

Monika Augustyniak

Associate Professor, Faculty of Law, Administration and International Relations,
Andrzej Frycz Modrzewski Krakow University

Organization and functioning of legislative bodies in Polish and French territorial self-government: contribution to the discussion¹

Foreword

According to Article 72 par. 3 of the French Constitution², the French legislator has determined that under the conditions provided for in the Act the territorial communities may freely exercise their power through elected councils and have the right to issue legal acts in order to exercise their powers. Provisions of the General Code of Territorial Communities (CGCT)³ specify in detail the catalogue of authorities, their organization and rules of operation. Whereas pursuant to article 169 par. 1 of the Constitution of the Republic of Poland⁴: “Units of local government shall perform their duties through constitutive and executive organs.” In the Polish and French legal order the organizational structure of legislative (or constitutive) bodies is based on the bodies indicated *expressis verbis* by the legislator in systemic self-government acts⁵ and regulations of the

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² Constitution of the French Republic of 4 October 1958 (Constitution du 4 octobre 1958, JORF n° 0238 du 5 octobre 1958, page 9151).

³ Code général des collectivités territoriales (General Code of Territorial Communities, CGCT) – source: <https://www.legifrance.gouv.fr> [accessed: 10.02.2018]

⁴ Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483, as amended) – hereinafter referred to as the Constitution of the RP.

⁵ Systemic self-government acts should be understood to mean: the Act of 8 March 1990 on municipal self-government (consolidated text Journal of Laws of 2017 item 1875 as amended) – hereinafter referred to as AMSG; the Act of 5 June 1998 on district self-government (consolidated text Journal of Laws of 2017 item 1868 as amended) – hereinafter referred to

General Code of Territorial Communities. This catalogue is closed and its extension is not permitted.

The notion of self-government power in this article includes only the presentation of legislative bodies in territorial self-government units in the Polish legal order and in French territorial communities. The analysis will cover a selected issue concerning the organization and functioning of legislative bodies and their basic tasks and competences implemented in both legal orders. The whole subject matter will be discussed from a comparative perspective. Discussing the basic elements related to the organization and functioning of councils and *sejmiki* (regional assemblies) will allow in the final evaluation to propose changes in the model of these bodies in contemporary territorial self-government. Bearing in mind the role and importance of the legislative body in territorial self-government units, the search for an appropriate model of this body seems to be an important research topic.

Organization and functioning of the legislative body: selected systemic and administrative aspects

In the Polish and French legal order the legislator imposed the obligation to appoint a legislative and executive body in territorial self-government units/territorial communities in order to perform municipal tasks that are the manifestation of implementation of the principle of decentralization⁶ of public authority.

Legislative bodies in French territorial communities are obliged at the beginning of the term of office to adopt a resolution on the internal regulations of a given municipal, departmental and regional council. This act determines the organization and mode of operation of the legislative body. According to article L. 2121-8 CGCT in municipalities with at least 3,500 inhabitants municipal council obligatorily sets its regulations within 6 months from taking over the function. They are optional in municipalities with less than 3500 residents. The council of the department or region must adopt regulations up

as AD SG; and the Act of 5 June 1998 on voivodeship self-government (consolidated text Journal of Laws item 2096 as amended) – hereinafter referred to as AVSG.

⁶ Decentralization of public authority occurred in France in the early 1980s. when the parliament passed a whole range of acts affecting the system of local authority in France, including Act No. 82-213 of 2 March 1982 on the rights and freedoms of municipalities, departments and regions, Act No. 83-8 of 7 January 1983 on the division of competences between municipalities, departments, regions and the state. Moreover, in article 1 of the Constitution of the French Republic of 4 October 1958 a provision was added stating that the organization of the French Republic is decentralized – see Ph. Ardant, B. Mathieu, *Droit constitutionnel et institutions politiques*, Paris 2015, p. 388.

to three months after the renewal of the term of office (see article L. 3121-8 of the CGCT and article L. 4132-6 of the CGCT). The internal regulations are binding until establishment of new ones, therefore they are limited by term. A resolution adopting or amending the internal regulations is an administrative act that can be challenged by a complaint regarding the abuse of powers⁷. The provisions of the internal regulations may only apply to the principles of the functioning of the council and the way in which a permanent commission operates in a department or region. The provisions of the internal regulations must comply with the rules set out in the statutory laws and implementing regulations. Resolutions adopted contrary to the internal regulations are unlawful.

In the Polish legal order, the statutes of the municipality, district and voivodeship regulate the system of a given territorial self-government unit. They include, among others, internal organization and mode of operation of the bodies of the municipality, district and voivodeship and their internal bodies. As a local law act of a structural and organizational nature⁸ they are subject to publication in the voivodeship official journal.. These are not term-limited *a contrario* to French regulations in this scope. They contain obligatory regulations defined in systemic self-government acts (e.g. principles and mode of operation of the audit commission and clubs) and optional regulations. As the Voivodeship Administrative Court in Gliwice stated in its judgement of 28 November 2017 “The statutes of the municipality may regulate not only those issues that have a separate detailed legal basis in the act, but also all issues related to the functioning of a given municipality, as long as they do not violate the generally applicable provisions of law”.⁹ Statutes of territorial self-government units are legal acts of normative nature. The provisions of the statutes are the law whose violation by the resolution of the body of the municipality, district, voivodeship justifies its annulment¹⁰.

The provisions of the CGCT Code and internal regulations allow councillors to efficiently prepare and take decisions in the field of competences granted to the legislative bodies. The internal bodies of councils include thematic commissions (appointed at the beginning of the term of office of the council), permanent commissions or created during particular meetings to

⁷ See decision of the Council of State, section, 10 February 1995, *Riehl et Commune de Coudékerque-Branche vs. Devos, Lebon* p. 66 and 67; *GADD* no. 13.

⁸ See D. Dolnicki, *Samorząd terytorialny* [Territorial self-government], Warszawa 2016, p. 383 et seq.

⁹ See judgement of 28 November 2017 of the Voivodeship Administrative Court in Gliwice (IV SA/GI 624/17, *LEX* no. 2422809).

¹⁰ See judgement of 9 April 2008 of the Voivodeship Administrative Court in Wrocław (III SA/Wr 68/08, *LEX* no. 506864).

analyse issues submitted to the council (see article L. 2121-22 CGCT). These commissions are convened by the mayor who *ex officio* performs the function of their chairperson. They are convened within one week of their creation and elect a deputy chairperson who replaces the mayor in the event of his/her absence or inability to perform his/her functions. Thematic commissions may also be appointed in the departmental and regional councils¹¹. Councillors have the right to submit oral inquiries (interpellations) at the meeting of the legislative body acting in matters concerning a given territorial community. In municipalities with at least 50,000 inhabitants, at the request of one-sixth of their members, the council deliberates on the creation of an information and evaluation mission (*mission d'information et d'évaluation*). This body has the task of gathering information on issues related to the municipality or assessment of municipal services (article L. 2122-22-1 CGCT). The internal regulations determine the conditions for the creation and functioning of these missions, the duration of which may not exceed 6 months. Therefore, this body can be considered as a kind of *ad hoc* commission.

In the Polish legal order commissions are also internal bodies of the council/*sejmik*. They are divided into permanent commissions (appointed for the term of office) and *ad hoc* commissions (appointed *ad hoc*). In addition, the commissions can be divided into obligatory commissions (e.g. audit, budget, health resorts commissions, commission for complaints, requests and petitions¹²) as well as optional commissions (freely appointed by the legislative body depending on the needs, e.g. culture commission, spatial planning commission). The chairperson of the commission is a councillor, elected for this function from among members of a given commission¹³.

The municipal council holds its meetings at least once a quarter. Whereas the mayor may convene a meeting of the council each time he/she considers it necessary. The mayor is obliged to convene a meeting within 30 days, if it is so requested by a representative of the central authorities, at least one third of the members of the council (in municipalities with at least 3,500 inhabitants) or the majority of its members (in municipalities with less than 3,500 inhabitants). The departmental council and regional council also meet at least quarterly on the initiative of their chairperson, at the request of a permanent

¹¹ See article L. 3121-22 CGCT I art. L. 4132-21 CGCT.

¹² This commission is to be established as an obligatory commission of councils/*sejmiki* for the new term of the legislative bodies, pursuant to the Act of 11 January 2018 on amending certain acts to increase the participation of citizens in the process of electing, operating and controlling certain public bodies (Journal of Laws item 130).

¹³ More on this topic in M. Augustyniak, *Prawa i obowiązki radnego jednostki samorządu terytorialnego* [Rights and obligations of a councillor of a territorial self-government unit], Warszawa 2012, p. 101 et seq.

commission or one-third of their members with a specific agenda and for a maximum period of two days, whereas no member may submit more than one request for convening the meeting for a semester (see article L. 3121-10 of the CGCT and article L. 4132-9 of the CGCT). In exceptional circumstances, the departmental or regional council may be convened by decree.

The legislative body is convened by its chairperson, i.e. the mayor or chairperson of the departmental or regional council. The invitation to the meeting includes a complete agenda. It is sent in writing, personally to the permanent address of the councillors in office, unless some of them indicate a different address for sending the materials. Convocation of a session is recorded in the register of resolutions, displayed or published (see article L. 2121-10 CGCT). Incorrect convocation can not be the subject of a complaint concerning the abuse of rights, but it results in the unlawfulness of resolutions adopted during the meeting. The invitation is sent within 3 full days before the meeting in municipalities with less than 3,500 inhabitants and 5 full days in municipalities with at least 3,500 inhabitants¹⁴ and 12 days (incomplete) in the case of departmental and regional councils (article L. 3121-19 CGCT and article L. 4132-18 CGCT). In urgent cases, it is possible to shorten the time of convocation, but it can not be shorter than one full day, provided that the council at the beginning of the meeting informs about the circumstances justifying the urgency of the convocation. Meetings of the municipal council are chaired by the mayor, and in the council of the department or region by the chairperson of the departmental or regional council, respectively. In the absence of this possibility – the person substituting him/her (see article L. 2121-14 CGCT – applies to the municipality). During the debate on the administrative account (*compte administratif*), but before its approval, the council elects its chairperson, while the mayor may participate in the deliberations, but not in the voting act.

In the Polish legal order meetings of the council/*sejmik* in ordinary mode are convened by the chairperson of the council/*sejmik*¹⁵ when necessary, but not less frequently than once a quarter. Each legislative body sets at the beginning of its term an annual schedule of its meetings. The chairperson is obliged to attach the agenda and draft resolutions being the subject of the meeting to the notice of convocation of the session. Moreover, the session of the legislative body may be convened in extraordinary mode at the request of the executive body or at least 1/4 of the statutory composition of the council/*sejmik*.

¹⁴ See article L. 2121-11 CGCT and article L. 2121-12 CGCT.

¹⁵ In the absence of the chairperson of the council/*sejmik*, the session may be convened by his/her deputy.

Than the chairperson is obliged to call the session on a day falling within 7 days from the date of submission of the said request¹⁶. The notice on convocation of the session is sent to the councillors in paper or electronic form, in accordance with the provisions of the statutes of a given territorial self-government unit. In its judgement of 3 March 2011 the Voivodeship Administrative Court in Szczecin indicated that “The concept of convening a session, used in article 15 par. 1 of the Act on district self-government should be understood as sound and exhaustive activities aimed at providing the councillors with information about the place, date and programme of the session. It is the duty of the chairperson of the council to notify all councillors about each session [...]. Failure to notify the councillor about the date of the session means depriving the councillor of his/her fundamental rights, and thus constitutes a significant violation of the procedure for convening the session”¹⁷.

In the French legal order, only the chairperson may apply disciplinary measures during the deliberations of the council (article L. 2121-16 CGCT, article L. 3121-12 CGCT and article L. 4132-11 CGCT). Therefore, he/she may ask any person disturbing the order, including a councillor, to leave or interrupt his/her speech. Meetings can be broadcast using audiovisual media. The chairperson due to his right to use disciplinary measures and to ensure the proper course of the meeting, may take any measures regarding the transparency of the council's meetings. It is not necessary to obtain consent of the councillors for the transmission of meetings on local television. Meetings are open to the public¹⁸, but this is not the case for the permanent commission. Free access to the meeting room may be limited only for reasons related to public order (in the absence of such reasons, resolutions adopted in violation of the principle of free access could be annulled). However, at the request of three members or a mayor (five members or a chairperson), the council may decide by absolute majority of the present and represented members to hold the meeting in camera. The decision is made by the council itself, in an open vote, if it deems it appropriate. It should be noted that in the departments and regions the prefect (of a department or region) may be heard by the council with the consent of the chairperson or at the request of the prime minister (article L. 3121-25 CGCT and article L. 4132-25 CGCT). Once a year, the prefect gives the council a special report on the activities of the central services in the department or region.

¹⁶ This period is indicative – see judgement of 28 October 2008 of the Voivodeship Administrative Court in Kraków (III SA/Kr 998/07, LEX no. 519152).

¹⁷ See judgement of 3 March 2011 of the Voivodeship Administrative Court in Szczecin (II SA/Sz 155/11, LEX no. 1097088).

¹⁸ See article L. 2121-18 CGCT, article L. 3121-11 CGCT and article L. 4132-10 CGCT.

In the Polish legal order, the chairperson of the legislative body is responsible for the proper organization of the work of the council/*sejmik* and for conducting meetings of this body. By organizing the works of the council/*sejmik* one should understand a series of activities, mainly material and technical, such as preparing a draft agenda of the session, notifying councillors about the place and date of the session and agenda, preparing relevant documents and other materials for councillors¹⁹. As part of the proper organization of the body's work, there is also the right of the chairperson to use the disciplinary measures towards councillors or residents specified in the statutes of a given territorial self-government unit. For example, in accordance with § 21 of the Statutes of the City of Kraków²⁰ in the event that during the council deliberations the form or content of the speaker's speech clearly violates the seriousness of the session, the chairperson may cut off the speaker, recording this fact in the minutes of the session. The chairperson may order a person who is not a councillor to leave the place of deliberations, who, by his behaviour, disturbs the order or otherwise interrupts the conduct of the session. However, these are regulations of statutes not raised to the rank of laws, as in the French legal order.

About competences of legislative bodies in both legal systems

Municipal council/conseil municipal

French municipalities have the presumption of competence in matters of local significance. This competence covers all local matters not reserved for the department and region or government administration²¹. The municipal council manages local affairs that belong to its competence under the acts. As indicated in the doctrine of French administrative law, general competence is not a constitutional principle. It is regulated by the act. This general competence of the municipal council to decide on municipal matters is determined on the basis of the territoriality principle and the interest of the municipality²². The municipal council exercises competences resulting

¹⁹ Cf. judgement of 19 July 2012 of the Voivodeship Administrative Court in Lublin (III SA/Lu 203/12, LEX no. 1213405).

²⁰ See. Resolution No. CXXI / 1934/14 of the Kraków City Council of 5 November 2014 regarding the adoption and announcement of the uniform text of the Statutes of the City of Kraków – source: <https://www.bip.krakow.pl/> [accessed: 10.02.2018].

²¹ See S. Creusot, *Une nouvelle organisation décentralisée de la République*, Paris 2012, p. 54.

²² See M. Degoffe, *Droit administratif*, Paris 2016, p. 157 et seq. Interest of the municipality is determined separately for each case, depending on the specificity of local needs. Therefore, the interest of the municipality can be considered through the prism of the needs of residents.

from legislative and executive provisions (this applies, among others, to voting on the budget and administrative account, creation of public services and jobs). Moreover, according to the provision of article L. 2121-29 CGCT, the municipal council regulates the municipal affairs with its resolutions. This formula should be understood as giving the legislative body the fundamental competence of the general law, appearing alongside other competences of the municipality. However, competences of the municipality can not be completely separated from the competences clearly reserved for the mayor (who is also a municipal body), because this formula also serves to determine the competences of the whole municipality. The powers of the mayor, exercising executive power in the municipality, are mutually exclusive with the powers of the municipal council. Therefore, it is the competence of the mayor to take individual decisions regarding the employees of the municipality, but only the municipal council can make decisions about the liquidation of jobs²³.

The most important decision-making competences of the legislative body in the French municipality include the approval of the budget²⁴, approval of its implementation, discharge of the mayor, creation and liquidation of municipal services and enterprises. In addition, the tasks of the municipal council include, among others: adopting local principles of spatial management and land development, developing programmes in the field of housing, education, and activities in the field of cultural policy (this applies to, for example, libraries and urban archives)²⁵. It is worth noting that many competence acts give the council specific tasks and competences in the area of local affairs. The control of the executive body exercised by the council consists, among others, in the mayor's duty to inform the council about the manner of implementation of its resolutions. The mayor is obliged to answer questions asked by the council. The Council may adopt resolutions expressing its position on the manner of implementation of its resolutions. They do not give rise to any legal consequences, in particular the responsibility of the mayor. However, the mayor and the council must cooperate with each other, because the decision deadlock is the basis for the dissolution of the council, which may result in the dismissal of both bodies.

Cooperation is also ensured by the electoral system guaranteeing a permanent majority in the council from which the mayor derives²⁶. It is worth

²³ See J. Ferstenbert, F. Priet, P. Quilichini, *Droit des collectivités territoriales*, Paris 2016, p. 253.

²⁴ See J. Girardon, *Les collectivités territoriales*, Paris 2014, p. 94 et seq.

²⁵ See P. Chapsal, *Les collectivités territoriales en France*, Paris 2015, p. 28.

²⁶ See article L. 2122-16 CGCT.

noting that although the mayor is elected by the municipal council, it has no right to dismiss the mayor²⁷.

One of the essential competences of the municipal council is the competence to appoint people for various positions. Personal voting in French self-government communities is secret²⁸. Apart from the election of the mayor and deputies and the election of the members of the thematic commissions, the municipal council (pursuant to article L. 2121-32 CGCT and article 1650 of Code général des impôts²⁹) appoints taxpayers every year who can sit on the municipal tax commission (commission communale des impôts). Moreover the council appoints councillors representing the municipality in various external bodies (see article L. 2121-33 CGCT), on principles specified in the CGCT regulations and other acts regulating the organization and functioning of these external bodies, e.g. public units of inter-municipal cooperation³⁰.

The municipal council also has competences in the scope of giving opinions and filing motions³¹. The distinction between these two measures was determined by the French legislator under the CGCT provisions. An opinion is required by a specific legal act or representative of the central authorities, which makes its scope imposed externally. Whereas a free motion is freely formulated by the municipal council, taking into account the so-called “local interest”. The concept of “local interest” (and not only “the interest of the municipality”) assumes that free motions may concern everything that interests the residents of the municipality, and not only what is strictly subject to the decision-making powers of the municipal council. The municipal council expresses the expectations of local communities on all matters covered by the local interest.

In the Polish legal order, the legislator formulates the principle of presumption of tasks and competences of the municipality. According to article 6 par. 1 of the Act on municipal self-government: “The scope of the activities of municipality includes all public matters of local significance, not reserved by laws for other entities.” The municipal council was equipped with the competence to resolve all matters reserved for the municipality. The list of the most important matters of the municipality in which the council has ex-

²⁷ See B. Faure, *Droit des collectivités territoriales*, Paris 2016, p. 256.

²⁸ See article L. 2121-21 point 2 CGCT.

²⁹ See Code général des impôts – source: <https://www.legifrance.gouv.fr> [accessed: 09.02.2018].

³⁰ See J. Ferstenbert, F. Priet, P. Quilichini, *Droit des collectivités territoriales*, Paris 2016, p. 255.

³¹ The council has competences in the scope of filing motions for matters of local significance, which are however more political than legal in nature – see P. Chapsal, *Les collectivités territoriales en France*, Paris 2015, p. 28 et seq.

clusive competence includes organizational, planning, financial and property, personal matters and other matters (e.g. concerning the coat of arms)³².

The most important competences of the municipal council of decision-making nature include financial and budgetary issues, such as the adoption of the budget and long-term financial forecast and the competence to legislate. As part of legislative competencies the council adopts resolutions that have different legal character. Some have the value of a local law act (e.g. spatial development plan), others do not (e.g. setting up an audit commission). As part of the control activity, the council controls the activities of the head of municipality, municipal organizational units and auxiliary units, thus the control covers the performance of own and commissioned tasks in the municipality. The council exercises its controlling powers basically through factual activities, e.g. consideration of the report on the activities of the head of municipality. The municipal council's competence also includes expressing opinions on its own initiative or upon request and directing motions to public authorities, including the executive body in the municipality, presenting positions and resolutions. The council's competence also includes delegating councillors. One of the essential competences of the municipal council is the competence to appoint councillors to commissions and other self-government institutions.

District/department council and voivodeship sejmik/regional council

The notion of the functioning of the legislative body in the district/department and voivodeship/region encompasses determination of several basic competences of this body, which include decision-making, opinion-giving and consultative competences as well as competences regarding delegation.

The Act no. 2015-991 of 7 August 2015 narrows the competence of the departmental council/regional council to "areas reserved for it by law" (see article L. 3211-1 CGCT and article L. 4221-1 CGCT). In addition, it should be pointed out that other acts of French substantive administrative law may add other competences to those legislative bodies. One should also mention the so-called shared competences (article L. 1111-4 CGCT³³) and

³² The list of the most important matters of the municipality in which the council has exclusive competence includes organizational, planning, financial and property, personal matters and other matters (e.g. adopting resolutions concerning the coat of arms) – *Prawo administracyjne* [Administrative law], ed. J. Boć, Wrocław 2003, p. 205–206.

³³ In accordance with 2 article L. 1111-4 CGCT French legislator indicates that competences in the field of supporting equality between women and men, culture, sport, tourism, promotion of regional languages and popular education are shared between municipalities, departments, regions and communities with a special status.

those competences which *ex lege* require the participation of several territorial communities (see article L. 1111-9 CGCT)³⁴.

An important type of competences of legislative bodies are decision-making competences. The departmental council and the regional council adopt a budget and have exclusive competence to create public services and local jobs. Since legislative bodies of territorial communities in the department and region must abide by the competences of other communities and bodies, the departmental regional council itself is not authorized to establish a statutes of specific units operating within the community's area of activity, e.g. the statutes of the forest fire service unit³⁵. The decision-making competences also includes the appointment of members of the permanent commission (*commission permanente*) based on article L. 3122-5 CGCT and article L. 4133-4 CGCT, its own commissions and its delegates to external bodies (see article L. 3121-22 CGCT and article L. 4132-21 CGCT).

Decision-making competences of the departmental council include giving support and implementation of all activities related to: people in a precarious life situation, social development, care for young children, independence of older people, promotion of solidarity and territorial cohesion³⁶. Whereas the council of the region is competent to promote the economic, social, sanitary, cultural and scientific development of the region. It promotes access to housing and improvement of housing, city policy, urban regeneration, education policy, spatial development, equality of its areas, promotion of regional languages, etc. It can undertake complementary activities that are the responsibility of central authorities, other territorial communities and establishments, in the fields and under the conditions set out in the legislation on the division of competences.

The opinion-giving and consultative competence is the next type of powers granted to the councils by the French legislator. Opinions issued by the departmental/regional council find their legal basis in statutes, including the CGCT regulations and executive provisions. The departmental council

³⁴ According to this article, the region is responsible for organizing, as a leader, of common rules regarding the activities of local authorities and their public institutions in the exercise of competences related to, inter alia, sustainable development of the territory, protection of biodiversity, youth policy. Whereas the department is responsible for organizing, as a leader, rules regarding joint actions of local authorities and their public institutions in the scope of exercising competences related to, among others, social activities, social development and contribution to the elimination of energy poverty. This also applies to actions taken to strengthen territorial solidarity between communities (*la solidarité des territoires*).

³⁵ See J. Ferstenbert, F. Priet, P. Quilichini, *Droit des collectivités territoriales*, Paris 2016, p. 256.

³⁶ See M. Lombard, G. Dumont, J. Sirinelli, *Droit administratif*, Paris 2015, p. 185.

issues opinions in particular on names of municipalities (article L. 2111-1 CGCT), changes of borders of municipalities (article L. 2112-6 CGCT), departments (art. L. 3112-1 CGCT), districts (arrondissements) (article L. 3113-1 CGCT) and cantons (article L. 3113-2 CGCT). For the council of the region, the obligation to consult is limited to the issues related to regional development and management (see article L. 4221-3 par. 1 CGCT). The council proposes to territorial communities measures to improve the coordination of local public investment in the region (see article L. 4221-3 CGCT). Consultations with the council on other matters are voluntary and non-binding. Of course, consultations, even those required by the legal act, are not mandatory if they prove impossible to be conducted.

Other important competences are delegation powers in territorial communities at departmental and regional level. Based on the provisions of article L. 3211-2 CGCT and article L. 4221-5 CGCT, the department's council and the regional council may delegate some of their powers to the permanent commission, with one important exception being matters relating to the budget, loans and the administrative account (*compte administratif*). The delegation does not concern the exclusive competence of the executive body in the department and the region, which means that the regional council can not delegate own competences of its chairperson. The ability to delegate competences by the council (of the department or region) to its chairperson is limited to the areas listed in article L. 3211-2 CGCT and in article L. 4221-5 CGCT and applies, for example, to the implementation of loans, liquidity support instruments and derogations from the obligation to deposit funds in central government bodies. Competences which the council (of the department or region) entrusts to the permanent commission can not then be sub-delegated to the council chairperson.

In the Polish legal order, the district performs public tasks of a supra-municipal nature. Bearing in mind the presumption of competence for the municipality, the district performs the tasks of a local nature that exceed the implementation capacity of the municipality³⁷. Activities of the district do not affect the scope of activities of the municipality. Whereas in the Act on the voivodeship self-government the legislator introduced a different solution from the presumption of competences of the legislative and supervisory body adopted in the Act on municipal self-government, because article 41 par. 1 of the Act on the voivodeship self-government introduces a presumption

³⁷ See D. Dolnicki, *Samorząd terytorialny* [Territorial self-government], Warszawa 2012, p. 280.

of the competences of the voivodeship board in all matters belonging to the voivodeship self-government not reserved for the voivodeship *sejmik*³⁸.

The district council and the voivodeship *sejmik* are legislative and supervisory bodies. As part of this last competence, the council/*sejmik* controls the district/voivodeship board and organizational units of the district/voivodeship.

In the Polish legal system, the exclusive competence³⁹ of the district council is regulated by art. 12 of the Act on district self-government, which indicates the scope of matters not subject to subdelegation. The decision-making competences of the district council, covered by its exclusive competence, include competences in the scope of:

- establishing local law acts,
- relations with the executive body (including election and dismissal of the board, consideration of reports on the activities of the board, including financial activities),
- property and financial matters (including adopting the district budget, considering the budget implementation report and adopting a discharge resolution for the board, adopting resolutions on the amount of taxes and fees within the limits set out in the acts and adopting resolutions on district property matters),
- public security and social policy: (among others, the district programme for crime prevention and protection of citizens' security and public order, counteracting unemployment and activation of the local labour market).

Decision-making competences of the voivodeship *sejmik* include the adoption of a voivodeship development strategy⁴⁰ that includes the diagnosis of the socio-economic situation of the voivodeship and defining the strategic objectives of the voivodeship's development policy. According to article 11 par. 2 of the Act on voivodeship self-government the voivodeship self-government implements the voivodeship's development policy, which includes

³⁸ See judgement of the Voivodeship Administrative Court in Poznań of 3.11.2016 (IV SA/Po 751/16, LEX no. 2161628).

³⁹ The Supreme Administrative Court in its judgement of 4 April 2013 (II OSK 205/13, LEX no. 1337316), indicated that "the statutory reservation of a certain competence for the district council does not have a specific form. For the recognition that a given competence is reserved for the district council, a general indication of «district self-government» and the recognition of a specific competence as falling within the «legislative function» is sufficient."

⁴⁰ K. Właźlak defines the development strategy of the voivodeship as a "key instrument for managing the development of the voivodeship" – see K. Właźlak, *Rozwój regionalny jako zadanie administracji publicznej* [Regional development as a task of public administration], Warszawa 2010, p. 259.

issues related to: regional technical infrastructure, spatial and ecological order at the regional level (including, among others, spatial development, environmental protection, water management); regional social infrastructure (e.g. social and family-friendly policy, promotion and protection of health, public education, including higher education, physical culture and tourism, counteracting unemployment and activating the local labour market)⁴¹. Decision-making competences of the district council, covered by its exclusive competence, include competences in the field of: establishing local law acts, property and financial matters (including budget approval), relations with the executive body and adopting resolutions in other matters. The catalogue of these tasks is not closed.

Another competence of the district council and voivodeship *sejmik* is consultative and opinion-giving competence. Opinions issued by the district council and voivodeship *sejmik* find their legal basis in systemic self-governmental acts and in other acts of substantive administrative law as well as in subordinate acts. Whereas the legislative bodies in the district and the voivodeship do not have delegation competences consisting in transferring their competences to another body, like the permanent commission in the French legal order. This means that competences falling within the scope of the exclusive competence of the district council and voivodeship *sejmik* can not be delegated to another body (e.g. district/voivodeship board, governor/marshal or district/voivodeship organizational unit). The prohibition of sub-delegation, treated as an absolute ban on the transfer of matters covered by exclusive competence to another body, has a primarily intra-organizational value, which results in a permanent division of tasks between the legislative and executive bodies⁴² in territorial self-government units.

De lege ferenda *postulates*

In searching for a normative model of the legislative body, whose structure and competences influence personal and functional relations of the executive body in territorial self-government units, after conducting this analysis in both legal orders, it seems correct to postulate the following directions of changes.

⁴¹ Division adopted after: B. Jaworska-Dębska, [in:] *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie* [Administrative law. Concepts, institutions, principles in theory and case law], ed. M. Stahl, Warszawa 2016, p. 433.

⁴² See B. Dolnicki, [in:] *Ustawa o samorządzie województwa. Komentarz* [Act on the voivodeship self-government. Commentary], ed. B. Dolnicki, Warszawa 2012, p. 183.

It would be worthwhile to adopt these French norms regarding the organization of legislative bodies of territorial communities in the Polish legal order, which are aimed at strengthening the legal position of the chairperson of the council/*sejmik*. *Ratio legis* of the strong position of the chairperson in the French municipal, departmental and regional councils results from the fact that the chairperson is also the executive body in a given community (mayor, chairperson of the departmental council, chairman of the regional council). In addition, the chairperson of the departmental council/regional council also chairs meetings of the permanent commission, which replaces the council as a legislative body during inter-sessional periods. Thus, the platforms of relations between legislative and executive bodies often overlap and are based on cooperation and efficiency of activities, and not on the relations of competitiveness between these bodies. The organizational structure in territorial communities promotes good personal relations, which corresponds indirectly with functional relations. Hence the question arises about the possibility to adopt these solutions in the model of the legislative and executive body to the Polish territorial self-government community.

In terms of the competence structure it should be noted that an important element would be the introduction of delegation competences in Polish legislative bodies of territorial self-government units. However, this would require modification of acts consisting in the organizational and systemic change, introduction of an obligatory permanent commission similar to the French *commission permanente*. The legislative body could entrust this commission with specific tasks and competences, by virtue of a statutory authorization. This commission would replace the council/*sejmik* between sessions, performing the functions of the legislative body as part of the competences entrusted to it. The chairperson of this commission would be the current chairperson of the council/*sejmik*, which would also strengthen his/her legal position. However, this commission would be composed only of councillors, due to the decision-making functions of the council/*sejmik* entrusted to this commission, in particular those in the scope of law making. This would create a normative framework of independence and broader interfaces of cooperation between authorities in the self-government community, as the executive bodies would have a wider relationship with the internal body of the council, operating permanently, with smaller personal scope than the council/*sejmik* and equipped with decision-making competences of the legislative body. However, this direction of modifying the model of the legislative body in territorial self-government units requires amendments to the acts.

Abstract

Organization and functioning of legislative bodies in Polish and French territorial self-government: contribution to the discussion

The article presents a selected issues concerning the organization and functioning of legislative bodies and their decision-making, opinion-giving and consultative competences as well as those related to delegation implemented in both legal orders. Discussing the basic elements related to the organization and operation of councils and *sejmiki* will allow in the final evaluation to propose changes to the model of legislative bodies in the contemporary territorial self-government, which has an impact on their more effective functioning. It will also help strengthen the relations of councils/*sejmiki* with executive bodies in individual territorial self-government units.

Key words: organization and functioning of the legislative body, competences of legislative bodies in the scope of making decisions, giving opinions, consultations and delegations, interfaces between authorities in territorial self-government units/territorial communities

Streszczenie

Organizacja i funkcjonowanie organów stanowiących w polskim i francuskim samorządzie terytorialnym – przyczynek do dyskusji

Artykuł przedstawia wybrane zagadnienia dotyczące organizacji i funkcjonowania organów stanowiących oraz ich kompetencje decyzyjne, opiniodawczo-konsultacyjne i delegacyjne realizowane w obu porządkach prawnych. Omówienie podstawowych elementów dotyczących organizacji i funkcjonowania rad i sejmików umożliwi w ocenie końcowej wysunięcie propozycji zmian modelu organów stanowiących we współczesnym samorządzie terytorialnym, które wpłyną na bardziej efektywne ich funkcjonowanie. Przyczynią się również do wzmocnienia relacji rad/sejmików z organami wykonawczymi w poszczególnych jednostkach samorządu terytorialnego.

Słowa kluczowe: organizacja i funkcjonowanie organu stanowiącego, kompetencje decyzyjne, opiniodawczo-konsultacyjne i delegacyjne organów stanowiących, płaszczyzny relacji między organami władzy w jednostkach samorządu terytorialnego/wspólnot terytorialnych