

THE PROTECTION OF HUMAN RIGHTS AS A TASK OF LOCAL GOVERNMENT IN POLISH LAW

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ABSTRACT

The article provides an analysis of legislation pertaining to the protection of human rights provided by units of local government. The author characterises the key issues relating to the protection of rights and freedom of the individual in a democratic state, highlighting the role of local government administration. Admittedly, public authorities may cause infringements of individual rights and freedoms, but they can also take actions resulting in the increased protection of these values. The analysis also reconstructs a model of human rights protection, shaped at the level of local government structures and based on the Constitution. The author provides an assessment of legal patterns defining the limits of the protection of human rights executed by local government structures, and formulates postulates in this area, suggesting desired directions for change. Also analysed is the relationship between the constitutional framework safeguarding the independence of local government structures, and tools for the protection of human rights developed in the course of the functioning of local government units on one hand, and the practice of their application on the other. Thus, the publication presents rules and mechanisms for the functioning of local government administration in the context of weighing the significance of the protection of human rights in the current circumstances in Poland.

KEYWORDS: *human rights, local government, decentralisation, participation.*

JEL CODES: K19, K38

DOI: <http://dx.doi.org/10.15181/rfds.v32i3.2144>

Introduction

One of the core aims of the law of a democratic state is to guarantee the rights and freedoms of each person and citizen (Safjan, Bosek, 2016). Modern public institutions, including local government, should, therefore, aim at achieving the best results in the area of the protection of human rights, using all their capabilities for this purpose (Wytrązek, 2011: 315). Their main role is to ‘satisfy the collective and individual needs of citizens resulting from their coexistence in communities’ (Boć, 2007: 13). In line with this, in performing their public functions, units of local government are the closest to the real needs of society (Giełda, 2017: 56). What is more, they are not perceived as one section of the executive power, merely implementing the law, or even acting as ‘the mouth of the law’. Instead, they are seen as performing the functions of an exceptional organiser, initiator and administrator of social life, safeguarding people’s fundamental rights and freedoms (Rożek, 2018: 29-30; Cieślík, 2004: 27-28). As a result, they are not treated by local communities as only authoritative powers, merely imposing limitations and obligations, but also as entities taking action to improve the area of individual rights and freedoms (Oleś, 2017: 169).

The aim of the publication is to characterise the key issues relating to the protection of individual rights and freedoms in a democratic state, especially taking into account the role of local government structures. In this context, an analysis is provided of the main legal acts pertaining to the protection of human rights

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Research interests: law, public administration, human rights, local government

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applied by local government. The analysis also reconstructs a model of human rights protection developed at the level of local government and based on the Constitution. Also analysed is the relationship between the constitutional framework safeguarding the independence of local government structures, and the tools for the protection of human rights developed in the course of the functioning of local government on one hand, and the practice of their application on the other. Thus, the publication presents rules and mechanisms for the administration of local government functioning in the context of weighing the significance of the protection of human rights in the current circumstances in Poland.

Two approaches are applied in the study: a formal dogmatic approach, and an institutional legal approach. The verification of assumptions is conducted through a thorough dogmatic analysis of the constitutional principles of decentralisation, subsidiarity and independence of local government units, as well as of the democratic state of law and its constitutive premises, including the principle of trust in the state and its laws, taking account of the doctrine. In turn, the institutional studies concentrate on the legal status and the competence of local authorities in the context of the protection of human rights.

1. Constitutional foundations of the protection of human rights

One of the fundamental functions of the state is to guarantee individual rights and freedoms, which *expressis verbis* results from Article 5 of the Constitution of the Republic of Poland, where the legislator stipulates that: ‘The Republic of Poland shall safeguard the independence and integrity of its territory, and ensure the freedoms and rights of persons and citizens, and the security of citizens, safeguard the national heritage, and shall ensure the protection of the natural environment pursuant to the principles of sustainable development’ (<https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>; Tuleja, 2019: 40; Gołębiowska, 2015: 15–32).

First, it should be noted that the semantics of the Constitution are significant in construing the meaning of the goals stipulated in Article 5. The enumeration of the state’s fundamental functions in Chapter 1 entitled ‘The Republic’, which deals with the founding rules of the state’s political system, confirms that, in the opinion of the legislator, the functions are of overriding significance (Winczorek, 2003: 66). The fact that the state’s functions have been given a constitutional dimension results in the fact that they have gained a stable and permanent status, ensuring that they will not be changed in line with the particular needs of a ruling political elite (Safjan, Bosek, 2016). As was assessed by Wiesław Skrzydło: ‘the principle of rights and freedoms thus becomes a foundation of the state’s political system, definitive for the essence of the Constitution’ (Skrzydło, 2006: 115).

In view of the above, the public authorities, including local government, are obliged to guarantee the rights and freedoms of persons and citizens (Lisiecki, 2017: 30). As was rightly pointed out by Bogusław Banaszak: ‘Ensuring the rights and freedoms of persons and citizens is a function of the public authorities aimed at the implementation of these rights and freedoms by protecting them from infringements and by countering threats to these values’ (Banaszak, 2012). It is also noteworthy that Article 5 of the Constitution gives a double meaning to the term ‘ensure’: one as encompassing negative obligations (the obligation to respect rights and duties and not to infringe them), and the other referring to positive obligations (safeguarding rights and freedoms from infringements by actors other than the public authorities). Consequently, guarantees of the rights and freedoms provided by the legislator mean that the individual is capable of using them within the prescribed scope (Safjan, Bosek, 2016). It is impossible to establish the substantive scope of the obligation based solely on the contents of Article 6 of the Constitution; it requires reference to other provisions of law, and to the rules of their interpretation (Gizbert-Studnicki, Grabowski, 1997: 99–102).

The obligation of the public authorities, including local government, to act towards providing the protection of individual rights and freedoms reflects the rule expressed in Article 30 of the Constitution pertaining to the dignity of the person. The rule is the foundation of the catalogue of human rights, and of the whole constitutional axiology (Tuleja, 2019: 40–41). Thus, the part of Article 5 of the Constitution saying ‘...ensure the freedoms and rights of persons...’ refers to the words of ‘the inherent and inalienable dignity of the person’ and his or her ‘freedoms and rights’ in the Introduction. Therefore, it should be noted that the above has a direct impact on the interpretation of the whole set of constitutional provisions, especially

the specific determinants of the individual's status, among others in Chapter II (The Freedoms, Rights and Obligations of Persons and Citizens), as well as the freedoms and rights of the person regulated outside this chapter (Garlicki, Zubik, 2016: 72).

Human rights are universal moral laws of a fundamental nature, due to every person in his or her relations with the state (Osiałyński, 1996: 14; Jurczyk, 2009: 30). According to A. Łopatka, human rights are the rights ascribed to every person, resulting from his or her inherent dignity. Rights cannot be denied to a person, they cannot be renounced, and the state is obliged to respect them (Łopatka, 2002: 13). Referring to the tasks entrusted to local government, it should be noted that the legislator has laid down specific obligations for ensuring and protecting human rights and freedoms: the right to life, freedom of assembly and of association, the right to participate in government, access to information about the activities of the government, the right to social insurance, the family's right to assistance, the right to study, and the right to participate in cultural life (Bańczyk, 2015: 10–27). Currently in democratic states, common standards are accepted by way of international agreements. This is directly related to the functioning of international public law in the scope of the guarantee and protection of human rights. Distinct tendencies have been observed in the doctrine, present in internal laws of democratic states. These include in particular (Banaszak, 2012):

1. The broadening of the scope of protection of the court in its various forms and its increased role in practice;
2. The existence of specific arrangements aimed at the protection of individual rights and freedoms in non-standard cases;
3. The broadening of the subjective scope of citizens' protection, so that it covers foreigners, stateless persons and legal entities.

Due to the fact that it has been stated in Article 16 paragraph 2 (Chapter 1) of the Constitution that 'Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility,' constitutional goals have a direct impact on the functioning of local government, and also on its obligation to guarantee human rights and freedoms. The constitutional basis justifying the participation of local government in the exercise of public authority has been aptly specified by the Constitutional Tribunal: 'In the execution of Article 16 paragraph 2 sentence two of the Constitution, the state shares with local government a portion of the superior power which is vested in the Nation (Article 4, paragraph 1 of the Constitution). Units of local government exercise the public authority granted to them by state government bodies; therefore, they do not have their own tasks which derive from natural rights and are subject to acknowledgement or acceptance by the state. For this reason, the Tribunal has already stressed in its judgments that units of local government are integral parts of the structure of public authority in the state, but the scope of public rule at their disposal is not their own "authority", it is an expression of decentralised state power, the power of the same, unitary Polish state' (Judgment of the Constitutional Tribunal of 26 May 2015, Kp 2/13). Local government should be given a significant portion of public authority (Tuleja, 2019: 75–76). In the light of the principle of subsidiarity, the state government administration should not execute tasks which can be executed more efficiently by smaller local communities. Specifying the scope, method and form of the execution of public tasks by units of local government, the legislator should balance local and national interests. The balancing act should be decisive for the division of competence among various levels of local government and the state government administration provided by the legislator (Judgment of the Constitutional Tribunal of 12 March 2007, K 54/05).

2. Decentralisation

Local government is the key driver of the decentralisation process, and a facilitator of the inclusiveness of state government. It is a structure that is meant to serve the self-governed community, established to satisfy the needs of the residents making up the community, and to enable the exercise of their rights and freedoms. The essence of self-governance consists of self-reliance, resulting from the implementation of the principle

of subsidiarity (Kania, 2017: 18). Undoubtedly, the self-reliance of local government structures ‘...makes it possible for them to make their own decisions without the prior involvement of any authorities, yet allowing the authorities for an *ex post* verification of the decisions (by means of supervision), which results from the fact that the self-government units are the actors in the decentralised administration’ (Jagoda, 2011: 40). A self-governed community, through the authorities elected by its members, names the collective need which needs to be satisfied by the whole community’s effort, and decides which tools will be used to satisfy the need (Gołębiowska, Zientarski, Stępień, 2017: 19–21).

An increase in the role of local government with reference to the protection of human rights is possible by means of processes in the further decentralisation of state rule. Responsibility for public affairs should be borne by the authorities that are closest to the citizens (Szreniawski, Turko, 2017: 47). This is not only about the effectiveness of the execution of public tasks, but also about the belief that the human being is the utmost value to be served by every state government system, and that his or her individual identity is the foundation of all activities undertaken by the public administration, and that, consequently, human rights need to be the guiding principle in this matter. Decentralisation is a permanent feature of the political culture of the state, constructed on the proper systematic arrangements congruent with the constitutional principles of the political system of the Republic of Poland. The limits of decentralisation are drawn by the structural consequences of the principle that the Republic of Poland is the common good of all its citizens, which results in the necessity to maintain a balance between local interests (reflected in the competencies granted to local communities) and supra-local interests (Kulesza, 2009: 7). The limits of decentralisation also result from citizens’ right to proper administration, well-founded in the EU Charter of Fundamental Rights. It is typical that in decentralised structures, it is much easier to satisfy various types of citizens’ needs, and in this type of structure it is much easier for citizens to exert influence over the functioning of public government bodies. Thus, decentralisation is conducive for the protection of human rights.

3. Citizen (public) participation

The proper functioning of the state and society absolutely requires active involvement by citizens. In the context of the protection of human rights, a special role is also played by social participation being viewed as an active exercise of the fundamental rights of persons in their functioning within a democratic state, and their influence on state rules (congruent with the principle of *demos kratos*), i.e. the implementation of the constitutional principle of co-participation in national policy-making, and in the exercise of power in local settings. As is pointed out by Iwona Niżnik-Dobosz, citizen participation in self-governance ‘is to be understood as:

1. the independent participation of citizens (the general public) in local governance, by means of direct democracy;
2. legitimating the rules of local government by citizens exercising their election and supervision rights;
3. citizen participation in decision-making and/or the execution of public tasks, including the provision of services, by units of local government in the scope of public affairs on local, supra-local or regional levels, as well as the execution of public affairs of a national character referred to local government by way of parliamentary act, or accepted at their own volition by means of administrative agreements with the state administration bodies’ (Niżnik-Dobosz, 2013: 21).

In the context of the protection of human rights, it is especially noteworthy that permanent and dynamic changes are taking place nowhere else but in units of local government (Sura, 2015: 14–15). As a result, the public administration enjoys a good reputation among locals, and specific forms of citizen participation are instrumental in the achievement of this goal (success). Public awareness and the sense of entitlement on the part of local residents have grown significantly: units of local government have begun to pay more and more attention to proper relations between people and the administration, as well as to the axiology of the norms constituted to regulate citizen’s relations with the public administration (Niżnik-Dobosz, 2013: 42; Sześciło, 2014: 26–32). As a result, having a wide range of instruments at their disposal, people are much more able

to co-decide about public affairs, and to feel more secure in the event of improper acts by the administration, which is decisive for the general perception that good governance is not only an offer from this or that public administration, but, aided by institutions such as citizen participation, it becomes a principle and a value at the same time (Sura, 2015: 15). Consequently, objectivised praxeological guidelines may be derived from the principle of good governance, directly related to the effective, rational and efficient functioning of the public administration, and the state itself. Similarly, subjective guidelines may be derived relating to the perception of specific rights by individuals in the light of the principles of the democratic state of law. Citizen participation, which is important for local government, is also related to the partnership between individuals and the authorities, as well as to the tradition of social and citizen involvement and good governance. For it is difficult to talk about the effective functioning of local government in the area of the protection of human rights without active citizen participation (Sozański, 2014: 34).

Conclusions

It is postulated that actions should be initiated by the legislator aimed at increasing the independence of units of local government. Decision making by local government structures on their own account and responsibility will facilitate the development of a democratic state and civil society. For it is at a local level that social and economic ties are shaped, and that new social structures are created. Special attention should be paid to the postulate of increasing citizen participation aimed at the creation of an efficient system for the satisfaction of social needs: the tasks of the state administration and of other governing bodies must respond to social needs. Moreover, citizen participation enables (facilitates) the choice of such actions and means of their performance to best reflect social needs, which is decisive for the public acceptance of actions by the public administration, as well as for citizens' trust in the functioning of the administration. The benefits of citizen participation in the public activities of local government are various and many: it guarantees the proper identification of social problems, and it allows the choice of acceptable methods for solving them. The involvement of local communities and non-governmental organisations in social processes is also conducive for the creation of a social controls system to monitor the functioning of public bodies and institutions. The existence of citizen participation inspires and shapes a sense of responsibility, without which it would be difficult to attain good-quality decision making or effective governance. Thus, participation has a qualitative impact on the protection of human rights.

It is also postulated that the legislator should implement tools supporting cooperation between units of local government and other non-state actors. Cooperation between local government structures and non-governmental organisations may be of various kinds: preventive (consisting of avoidance of the formation of specific phenomena), or reactive (through activities aimed at fixing a problem of a local dimension).

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LENKIJOS ŽMOGAUS TEISIŲ APSAUGOS ASPEKTAI SAVIVALDOS LYGMENIU

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Santrauka

Straipsnyje pateikiama teisės aktų, susijusių su žmogaus teisių apsauga, analizė, pateikta vietos savivaldos. Aptarti klausimai, susiję su asmenų teisių ir laisvių apsauga demokratinėje teisinėje valstybėje, ypač pabrėžiant savivaldos administravimo vaidmenį. Be abejo, valdžios institucijos gali pažeisti asmens teises ir laisves, bet gali imtis veiksmų, kurie užtikrintų didesnę šių vertybių apsaugą. Analizuotas žmogaus teisių apsaugos modelis, suformuotas savivaldos struktūrų lygmeniu ir pagrįstas Konstitucija. Pateikta teisinių modelių savivaldos dokumentuose, kurie nevisiškai apibrėžia ir užtikrina žmogaus teises, analizė. Analizuotas konstitucinės struktūros, saugančios savivaldos struktūrų nepriklausomumą, ir žmogaus teisių apsaugos priemonių tarpusavio santykis. Straipsnyje pateikiamos savivaldos administravimo taisyklės ir mechanizmai Lenkijos žmogaus teisių apsaugos kontekste.

Atliekant tyrimą vadovautasi dviem požiūriais: formaliu dogmatiniu ir instituciniu teisiniu. Kruopščiai analizuoti konstituciniai savivaldos decentralizavimo, subsidiarumo ir nepriklausomumo principai, demokratinės teisinės valstybės veikimo prielaidos, įskaitant pasitikėjimo valstybe principą. Daugiausia dėmesio skirta vietos valdžios institucijų teisiniam statusui ir valdininkų kompetencijoms žmogaus teisių apsaugos srityje.

Padaryta išvada, kad įstatymų leidėjas turėtų siekti didinti vietos savivaldos nepriklausomumą. Atsakingi savivaldos sprendimai palengvintų demokratinės valstybės ir pilietinės visuomenės plėtrą, nes būtent vietos lygiu plėtojami socialiniai ir ekonominiai ryšiai arba kuriamos naujos socialinės struktūros. Ypač akcentuotinas piliečių dalyvavimo skatinimas, siekiant sukurti veiksmingą socialinių poreikių tenkinimo sistemą: valstybės administracijos ir kitų valdymo institucijų užduotys turi atitikti gyventojų socialinius poreikius. Piliečių dalyvavimo viešojoje vietos savivaldos veikloje nauda daugialypė: užtikrina socialinių problemų identifikavimą ir tinkamų jų sprendimo būdų pasirinkimą. Vietos bendruomenių ir nevyriausybinė organizacijų įtraukimas į socialinius procesus naudingas kuriant socialinės kontrolės sistemą, skirtą stebėti viešųjų įstaigų ir institucijų veiklą. Piliečių dalyvavimas skatina prisiimti atsakomybę, be kurios būtų sunku užtikrinti tinkamų sprendimų priėmimą ar valdymo veiksmingumą. Taigi dalyvavimo savivaldoje poveikis žmogaus teisių apsaugai yra kokybinis.

Pažymėtina, kad įstatymų leidėjas turėtų skatinti vietos savivaldos padalinių ir kitų nevalstybinių subjektų bendradarbiavimą. Savivaldos struktūrų ir nevyriausybinė organizacijų bendradarbiavimo pobūdis gali būti įvairus: prevencinis arba reaktyvus.

PAGRINDINIAI ŽODŽIAI: *žmogaus teisės, vietos savivalda, decentralizacija, dalyvavimas.*

JEL KLASIFIKACIJA: K19, K38

Received: 2020-08-15

Revised: 2020-09-25

Accepted: 2020-10-10