and interests of a supra-local nature. In this context, consideration must be given to the principle of subsidiarity (which finds anchorage in the preamble to the Constitution of the Republic of Poland), which strengthens the powers of citizens and their communities, and which legitimizes taking action at the supra-local level, if such a solution would prove better and more effective than the action of primary-level bodies. Hence, the right to self-government should not be understood as a citizen's right to a specific municipality (whose existence, as well as boundaries, may be subject to change), but "a citizen's right to good and better self-government"²⁹. And the interference of the legislator should take into account the framework set by the principle of proportionality (Article 2 of the Polish Constitution³⁰).

The legislature, in Article 15(2), granted the legislator the legitimacy to shape the basic territorial division of the state, which includes supra-municipal units, the existence of which does not violate the principle of decentralization. However, the right of the residents of the units of the basic territorial division,

²⁴ CT judgment of 18.02.2003, K 24/02, OTK-A 2003, No. 2, item 11.

²⁵ H. Izdebski, *Konstytucyjny...*, p. 279.

²⁶ CT judgment of 21.10.2008, P 2/08, OTK-A 2008, No. 8, item 139.

²⁷ CT judgment of 18.02.2003, K 24/02.

²⁸ Further: M. Grzybowski, M. Grzybowski, *Konstytucyjna zasada decentralizacji władzy publicznej a proces decyzyjny w kwestiach zmiany granic gmin*, [in:] *Samodzielność ustrojowa samorządu terytorialnego...*, pp. 245-263.

²⁹ CT judgment of 18.02.2003, K 24/02.

³⁰ CT judgment of 18.02.2003, K 24/02.

within the meaning of Article 16 of the Polish Constitution, is not an absolute right. The task of local government is to "serve the better realization of the rights of individuals," exercising "an essential part of public authority," and thus subject to the constraints of the principle of the unity of the Republic (Article 3 of the Polish Constitution). These limitations in particular are reflected in the subordination of local law to the basic law (Article 87(2) of the Polish Constitution)³¹.

As already mentioned in Chapter VII of the Constitution of the Republic of Poland, the legislator has specified the basic principles relating to local government: the principle of presumption of tasks: local government within the system (Article 163) and the principle of presumption of tasks of the municipality as the basic unit of local government (Article 164 paragraph 1) within the system of local government (Article 164 (3))³². In addition, attention should be paid to the following resulting from the constitutional norms: the possession by local government units of legal personality and their entitlement to ownership and other property rights (Art. 165 (1)), judicial protection of local government units' independence (Art. 165 (2)), qualification of public tasks to meet the needs of the local community as the local government's own tasks (Article 166(1)), adequacy of the tasks of local government units and the financial resources allocated for the implementation of these tasks (Article 167), limitation of supervision of local government activities to the criterion of legality (Article 171(1)). Also to be mentioned are the declarations of: the right of local government units to determine the amount of local taxes and fees (Article 168), the right of members of the local government community to decide by referendum on matters affecting that community (Article 170), as well as the right of local government units to associate, including joining international associations of local and regional communities (Article 172). Within the framework of this - given the framework of the study - we will address several of these issues³³.

Independence of local government units does not mean that it cannot be limited by law³⁴. Thus, there is no doubt that the independence of municipalities, although protected, is not an absolute value" (Article 16(2), in conjunction with Article 165(2) of the Polish Constitution). In turn, its protection "cannot exclude, or abolish completely, or in a significant part, the right of the legislature

³¹ CT judgment of 18.02.2003, K 24/02; see also: A. Bałaban, *Prawo miejscowe samorządu terytorialnego w systemie źródeł prawa III RP*, [in:] *Samodzielność ustrojowa samorządu terytorialnego...*, pp. 49-60.

³² Further H. Izdebski, *Domniemanie zadań samorządu terytorialnego i domniemanie zadań gminy w obrębie samorządu terytorialnego - klauzule generalne dotyczące zadań samorządu*, *Samorząd Terytorialny 2015*, No. 1-2, pp. 69-70.

³³ Indicated after H. Izdebski, *Konstytucyjny...*, pp. 279-280.

³⁴ CT judgment of 4.05.1998, K 38/97; OTK 1998, No. 3, item 31; see also: CT ruling of 23 October 1996, ref.no. K/1/96, OTK in 1996, vol. II, item 36; CT judgment of 15.12.1997, K 13/97, OTK 1997, No. 5-6, item 69.

to shape relations in the state"³⁵. Autonomy, in particular, consists in the operation of local self-government units within the framework of laws. Therefore, the purpose of laws limiting the independence of local government (including, in particular, municipalities as basic units within the meaning of Article 164(1) of the Constitution of the Republic of Poland) should be to create a legal framework that allows the realization of independence in a unitary state³⁶. Thus, when we speak of guaranteeing self-government units' independence, we mean legal means and guarantees for its protection³⁷. In this context, supervision over the activities of local government, which can be exercised only according to the criterion of compliance with the law, (Article 171(1) of the Constitution of the Republic of Poland) and applies to strictly defined bodies: the Chairman of the Council of Ministers, provincial governors and regional chambers of audit (Article 171(2) of the Constitution of the Republic of Poland) is important³⁸. This is significant in the context of statutory solutions, as the ordinary legislator cannot go beyond the constitutional limits.

The legislature grants local government units legal personality, as well as the right to ownership and other property rights (Article 165(1)). It is worth noting that the legal personality of the local government cannot be limited only to the civil legal sphere. Its units are subjects of private (civil) rights, as well as public (administrative) rights. In Article 165(2) of the Constitution of the Republic of Poland, the legislature granted self-government units independence subject, importantly, to judicial protection. This protection, however, should be distinguished from the right to a court as provided for in Articles 77(2) and 45(1) of the Polish Constitution. It is of a guarantee nature for the local government unit for the correct performance of public tasks, while the right to a court is one of the means of protecting the constitutional freedoms and rights of the individual. This differentiation also applies to the right of protection of property, as referred to in Article 64 (1) of the Constitution of the Republic of Poland, and the right to property, as defined in Article 165 (1) of the Constitution of the Republic of Poland³⁹. Therefore, it can be assumed that the municipality - as a legal person of public law - exercising public authority within the scope entrusted by statutes "does not enjoy the constitutional rights and freedoms set forth in Chapter II of the Constitution guaranteed to an individual, and to a limited extent to another entity, including a legal person of private law"⁴⁰.

³⁵ CT judgment of 4.05.1998, K 38/97.

³⁶ CT judgment of 8.04.2009, K 37/06, OTK-A 2009, No. 4, item 47; see also in this subject: H. Izdebski, *Trzydzieści lat po restytucji samorządu - gdzie jesteście?*, Samorząd Terytorialny, 2020, No.3, p. 31.

³⁷ CT judgment of 4.05.1998, K 38/97.

³⁸ CT judgment of 7.12.2005, Kp 3/05, OTK-A 2005, No. 11, item 131.

³⁹ See also CT judgment of 29 maja 2001, case ref.no. K 5/01, OTK ZU No. 4/2001, item 87.

⁴⁰ CT ruling of 22.05.2007, SK 70/05, OTK-A 2007, No. 6, item 60.

The personality of local government units finds expression in the Constitution of the Republic of Poland. They have been formed as public law persons. This applies in particular to the basic local government unit, i.e. the municipality as a legal person under public law, whose legal status is determined (and to a large extent) by the regulations of Chapter VII of the Constitution of the Republic of Poland. The legislature has defined a municipality as - created by law - a community of residents established to carry out public tasks (Article 16(1) and (2) of the Constitution), and this feature should be taken into account in the process of analysing the constitutional position of local government⁴¹.

The principle of adequacy expressed in Article 167(1) of the Constitution of the Republic of Poland is important for tertiary self-government. In its light, the transfer of public tasks to individual local governments should be accompanied by adequate provision of public revenues. The consequence of a differently shaped catalogue of tasks by local governments (municipal, county and provincial levels) is the differences in the system of revenues of local government units of each level, from which these tasks are financed. While the legislature in Article 167(2) determines for all local government units the same structure of income, which includes own income, general subsidies and targeted grants, the amount of income from these sources, as well as their internal differentiation and importance is shaped differently for each level of local government⁴².

4. Final considerations

The findings made entitle us to formulate some concluding thoughts.

Both Czech and Polish local government are undergoing transformation. Hence, conducting comparative research can be inspiring when taking further legislative measures to improve its functioning. Constitutional determinants, in turn, are important for shaping individualized solutions at the level of ordinary legislation.

The Polish legislature, although it devotes a relatively large amount of space to the subject of local government, has not resolved many issues concerning it, leaving this task to the ordinary legislature. This applies in particular to the issue of the fundamental territorial division of the state - the levels at which local government units are formed. This is important in the context of qualifying a particular task at a given level of local government and assessing the constitutionality of such an action, taking into account the entirety of the constitutional norms with particular regard to the principle of subsidiarity, or the principle of adequacy - which boils down to ensuring local government units, an adequate share

⁴¹ CT judgment of 21.10.2008, P 2/08; see also B. Przywora, *O pojęciu wspólnoty samorządowej z perspektywy Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, [in:] *Samodzielność ustrojowa samorządu terytorialnego...*, pp. 319-336.

⁴² CT judgment of 4.03.2014, K 13/11, OTK-A 2014, No. 3, item 28.

of public revenues to the tasks falling to them, and making appropriate changes in public revenues along with changes in the tasks and competencies of these units (Article 167(1) and (4) of the Constitution). The legislature has merely indicated in Article 15 (2) of the Constitution of the Republic of Poland the criteria for the creation of units and the need for the existence of a municipality, as well as at least one regional level, with the possibility of also creating a local supra-municipal level - Article 164 (1) and (2) of the Constitution of the Republic of Poland). As for the bodies of local government units, only the need for the existence of constituent and executive bodies and the rules for elections to constituent bodies were indicated - Article 169 (1) and (2) of the Polish Constitution.

Similarly, the Czech legislature defined only the basic principles for the organization of local government, deciding in particular to distinguish two levels of self-government: municipalities (tzv. obce) as basic units of self-government and regions (tzv. kraje), as higher units of self-government (Article 99 of the Czech Constitution).

The solution adopted in Poland, granting the ordinary legislature the freedom to introduce higher levels of local government units, seems more rational, taking into account a number of variable factors determining the functioning of the state. It should be emphasized that any modification of the structure of local government units should be evaluated in the context of the tasks and competencies assigned to them within the structure of government. The point is that the ordinary legislator, when designing changes in the structure of local government, must not lose sight of the totality of constitutional principles, headed by the principle of the common good (Article 1 of the Constitution of the Republic of Poland), understood as maintaining a balance between local needs and interests (the local community) and supra-local needs and interests. A precise determination of these issues should be reflected in the regulatory impact assessment.

It is also possible to submit to the consideration of both the Czech and Polish legislators the expansion of the norms on local government finances (including the functioning of the equalization mechanism)⁴³. Such action should correspond to the appropriate distribution of tasks to local government units.

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⁴³ It is necessary to share the position of H. Izdebski, *Konstytucyjny...*, p. 289.

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O samorządzie terytorialnym w konstytucjach: czeskiej i polskiej

Streszczenie

Celem opracowania jest przedstawienie instytucji samorządu terytorialnego czeskiego i polskiego z perspektywy unormowań konstytucyjnych. W opracowaniu wskazujemy, w jakim kierunku i zakresie ustrojodawca czeski i polski określił pozycję samorządu terytorialnego. Stanowiąc to będzie podstawą do sformułowania wniosków końcowych obejmujących postulaty *de lege ferenda*.

Słowa kluczowe: samorząd terytorialny, gmina, zasada pomocniczości, zasada decentralizacji.