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Paulina Łazutka

***Public-law forms of cooperation between municipalities in the Federal
Republic of Germany and in Poland – legal comparative analysis***

SUMMARY

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Professor Barbara Jaworska-Dębska
and subsidiary thesis advisor Doctor Rafał Budzisz

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The subject of this dissertation is the research on the public forms of cooperation between municipalities in the Federal Republic of Germany and Poland. This topic should be considered in the context of the increasing importance of the institution of cooperation and the need for it in the present reality of local government, overloaded both by the amount of public tasks allocated to it and by the ever-increasing social expectations.

As early as 1942, the eminent scholar M. Jaroszyński noticed that better forms of collective life should be sought in self-government¹. Even after several years, the statement still remains very topical. On the wave of political changes that took place in Poland after 1989, the cooperative institution, albeit initially treated with great optimism, has enjoyed less popularity in the course of time. It is very aptly noted by I. Lipowicz that despite the passage of 25 years since the reactivation of local self-government in Poland, there is still a lack of common striving for joint interests². It is though still urgent to define the needs of legislative solutions that strengthen the capacity of self-government to cooperate on all possible levels: between the neighboring municipalities, between poviats, between the poviat self-governments and the voivodeship self-government, in the urban agglomeration area, in a form of cross-border cooperation between the Polish self-governments and foreign neighbors³.

Also in Germany the need to increase the importance of cooperation institution is visible. The territorial reform of the 1970s, which was, however, well-founded, but was not popular with the public, may be an example of this tendency. The reform, however, has been implemented against the will of the inhabitants, who did not accept the incorporation of old communities - often with a thousand years of tradition, to artificial cities deprived of their identity. The sense of connection with the place and its history is a value people do not want to devote to modernization and technology⁴. Cooperation, that has become increasingly realized need and often also a necessity, may therefore be the panacea for the above problems⁵.

¹ M. Jaroszyński, *Zagadnienia samorządu*. Reprint, PiP 1974, fascicle 6., p. 13.

² I. Lipowicz, *Odrodzenie samorządu terytorialnego w Polsce w latach 1990-1998 – perspektywa administracyjna*. *Naprawa transformacji ustrojowej*, ST 2015, no 3, p. 14.

³ M. Kulesza, *Gospodarka komunalna – podstawy i mechanizmy prawne*, ST 2012, no 7-8, p. 24.

⁴ U. W. Schulze, *Samorząd terytorialny w Niemczech*, PiP 1992, fascicle 6, p. 40-41.

⁵ See M. Ofiarska, *Współdziałanie jednostek samorządu terytorialnego* [in:] M. Ofiarska, J. Ciapała (ed.), *Zarys prawa samorządu terytorialnego*, Poznań 2001, p. 268.

Cooperation may be created both in the form of public law, forms of private law and in the hybrid forms. This thesis focuses exclusively on the public forms of cooperation provided for by the German and Polish legislators.

The issues connected with associations of territorial self-government units that may be created under the article 84 of the Act on Commune Self-Government⁶ and article 75 of the Act on Poviats Self-Government have been excluded from the dissertation⁷. Despite the fact that they are regulated in local self-government acts, associations are a private form of cooperation. They are not designated for performing public administration functions, and in particular - not for enacting executive acts. However, they can be used for the implementation of the principle of inter-communal cooperation, in the forms provided for in their statutes and in The Associations Act⁸.

The scope of research that is the subject of this thesis is limited to legal considerations, particularly indicating the conditions of territorial self-government. At the center of interest is the municipality, as a basic territorial self-government unit and a public administration entity. The basic issue of the dissertation is an analysis of public-law forms of cooperation between municipalities in the Federal Republic of Germany and Poland. Restricting the deliberations only to municipalities does not denigrate the value of the conducted considerations, as municipalities are the largest group of territorial self-government units, and the forms of public-law cooperation are most exposed in the territorial self-government. In the main reasoning of the thesis it is also mentioned about the other entities involved in the cooperation, which aims at a comprehensive presentation of particular forms of cooperation and their specificity.

Particular attention is devoted to the analysis of the solutions provided by German national statutes on the cooperation of thirteen of the sixteen Lands. Three free cities have been excluded from the analysis: Berlin, Bremen and Hamburg, which have dual status of the Land and City but do not have a separate regulation of statutory cooperation. This is due to

⁶ The Act of 8 March 1990 on commune self-government (consolidated text, Journal of Laws from 2016, item 446 as amended).

⁷ The Act of 5 June 1998 on poviats self-government (consolidated text, Journal of Laws from 2016 r., item 814 as amended).

⁸ Z. Leoński, *Formy współdziałania w samorządzie terytorialnym*, ST 1995, no 4, p. 58.

the fact that they simultaneously have the features of the municipality and powiat, despite the lack of division into municipalities and powiats⁹.

The analyses carried out in my dissertation relate to the solutions applied in the federal state and the unitary state. The Federal Republic of Germany is a democratic and social federal state¹⁰. It consists of sixteen Lands, each of which has its own state-independent apparatus, has its own constitution, its own legal order in areas not covered by federation and its own governing bodies. The division of competencies between federations and Lands is based on the principle of presumption of competence in favor of lands, as the competences of the federation are set out in detail in the constitution¹¹. Matters of defense and foreign policy are common for the federation and the Lands. The federal system provides a political community with unity - outwards and diversity - inwardly, and further strengthens the principle of political democracy and the political engagement of citizens in their local and regional environment¹².

Poland is, in contrast, a unitary state. According to the definition, it is a homogeneous country, because all the field authorities are organized in the same way and subordinated to the central authorities.¹³ There are no hierarchical relationships between the two segments of public administration in the state (state administration and self-government administration).

It is also worth mentioning that the Federal Republic of Germany is the area in which the institution of self-government is developing most intensively. There is a great diversity of system and legal solutions concerning municipalities as well as their internal organization.¹⁴

Having regard to the differing nature of both states (federal and unitary), my thesis is aimed at seeking analogical legal solutions in terms of public-law cooperation. The procedure, however, is extremely complex as there are sixteen solutions functioning simultaneously in the structure of German territorial self-government, which, despite similarities, sometimes exhibit exceptional diversity, taking into account the local history and local identity of the particular Land.

⁹ M. Miemiec, *Determinacja prawna współdziałania komunalnego w Niemczech* [in:] R. Kusiak-Winter (ed.), *Współpraca transgraniczna w administracji publicznej*, Wrocław 2015, p. 256.

¹⁰ Article 20 cap. 1 of Basic Law of Federal Republic of Germany from 23rd of May 1949 r., BGBl. I S. 2438, hereinafter GG.

¹¹ A. Lipska-Sondecka, *Samorząd terytorialny Republiki Federalnej Niemiec, Szwecji i Hiszpanii*, Koszalin 2005, s. 34.

¹² E. Zieliński, *Zasada federalizmu* [in:] S. Sulowski, K. A. Wojtaszczyk, *System polityczny Republiki Federalnej Niemiec (selected issues)*, Warsaw 2005, p. 76.

¹³ P. Machalski, *Europa samorządna. Samorząd terytorialny w wybranych państwach Unii Europejskiej*, Toruń 2015, p. 38.

¹⁴ A. Lipska-Sondecka, *Samorząd terytorialny Republiki Federalnej Niemiec...*, p. 46.

According to the main research postulate of the thesis, the institution of public-law cooperation in the age of globalization and in the present socio-economic conditions is an opportunity for territorial self-government to dynamically develop and maximize the efficiency and quality of performed public tasks.

In order to achieve the above-mentioned research goal, legal dogmatic method¹⁵ and the legal comparative method have been used in the dissertation¹⁶. The norms of European Union law have been analyzed, as well as the legal norms of both states, starting with constitutional norms, through ratified international agreements, statutes, ordinances and settlements, agreements and bylaws being the basis for the functioning of the various forms of cooperation. In addition, the work examined the views of the doctrine and the jurisprudence of the constitutional and administrative courts of both states.

The research goal described above and the methods used in this study have determined the thesis arrangements. It corresponds to a classic construction that includes reflections on the development of municipal cooperative institutions, analysis of individual public-law forms in terms of national and cross-border cooperation and supervision of these forms. Consequently, the work consists of an introduction, seven chapters and conclusions.

The purpose of chapter one is, firstly, to establish a basic conceptual nomenclature by presenting the term "cooperation" on the basis of various sciences, i.e. praxeology, organizational and management theory, and administrative law. Secondly, the first chapter presents the genesis of the development of the municipal cooperation institutions in the Federal Republic of Germany and in Poland. The deliberations were made on the basis of the texts of laws, inter alia text of the Prussian act from year 1911 on goal-oriented unions or the Reich act from the year 1939 on goal-oriented unions and enriched with the comments of the then doctrine.

The chapters from the second to the sixth have been dedicated to the characteristics of admissible forms of cooperation in Germany and Poland. Wherever possible, considerations are being carried out jointly for German and Polish solutions concerning a given form of cooperation, with the present indicating similarities and differences. The situations, where a given form occurs only in one country, were explicitly noted. In addition, it was examined

¹⁵ See Zagadnienia metodologiczne prawoznawstwa. Materiały z sesji naukowej Łódź 27-28 marca 1980 r., Wrocław-Warsaw-Cracow-Gdańsk-Lódź 1982, T. Kotarbiński, Pojęcia i zagadnienia metodologii ogólnej i metodologii nauk praktycznych, Studia Filozoficzne 1972, no 1.

¹⁶ Also M. Ancel, Znaczenie i metody prawa porównawczego, Warsaw 1979.

whether this form did not correspond to another form (otherwise named) and whether it would be possible to incorporate it in the other legal order, i.e. German or Polish. If the differences between the Polish and German forms do not allow drawing common conclusions, the reasoning is conducted in two ways.

The second chapter was devoted entirely to the form of a goal-oriented union, the form of cooperation that has the longest history and is most well established in both legal orders. This chapter provides a comprehensive description of the relationship, starting with its legal nature, the tasks it can perform, its participants, through the formation process, the statute, the authorities, the financial management, the permissible economic activity and the principles of transforming the union and its liquidation. Considerations concerning the proper formation of the goal-oriented union statute were based on numerous examples of legal solutions adopted in statutes of goal-oriented unions registered in Poland. This chapter also describes the form of an obligatory goal-oriented union and presents specific types of the ones created in Germany and in Poland.

The central issue of the third chapter is the form of a public-law agreement. At this point, the issues like legal nature of the agreement, its admissible participants and the way in which the tasks are being performed as a part of it were presented. In addition, in order to show the way in which the agreements are constructed and what provisions they contain, the content of the Polish agreements concluded over the last 10 years between the municipalities of the Lodzkie Voivodeship has been analyzed.

In the fourth chapter, the characteristics of other legally admissible public-law forms of cooperation such as: working partnership (*Arbeitsgemeinschaft*), the municipal public-law corporation (*Anstalt des öffentlichen Rechts*), the metropolitan union and mutual support under article 10 of the Act on Commune Self-Government has been made.

The fifth chapter presents the issues of cooperation within multilevel organizational units in Germany such as: administrative bodies (*Ämter*), associative municipalities (*Verbandsgemeinde*), union municipalities (*Samtgemeinde*) and municipal associations (*Verwaltungsgemeinschaften*). These forms are a very interesting solution as their introduction has enabled the continued existence of small municipalities that were originally intended to be attached to larger units in order to be more effective.

Chapter six introduces a new perspective to the thesis, because its task is to present admissible forms of cross-border cooperation. This chapter outlines the legal foundations of cross-border cooperation, its historical formulation and its objectives. The chapter presents such forms of cooperation as: city partnerships, Euroregions and the European Grouping of

Territorial Cooperation. When describing each form, an example of good Polish-German practices in this area was also presented.

The seventh chapter – the last one - is dedicated to the control and supervision over public-law forms of municipalities' cooperation. In the introduction, the general understanding of control and supervision concepts and the legal basis for their implementation in both countries were depicted. In the separate subsections, selected control and supervision measures over public-law forms of cooperation were characterized.

A summary of the deliberations has been placed in the ending of the thesis. This section presents the advantages and disadvantages of the cooperation institution as well as the *de lege ferenda* postulates.

Pauline Lentz