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RECENTRALIZATION IN PROGRESS: UNDERMINING INFLUENCE OF THE TERRITORIAL SELF-GOVERNMENT BODIES ON NATIONAL POLICIES AND LEGISLATION

Abstract

This article focuses on specific dimension of the recentralization process observed in Poland since the 2015 parliamentary elections. From quantitative and qualitative perspective, it describes the trend of undermining the influence of the local and regional self-government bodies on the national legislative process. The practice of functioning of the Joint Commission of the Government and the Self-Government Bodies is analyzed in order to assess to what extent this original institutional mechanism was used after 2015 for effective involvement of the local and regional authorities in shaping the legislative framework concerning their functions and status. We conclude that the Commission's role has significantly deteriorated, as increasing number of laws have been prepared and adopted without even providing the Commission with opportunity to share its opinion on the relevant legislative proposals.

KEYWORDS

recentralization, local government, legislative process, local autonomy

SŁOWA KLUCZOWE

recentralizacja, samorząd terytorialny, proces legislacyjny, samodzielność lokalna

I. INTRODUCTION

Recentralization trend in the policies of central government in Poland has been clearly present since the 2015 parliamentary elections that resulted in formation of the right-wing populist majority led by the Law and Justice party (*Prawo i Sprawiedliwość*, PiS).¹ However, only recently the scope and depth of this shift has been comprehensively analyzed and captured through several indicators of local autonomy and capacities of the territorial self-government units at the local level. For the first time, the decentralization index prepared by a team of researchers under auspices of the Stefan Batory Foundation offers a more structured and complete comparison of evolution of the policy of the central government and legislature towards the local governments in the period 2014–2023.²

This article focuses on one of the elements of this assessment, namely the measurement of the political standing and impact of local government on the national policies and legislation. This issue was measured through composite indicator relating to the involvement of the Joint Commission of the Government and the Self-Government Bodies (*Komisja Wspólna Rządu i Samorządu Terytorialnego*, *KWRiST*). This body serves as a unique institutional formula for participation of the local and regional governments in the legislative process, already operating for three decades. In order to measure the political impact and strength of local and regional governments, we investigated the proportion of the legislative acts concerning self-government bodies (local and regional matters) that were adopted after or without consultation with the *KWRiST*. In this article, we provide more detailed insight into our investigations in this regard.

¹ See Dawid Sześciło, 'Is There a Room for Local and Regional Self-Government in the Illiberal Democracy? Struggle over Recentralization Attempts in Poland', *Studia Iuridica*, 2019, Vol 79.

² Marta Lackowska and others, *Indeks samorządności*, Warsaw 2023; Marta Lackowska and others, *Indeks samorządności. Druga edycja 2023*, Warsaw 2023; Marta Lackowska and others, *Indeks Samorządności 2024. Bilans dekady 2014–2023*, Warsaw 2024.

II. JOINT COMMISSION OF THE GOVERNMENT AND THE SELF-GOVERNMENT BODIES

The *KWRiST* was set up in 1993, though only in 2005 was the special law³ on its functioning adopted. This cemented evolution of this body from an advisory committee of the Council of Ministers to a more standalone and formalized institution.⁴ The organizational setup of the Commission is based on the principle of equal representation of the central government and representatives of the local and regional self-government units. While the government is represented by the members selected autonomously by the Prime Minister, the law establishes more detailed rules for filling up the seats reserved for the representation of the local and regional self-governments. In general, these rules aim at ensuring representation of various types of local and regional government units, i.e., smaller and more populated municipalities, districts and voivodeships.

The mandate of *KWRiST* was formulated quite extensively, including aligning position of the central government and local/regional government in terms of setting economic and social priorities in matters relating to municipal economy and functioning of municipal and district self-government, regional development and functioning of the voivodeship self-government. It also covers conducting reviews and assessments of the legal and financial conditions of the functioning of local and regional government, assessment of the functioning of local and regional government in relation to the EU integration processes, including the problems of absorption of the EU funds. However, the most important area of the *KWRiST*'s operations involves providing opinions on the draft normative acts, programs and other documents relating to the self-government bodies and determining relations between the territorial self-government and other bodies of public administration.

In principle, the Commission operates according to the rule of consensus, striving to formulate unanimous opinion of both parties on the relevant draft normative act. In case of failure to achieve consensus, each party may adopt its own position on the respective matter. Considering this formula, the Commission generally does not conduct votes on the matters submitted to it.

The Joint Commission of the Government and the Self-Government Bodies is one of the most original in the European practice institutional mechanisms for involvement of the local and regional governments in the legislative process. Similar model also exists in Spain, in the form of National Commission for Local

³ The Law of 6 May 2005 on the Joint Commission of the Government and the Self-Government Bodies and the representatives of the Republic of Poland in the Committee of Regions of the European Union, Official Journal, No 90, item 759.

⁴ See Hubert Izdebski, 'Pozycja ustrojowa Komisji Wspólnej Rządu i Samorządu Terytorialnego', *Samorząd Terytorialny* 2013, No 12; Igor Zachariasz, 'Geneza Komisji Wspólnej Rządu i Samorządu Terytorialnego', *Samorząd Terytorialny*, 2015, No 12.

Administration (NCLA). The NCLA is led by the minister of public administration and, alike *KWRiST*, consists of an equal number of representatives of local entities and the central government. Mandate of the NCLA primarily comprises considering the draft laws affecting local communities, but also making proposals and suggestions to the government regarding delegation of powers to the local administration, distribution of subsidies and other forms of transfers to the local entities, participation of the local entities in taxation revenues, as well as budgetary and financial matters. The Commission, to fulfill its functions, may require the Institute of Local Administration Studies to carry out studies and issue reports. Finally, the NCLA may also request the constitutionally legitimized bodies to challenge before the Constitutional Court the laws of the State or the Autonomous Communities that it deems detrimental to the constitutionally guaranteed local autonomy.⁵

More recently, the success story of the Polish *KWRiST* inspired creation of a similar body in Romania. The Interministerial Technical Committee for Decentralization was established in June 2022.⁶ It includes the minister responsible for local government matters, State secretary in this ministry, representatives of the ministry of finance, other ministries, general secretariat of the government and heads of the associations of the local government units. The Committee is responsible, among others, for approving the draft of the general decentralization strategy developed by the coordinating ministry of the decentralization process, proposing solutions regarding the sectoral decentralization process or regarding the need to improve the way decentralized powers are exercised and endorsing the projects of sectoral decentralization strategies and the projects of sectoral strategies for improving the way of exercising decentralized powers. Separate government decision regulates the right of the associations of the local government units to provide opinions to the draft legislative acts.⁷

III. MEASURING THE PARTICIPATION OF THE LOCAL AND REGIONAL GOVERNMENTS IN THE LEGISLATIVE PROCESS

For the purposes of measuring the political strength of the territorial self-government bodies, we concentrated, in general, on the extent to which the Com-

⁵ Article 117–119 of the Law 7/1985 of 2 April 1985 on the Bases of the Local Regime.

⁶ Government Decision No 800 of 23 June 2022 for the organization, functioning and duties of the Interministerial Technical Committee for Decentralization and the working groups for the decentralization of competences.

⁷ Government Decision No 635 of 11 May 2022 regarding the consultation procedure of the associative structures of the local public administration authorities when drafting normative acts.

mission was actually involved into legislative processes and to what extent the opinions of the self-governments expressed on this forum were taken into account by the government. Subsequently, we also analyzed the legislature considering the draft legislation. The composite indicator captures various dimensions of this problem through three components:

- a) Share of the government-sponsored laws (adopted by the parliament) concerning the local and regional self-governments that were not submitted by the government to the *KWRiST* for opinion;
- b) Share of the government-sponsored laws (adopted by the parliament) concerning the local and regional self-governments that were submitted by the government to the *KWRiST* for opinion and adopted despite the negative opinion of the representation of the local and regional self-governments;
- c) Share of the laws concerning the local and regional self-governments adopted upon submission of the members of the parliament.

As a general rule, each of these components marks a negative trend of ignoring the voice of the local and regional self-governments or bypassing the main institutional channel for acquiring their opinions. The first case is a consequence of the fact that it is ultimately an autonomous decision of the government whether the draft normative act should be submitted to *KWRiST* or not. The representation of the local and regional self-governments in the Commission does not have power to oblige the government to table the legislative proposal for *KWRiST*'s opinion.

Second case relates to situations where the proposals were filed to the Commission, but the parties failed to reach consensus and the representation of the local and regional self-governments decided to formulate negative opinion about the relevant draft. Considering that *KWRiST* is only an advisory body without any imperative powers, this opinion does not influence the course of the legislative process.

Final case illustrates the process of bypassing *KWRiST* through legislative proposals tabled directly by the parliamentarians of the ruling majority (often prepared by the relevant ministries) in order to accelerate the legislative process and skip the additional consultation and impact assessment requirements applicable to the government-sponsored drafts, including consultation in the formula of *KWRiST*. According to the parliamentary rules of procedure, proposals tabled by the members of parliament are not subject to any mandatory consultations with *KWRiST*.

Alike with other indicators constituting the decentralization index, this composite indicator was calculated for 2014 (last full year before the formation of the PiS-led parliamentary majority), 2021 (first edition of the decentralization index), 2022 (second edition of decentralization index) and 2023 (third edition of decentralization index). For each year, we analyzed all laws adopted by the parliament in search for the acts that could be categorized as meeting the criteria

elaborated in the 2005 Law on *KWRiST*, i.e., relating to the self-government bodies and determining relations between the territorial self-government and other bodies of public administration. For the purpose of this review, we followed the broad definition of these criteria, relying on the assumption that the government should proactively seek the inputs from the local and regional self-governments in the legislative process and enhance their influence on the legislative framework. It should be underlined that we included only proposals that were eventually adopted in the relevant year.

In quantitative terms, the number of adopted laws concerning the local and regional self-government bodies was similar across years covered by our analysis:

- 68 laws in 2014;
- 75 laws in 2021;
- 70 laws in 2022; and
- 57 laws in 2024.

However, in terms of the scope of involvement of the local and regional self-governments in the legislative process, we observed major differences. The table below presents the detailed results of the analysis for each of the components distinguished above as indicators of the participation of local and regional governments in the law making process.

Table. Analysis of involvement of the representation of the local and regional self-government bodies in the legislative process (2014, 2021, 2022)

	2014	2021	2022	2023
Total number of adopted laws concerning local and regional government	68	75	70	57
Number of the government-sponsored laws (adopted by the parliament) concerning the local and regional self-governments that were not submitted by the government to the <i>KWRiST</i> for opinion	6	23	19	9
Number of the government-sponsored laws (adopted by the parliament) concerning the local and regional self-governments that were submitted by the government to the <i>KWRiST</i> for opinion and adopted despite the negative opinion of the representation of the local and regional self-governments	1	6	3	10
Number of the laws concerning the local and regional self-governments adopted upon proposal of the members of the parliament	10	5	8	17

Source: Own analysis based on review of legislation adopted and protocols of the Joint Commission of the Government and the Self-Government Bodies.⁸

⁸ Protocols of the meetings of the Joint Commission of the Government and the Self-Government Bodies were requested and obtained by the Stefan Batory Foundation, as the Commission fails to publish them on its official website.

The negative trend is clearly visible, also in terms of percentage of the laws adopted without adequate involvement of the *KWRiST* into the legislative process. In 2014, 25% of the laws were passed without *KWRiST*'s opinion or despite the negative opinion of the local and regional self-governments' representation. In 2021 and 2022, the value of this indicator exceeded 40% and in 2023, it reached almost 70% of all the laws adopted. This increase could be attributed primarily to the more common practice of the government to ignore the Commission in proceeding government-sponsored draft laws. The two remaining subindicators are of rather marginal relevance for the full picture, except for 2023, when the significant number of laws were adopted upon proposal of the members of the parliament.

These results correspond well with and empirically confirm already formulated observations about atrophy of the mechanism of the local and regional governments involvement in the legislative process through the *KWRiST*.⁹ Marginalizing the role of the Commission is a strong and accelerating trend. It manifests very clearly the overall approach of the central government and ruling majority towards the local and regional self-governments that leaves a steadily narrowing space even for presenting non-binding opinions on the government's proposals. The top-down approach to policy making seems to be further strengthening and legitimate questions about the very sense of continuing the *KWRiST* format could be raised.

Alarming trends are demonstrated not only by numbers and shares of legislative acts adopted without the Commission's involvement. More in-depth analysis of the individual legislative initiatives shows that this practice also relates to the acts of fundamental relevance for the functioning of the local and regional self-governments. For example, among the laws adopted in 2021 without the *KWRiST*'s review, we can identify an initiative regulating salaries of the local and regional government officials or subsidies for home schooling managed by the local governments.

In 2022, the Commission was bypassed in the process of adoption of several laws of major relevance for the local and regional communities. For instance, the law extending the current term of the local and regional government bodies was adopted upon proposal of the members of parliament, hence without even formal ground for consultation with the *KWRiST*. The same scheme was applied to proceed the law changing the salaries of the teachers paid from the budgets of the local governments managing public schools. As part of government-sponsored proposals, the parliament adopted series of laws establishing mechanisms

⁹ See Justyna Przadańska, Michał Szwał, 'Komisja Wspólna Rządu i Samorządu Terytorialnego – w stronę upodmiotowienia samorządu terytorialnego', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2019, issue 4; Justyna Przadańska, 'Rola Komisji Wspólnej Rządu i Samorządu Terytorialnego w kształtowaniu zasad wsparcia finansowego dla jednostek samorządu terytorialnego w ramach Rządowego Funduszu Inwestycji Lokalnych', *Acta Universitatis Wratislaviensis*, 2021, No 4058.

for financial and non-financial aid to the Ukrainian refugees. These acts were adopted without requesting opinion of the *KWRiST* despite the fact that they imposed numerous new administrative, organizational and financial obligations on the local governments. In a similar manner, the government and parliament adopted extraordinary legislation obligating the municipalities to participate in the distribution of coal on preferential conditions to the individual consumers, in the context of war-related energy crisis. In 2023, even the amendments to the Law on *KWRiST* (modifying its composition) were adopted upon proposal of the members of parliament, hence without consultations with the local governments' representation in *KWRiST*.

IV. RESTORING THE MECHANISMS FOR INVOLVEMENT OF SELF-GOVERNMENT BODIES IN THE LEGISLATIVE PROCESS – LESSONS LEARNT

Considering the unique nature of *KWRiST* and its extensive track record of articulating the voice of local and regional communities in decision making at the central level, the experience of the current decay of this institutional mechanism should be transformed into concrete ideas and recommendations for revision of the legislative framework for the Commission. The main objective would be to eliminate the possibilities for bypassing the *KWRiST* in the legislative process through two major amendments. First of all, the representation of the local and regional self-governments should obtain the right to issue binding demand for submission of the government-sponsored legislative proposal for the Commission's opinion. The decision on redirecting the proposal to the *KWRiST* should not be left to the autonomous choice of the government. Secondly, the proposals lodged by the members of parliament should be subject to mandatory review of the Commission, alike all the proposals of the MPs, which are consulted with the government.

These two major improvements should be accompanied with more technical but still important revisions. The law on *KWRiST* should clarify at what stage of the legislative process the proposal should be submitted for the opinion of the Commission, i.e., before or after interministerial consultations, or at both phases. In the context of the legislative process, it might be also considered to explicitly allow the representation of the local and regional governments in the Commission to submit legislative proposals for the consideration of the government.

There is also a need to enhance the analytical capacities of the Commission by strengthening its apparatus. The Commission should absorb the National Institute of Local Government, which is subordinate to the Ministry of Interior and Administration, and which has never met expectations of providing extensive analytical

support feeding the public and policy debate on the local government. Strengthened *KWRiST* should be obliged to prepare several key documents regarding the state of local government every year, including: a report on the financial situation, on the problems of supervision of voivodes and regional audit chambers over local governments, on the problems of the jurisprudence of administrative courts in local government matters, or, for example, on citizen participation in local government (participatory budgeting, social consultations, civic legislative initiatives).¹⁰

Regardless of these ideas, the reactivation of the Commission and restoration of its role in the legislative process will require in the first place the policy shift in the approach of the central government towards local and regional authorities. Unless the government and ruling majority internalize the understanding of the value of providing the self-government bodies with the platform to present their views on the legislative proposals, even the most progressive arrangements in the law on *KWRiST* will have limited impact on the actual political strength of the local and regional governments.

A legislative proposal addressing some of the issues discussed above was recently prepared under the auspices of the Stefan Batory Foundation.¹¹ It envisages new, more transparent and representative mechanism for the selection of the self-governments' representation in *KWRiST*, the right of the self-governments' representation to demand submission of the legislative proposal to the Commission, as well as obligation to provide response to the comments and remarks submitted by the local governments. However, this proposal has not been yet formally lodged by any actors enjoying the right to the legislative initiative.

V. CONCLUSIONS

On its 30th anniversary, the Joint Commission of the Government and the Self-Government Bodies is facing the greatest crisis in its history. The problem of ignoring the voice of the local and regional governments in the legislative process reached systemic level with half of the laws concerning local and regional communities having been adopted without proper consultation with the Commission. This phenomenon is just a part of broader, comprehensive crisis of local and

¹⁰ Dawid Sześciło, Komisja Wspólna Rządu i Samorządu: potrzeba nowej formuły, online: <https://www.batory.org.pl/blog_wpis/komisja-wspolna-rzadu-i-samorzadu-potrzeba-nowej-formuly/> accessed 20 January 2025.

¹¹ See Hubert Izdebski, 'Trzydzieści lat Komisji Wspólnej Rządu i Samorządu Terytorialnego. Propozycje zmian w ustawie o Komisji Wspólnej oraz o przedstawicielach Rzeczypospolitej Polskiej w Komitecie Regionów Unii Europejskiej', *Samorząd Terytorialny* 2023, issue 12.

regional autonomy since 2015. As the results of the decentralization index demonstrated, it is accompanied by curbing powers and scope of responsibilities of local and regional authorities, undermining financial capacities, as well as obtrusive administrative supervision over local and regional governments performed by the voivodes (regional governors appointed by the central government) and regional audit chambers.

In 2014, the Polish local government was perceived as one of the strongest in Europe, leading the decentralization process among post socialist countries of the Central and Eastern Europe.¹² The period after 2015 is marked with continuous deterioration of capacities and political standing of the local and regional communities. As demonstrated in this article, the recentralization trend is multi-faceted and also involves not only direct and explicit actions undermining the powers and capabilities of the self-government bodies. It may also be based on softer measures that nevertheless cumulatively have considerable impact on the overall degree of local autonomy.

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¹² Andreas Ladner, Nicolas Keuffer, Harald Baldersheim, 'Measuring local autonomy in 39 countries (1990–2014)', *Regional & Federal Studies* 2016, issue 26 (3).