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Agnieszka Jachowicz

***The role of The Constitutional Tribunal
in interpretation of the meaning of the
territorial self- government.***

SUMMARY

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prof. dr hab. Małgorzata Stahl

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The doctoral dissertation concerns one of the most important institution in the democratic state ruled by law – territorial self-government. Beyond all doubts, the existence of self-governing communities, that act within legally delegated powers and participate in exercising the public power in its own name and under its own responsibility is a key question in European legal systems. According to this set of standards, territorial self- government is the main form of the decentralization of public power and essential unit that implements the idea of civil society.

Territorial self-government, as a main institution in the Polish legal system, is the subject of interest of many branches of law. However, the most important subjects such as its structure, organization or activity are studied principally in the area of constitutional and administrative law. The basic thesis, upon which the territorial self-government theory was built, have been elaborated since 1920'. Despite the fact that they have been developing, its essential factors remain actual. Beyond the researches that are conducted in the legal literature, the territorial self-government theory is established also by the judicature of administrative courts and The Constitutional Tribunal. Due to the fact that the aim of the doctoral dissertation is to examine the role of The Constitutional Tribunal in establishing the essential of territorial self-government, the judicature of administrative courts is not taken into consideration.

The wide research taken in this paper reveals, beyond all doubts, that The Constitutional Tribunal is one of the most important institution in the democratic state ruled by law and essential part of its structure. However, the main role of the Tribunal is to control that all legal acts are in conformity with the Constitution, its jurisdiction has also a great significance in the area of developing the whole legal system and its institutions. Despite the fact that according to law in force The Constitutional Tribunal does not have the competence to conduct a legal interpretation, the intended meaning of statues and other legal acts determined by the Tribunal is referred by both common and administrative courts. The essential role of jurisdiction of The Constitutional Tribunal is also seen in its comprehensive and versatile nature, that remains valid after entering the new constitution into force. However, in Polish legal system courts are not entitled to pass the law, the research taken in this paper allows to reveal the main role of the jurisdiction of The Constitutional Tribunal in the area of legislation. One of the institution, which it has a major influence on, is territorial self-government.

The dissertation is divided into five chapters. The first one introduces into the issues of constitutional review of law in the world and especially in Europe. The aim of the next chapters is to present the views on the institution of territorial self-government in the juridical doctrine. I have chosen those elements, that, in my opinion, are the most meaningful according to the essence of territorial self-government: the entity of its units, their self-governing nature and the field of the review taken on their actions. The views presented in the juridical doctrine are compared to the jurisdiction of The Constitutional Tribunal, to expose its influence and impact on the process of establishing and developing the legal construction of territorial self-government.

As mentioned above, the first chapter introduces the subject of the constitutional judicature in the world, its origin and development in Europe and in the world. In Polish legal system the role of the constitutional court is implemented by The Constitutional Tribunal, which guarantees the protection of the Constitution. This chapter also raises the issue of the judicial competences of the Tribunal and its legislative functions, in particular in the area of administrative law, as well as the controversial subject of the judge – made law.

The second chapter of the dissertation deals with the definitions of local government and its most relevant elements, in particular its subject, object and the system of participation in public duties. The thesis presented in the legal literature are compared to the jurisdiction of The Constitutional Tribunal. The research allows to present its influence on the understanding of the institution of territorial self-government in the area of public law.

In the next chapters the subjects of the research focuses on different, the most important elements of the essence of the territorial self-government: its legal entity, self-governing nature and rules of its review. The third chapter discusses the controversial subject of the legal entity of the territorial self-government and its units, in particular its dual character: the entity in the area of public and civil law. Due to many controversies in the legal literature, the jurisdiction of The Constitutional Tribunal proves that the legal entity of the territorial self-government has special character: beyond the civil entity it also possesses the public entity, that allows territorial self-government to participate in the exercise of public power.

According to The Constitutional Tribunal, the essence of the territorial self-government is the self-governing nature of its units, which is the subject of the research in the fourth chapter. Beyond all doubts the independence and freedom from control or influence of

the government administration, allows the units of territorial government to obtain a substantial part of public duties to be done in its own name and under its own responsibility and determines its unique nature of territorial self-government.

Despite its independence, the territorial self-government remains under the review of the state, which is admissible under the legally stated rules. According to the Constitution, the subject of the review shall be only the legality of actions by the territorial self-government and it shall be taken by the Prime Minister and voivods and regarding financial matters - regional audit chambers. The chapter deals with the controversial issue of the self-governing boundaries, the necessity of its legal protection and the power of state authorities to control territorial self-government's actions.

The research conducts in the doctoral dissertation reveals the substantial role of The Constitutional Tribunal in interpretation of the legal meaning of the territorial self-government. However, not of each element that constructs the essence of this institution is developed by the Tribunal's jurisdiction, its part shall not be disregarded. According to Tribunal's interpretation of numerous regulations, it is possible to concern territorial self-government as essential and one of the most crucial institution in the democratic state ruled by law.

