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The Issue of Restitution of Local Self-governments in Poland and Croatia in the Late 20th Century – the Question of Their Constitutionalisation

Z problematyki restytucji samorządu terytorialnego w Polsce i w Chorwacji w końcu XX w. – kwestia ich konstytucjonalizacji

ABSTRACT

The subject of this analysis is the restoration of the institutions of local self-government in the two socialist states, Poland and Croatia, in the early 1990s, with some references to the past. The key research question involves the issue of constitutionalisation of local self-government in the two post-socialist countries. The article examines how the process of constitutionalisation proceeded, which specific phases can be identified in its evolution, and whether the constitutionalisation is part of broader Central European or even broader European trends. The basic research question is: What actual model of local self-government was drawn up by legislators in both the Polish and Croatian cases? Several research methods were adopted as appropriate for the analysis conducted – they include the legal-institutional analysis, historical-descriptive analysis and comparative method. The paper is written from the perspective of the science of politics and administration, but there are also threads undertaken in analyses originating from the legal sciences. We are of the opinion that the broadening of the research perspective should be regarded as a positive fact for the analytical conclusions obtained.

Keywords: local self-government; constitutionalisation; restitution; Poland; Croatia; post-socialist countries

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INTRODUCTION

This article deals with the restitution of local self-government institutions in two Central European countries – Poland and Croatia. Both of them developed their self-government solutions in the 19th century. Under the communist rule (in both Croatian and Polish versions), the institution of local self-government was significantly curtailed or abolished as incompatible with the vision of a socialist state. The issue looked a little different in Croatia, because the model of the so-called state socialism began, and the Yugoslav model of self-governments to take shape in the conditions of the Yugoslav Tito-led state. These models to a large extent limited by the existing monopoly of the communist party.[1] In Poland, on the other hand, national councils were introduced into the political system after 1950 as local organs of the uniform state authority. Despite subsequent political system reforms (in 1958, 1972, 1983 and 1988), this model did not draw much closer to the criteria of local self-government.[2]

The subject of this analysis is the restoration of the institutions of local self-government in the two above-mentioned socialist states, Poland and Croatia, in the early 1990s, with some references to the past. The key research question involves the issue of constitutionalisation of local self-government in the two post-socialist countries, and how evolution of political systems determinate and limited this political and law process. The article examines how the process of constitutionalisation proceeded, which specific phases can be identified in its evolution, and whether the constitutionalisation is part of broader Central European or even broader European trends. The basic research question is: What actual model of local self-government was drawn up by legislators in both the Polish and Croatian cases?

Several research methods were adopted as appropriate for the analysis conducted – they include the legal-institutional analysis, historical-descriptive analysis and comparative method. The legal and institutional analysis served to show the competences of local government administration of individual levels, based on constitutional laws, and to a lesser extent – ordinary laws. In turn, the historical and descriptive analysis allowed to show the evolution of local government administration in both discussed European countries. On the other hand, the comparative method served to indicate similarities and differences in the shaped models of local government in Poland and Croatia. The paper is written from the perspective of the

[1] See H. Matković, *Povijest Jugoslavije (1918–1991–2003)*, Zagreb 2003, pp. 314–317; D. Bilandžić, *Historija Socijalističke Federativne Republike Jugoslavije. Glavni Procesi. 1918–1985*, Školska Knjiga–Zagreb 1985, pp. 168–178.

[2] See E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 1994, pp. 155–162; W. Witkowski, *Historia administracji w Polsce. 1764–1989*, Warszawa 2007, pp. 424–434; M. Kallas, *Historia ustroju Polski*, Warszawa 2007, pp. 393–398.

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science of politics and administration, but there are also threads undertaken in analyses originating from the legal sciences. We are of the opinion that the broadening of the research perspective should be regarded as a positive fact for the analytical conclusions obtained.

LOCAL GOVERNMENT IN POLAND AFTER 1990

The institutions of local self-government returned to public debate in Poland during negotiations between the government side and representatives of the Solidarity side centred around Lech Wałęsa, at the so-called "Round Table".[3] In February 1989, a group on local self-government met in the Namiestnikowski Palace. Within this group, Solidarity representatives (including Jerzy Regulski and Michał Kulesza) presented the social side's demands to replace the institution of the national council with local self-governing communities. The local government institutions proposed by the Solidarity side referred to the regulations of the Second Polish Republic and the provisions of the 1985 European Charter of Local Self-Government. The call for the restoration of the institution of municipal self-government appeared for the first time in an official election campaign document on 23 April 1989 in the election programme of the Solidarity Citizens' Committee formed around Lech Wałęsa. The pre-election declarations were followed by the announcement of the new Prime Minister Tadeusz Mazowiecki that a government plenipotentiary (with the rank of minister) would be appointed to prepare a reform of the state administration, which would include the restoration of self-government at the basic level.[4]

The institutional instrumentation of the self-government reform was determined at the session of the Sejm on 8 March 1990. A major amendment of the existing Constitution with regard to administrative changes was then adopted.[5] Fundamental changes were made in chapter 6, entitled "Local organs of state authority and administration". This chapter was renamed "Local self-government". It is worth noting here that this chapter name appeared for the first time in the history of Polish constitutionalism. In the March Constitution of 1921, the issues of self-governing state administration were included in the chapter entitled "Executive power".[6] In

[3] See J. Regulski, *Życie splecione z Historią*, Wrocław 2014, pp. 360–460; J. Bartkowski, E. Nalewajko, B. Post, I. Słodkowska, *Droga do samorządności terytorialnej. Polska 1989–1990*, Warszawa 2016, pp. 35–81.

[4] See J. Regulski, M. Kulesza, *Droga do samorządu. Od pierwszych koncepcji do inicjatywy Senatu (1981–1989)*, Warszawa 2009.

[5] Act of 8 March 1990 on the amendment of the Constitution of the Republic of Poland (Journal of Laws 1990, no. 16, item 94).

[6] Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws 1921, no. 44, item 267).

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the second constitution adopted in the Second Polish Republic, the April Constitution of 1935, the issues of local government were placed in the chapter "State administration", which was consistent with the guiding idea of the constitution to assign all the sectors and levels of administration to the state and its supreme authorities.[7] The chapter was not very extensive, with only five articles, but it was a breakthrough in the modern history of local self-government in Poland. The Polish legislator introduced a definition of local self-government, recognizing it as the basic form of organization of public life in the municipality (Article 43 (1)). The tasks of municipal self-government were also generally defined – the municipality meets the needs of the local community (Article 43 (2)). Meanwhile, significant legal regulations are found in the next article of the Constitution, where the legislator grants the municipality a legal personality, which means that it performs public tasks on its own behalf. At the same time, the principles of performing state tasks by self-governing authorities are set out in statutory regulations, which is strongly emphasised by the Polish legislator. An important political, systemic and also legal declaration was the granting of judicial protection to municipal independence. This expressed sincere intentions of the proponents to establish a real self-governing authority, and at the same time significantly expanded the scope of jurisdiction of both administrative and constitutional courts in Poland. Public tasks performed by the municipal self-government were complemented by tasks delegated from the scope of government administration. This was further clarified by the provision that municipalities perform delegated tasks only to the extent governed by statute (Article 44). Article 45 relates to the issue of local government bodies. In accordance with the doctrine and practice adopted already in the Second Polish Republic (to be precise, in the provisions of the 1933 Integration Act[8]), these bodies are divided into decision-making and executive ones. The municipal council is defined as the decision-making body and its special character comes from the legitimacy granted by the local community. In this respect, the Polish legislator determined that the council is elected by the residents of the municipality, thus it is formed as a result of direct and universal elections. This political and systemic declaration was a sort of reaction to the negative electoral practices in People's Poland (including those involving national councils) and in the Second Republic after 1935. Free and democratic elections of councillors were designed as a guarantee of genuine local self-governance after 1990. At the same time, references are made here to statutory regulations, which, according to the legislator, were to define the principles and procedure of local government elections. The legislator also decided on an indirect procedure for electing the executive body in the municipality, without defining its

[7] Constitutional Act of 23 April 1935 (Journal of Laws 1935, no. 30, item 227).

[8] Act of 23 March 1933 on a partial change of the local government system (Journal of Laws 1933, no. 35, item 294).

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title. These issues were left to statutory provisions. It should be noted here that both the acts to which the Polish legislator referred had already been passed at the above-mentioned session – the Act on local self-government and the Electoral Law for municipal councils. The legal and systemic structure of municipal self-government is completed by the legislator's declaration that the municipality has the right to own property and other property rights (e.g., lease, mortgage, pledge, inheritance). It was clearly stated that they constitute another type of asset – municipal property (Article 46 of the Constitution). It is worth emphasising that this category of property had not existed *de iure* in Poland since 1950, *de facto* since 1944.[9] The issue of self-government finances was also mentioned fragmentarily. The legislator singled out two types – the municipality's own revenues and transfers from the central state budget. The latter are subsidies paid to local governments on terms laid down in statutes (Article 47 of the Constitution).

Pursuant to these regulations, the Prime Minister set the first local government election for Sunday, 27 May 1990, and it was also the first local government election in Central and Eastern Europe.

As the constitutional process in the Polish Parliament was protracted and the internal structure of the Sejm elected in October 1991 was very fragmented, a decision was made to return to the Polish practice of adopting provisional constitutional regulations. In Poland, these were called Small Constitutions and were usually enacted at crucial moments of Polish statehood (i.e., on the cusp of the second independence in 1919[10] and at the outset of the socialist state in 1947[11]). It should be pointed out here that each successive Small Constitution was more detailed and extensive. The Small Constitution is a journalistic name, its official name was: the Constitutional Act of 17 October 1992 on the mutual relations between the legislative and executive institutions and on local self-government.[12] The title of the legal act in question deserves special mention at the start of our deliberations. For the first time in the Polish constitutional order, local self-government was mentioned in the title of a constitutional act. This should be regarded as an appreciation of the political and systemic importance of local self-government among democratic political institutions. It should also be pointed out that the constitutional act contains a separate so-called "self-government chapter". This refers to chapter 5 entitled "Local self-government". It significantly expanded the previous statutory regulations from the March 1990 amendment. It consisted of six articles, arranged by

[9] See J. Jagoda, *Mienie samorządowe*, Warszawa 2019.

[10] Resolution of the Sejm of 20 February 1919 on entrusting Józef Piłsudski with further performance of the office of the Head of State (Journal of Laws of the Polish State 1919, no. 19, item 226).

[11] Constitutional Act of 19 February 1947 on the organization and scope of activities of the highest organs of the Republic of Poland (Journal of Laws 1947, no. 18, item 71).

[12] Journal of Laws 1992, no. 84, item 426.

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issue. There are definitional regulations at the beginning of the chapter, where the legislator defines local self-government as the basic form of organization of local public life. At the same time, the Constitution stipulates that local self-government units have legal personality as "communities of inhabitants of a given territory existing by law". Provisions on the right to own property and other property rights were also retained. A new legal regulation is a declaration that the municipality is the basic unit of local self-government. This means the possibility of creating new local government units, but the legislator does not determine the structure of the Polish local self-government, or even the name of individual levels of administration (Article 70 of the Small Constitution). This was an important regulation as the government was at that time studying the expansion of local self-government administration, but the final legal and systemic solutions had not been decided yet (the period of Hanna Suchocka's cabinet).[13]

It should be noted that the provisions relating to the issue of tasks performed by local self-government (only municipal one at the time, as mentioned above) were significantly more detailed, both in terms of its own and delegated tasks. The legislator declared that local self-government performs a significant part of public tasks under statutory authorization. It means that the activities of the self-government administration and local governments have been made more realistic. It can be said that the local government was meant to become a real host at the level of the municipal community. At the same time, it was indicated that municipality tasks were limited – by virtue of statutory regulations – to those assigned to the competences of government administration (Article 71 (1) of the Small Constitution). It is worth pointing out here that the legislator opted for a negative method of identifying the tasks of local government administration, as opposed to the enumerative method used in some European countries. According to the principle, what is not reserved for the government and its administration is the domain of local self-government authorities. Both their own and delegated tasks were defined in more detail. Their own tasks were defined as those that local government units perform in their own name and on their own responsibility for a precisely defined purpose. This purpose is to meet the needs of the residents. In the context of delegated tasks (the legislator already mentioned such a catalogue of local government tasks in the March 1990 amendment), it was emphasized that local government units will not perform these tasks using their own funds. The legislator unambiguously declares in this respect that self-government units will be provided with adequate financial resources, which should be read as a promise of subsidies to cover the costs of tasks delegated by the government administration (Article 71 (2) and (3) of the Small Constitution).

[13] See *Mała Konstytucja w świetle orzecznictwa Trybunału Konstytucyjnego*, ed. A. Szmyt, Koszalin 1995; M. Kallas, *Mała Konstytucja z 1992 roku*, Warszawa 1993; *„Mała Konstytucja" w procesie przemian ustrojowych w Polsce*, Warszawa 1993.

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In the discussed context, it is worth noting the organisational autonomy of local self-government. The legislator granted local government units the right to freely define the internal structures of municipalities through statutes of units, although the name of this act of local law does not come up in this meaning (Article 71 (4) of the Small Constitution).

The legislator specifies the principles of Electoral Law for local self-government bodies. In the context of elections to decision-making bodies (the municipal council is not mentioned by name), three so-called electoral adjectives are used. Local elections to decision-making bodies are defined as universal (for the entire local community, obviously with certain exceptions – those deprived of public rights and incapacitated persons), equal (each voter has one vote) and held by secret ballot.[14] Noticeably absent are adjectives specifying the electoral formula – proportional or majority voting. This omission by the legislator should be regarded as entirely natural due to the different models of election formulas adopted in municipalities depending on the number of inhabitants. Small municipalities have opted for majority elections, medium-sized and larger ones – for the proportional formula (Article 72 (1) of the Small Constitution). Tellingly, there is no mention of the procedure for electing executive bodies in municipalities. Previously, the legislator (in the March amendment) had decreed indirect election of those bodies, and the Small Constitution was discreetly silent on the matter, referring to statutory regulations. At the same time, it is worth mentioning that preliminary discussions on direct election of executive bodies were then underway, hence perhaps this evasion by the legislator. In turn, the possibility of holding a local referendum is an important development. For the first time in the history of Polish constitutionalism and local self-government solutions, inhabitants of local communities were allowed to make decisions through this instrument of direct democracy. As regards the conditions and procedure of holding a referendum, the legislator referred to statutory regulation (Article 72 (2) of the Small Constitution). It is worth noting in this context that Poland's first law on the municipal referendum was passed as early as on 11 October 1991,[15] and the first municipal-level referendums were already held in 1992.

Provisions relating to local self-government finances were expanded. The legislator introduced three basic catalogues of revenues of local government units – their own revenues, subsidies and grants from the central budget. At the same time, a significant declaration in the Small Constitution stated that the sources

[14] See R. Miernik, *Charakterystyka wyborów samorządowych w Polsce*, "Studia Politicae Universitatis Silesiensis" 2019, vol. 24; D. Sieklucki, *Zmiany i projekty zmian w polskim systemie wyborczym po uchwaleniu Kodeksu wyborczego*, "Politeja" 2016, no. 43, pp. 289–310; B. Michalak, *Zmiana przepisów Kodeksu wyborczego przed wyborami samorządowymi 2018*, "Atheneum. Polskie Studia Politologiczne" 2018, no. 58.

[15] Act of 11 October 1991 on the municipal referendum (Journal of Laws 1991, no. 110, item 473).

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of revenues of local government units for public tasks have statutory guarantees (Article 73 of the Small Constitution). In this context, it should be noted that the Act on local taxes and charges was passed on 12 January 1991.[16]

The issues of supervision over the activity of local self-governments were regulated laconically. The legislator decided neither to indicate the supervisory bodies nor their criteria, not to mention supervisory measures. In the area of supervision, the legislator referred to statutory regulations (Article 75 of the Small Constitution). It is worth pointing out in the context of supervisory bodies that simultaneously with efforts to draft the Small Constitution, work was underway on the Act of 7 October 1992 on Regional Chambers of Audit,[17] which introduced, following the French model, specific financial supervisory bodies.

The last thing related to the operation of local self-governments mentioned by the legislator involved the principles of association of local self-government units. With regard to these principles and representation of the self-government's interests vis-à-vis the state authorities, the legislator referred to statutory regulations (Article 75 of the Small Constitution). However, they were not enacted until the summer of 2000.[18]

LOCAL GOVERNMENT IN THE POLISH CONSTITUTION OF 1997

The Polish Constitution was not adopted until 2 April 1997, or the eighth year of the Polish political and systemic transformation.[19] On the one hand, therefore, it constituted a summary of the Polish constitutional changes and the use of political practice after the breakthrough year of 1989. On the other hand, it constituted a certain summary of the Polish model of local self-government, built from scratch in the early 1990s. This is an important observation as there was no consensus among the political and academic elite on the future and final structure of local self-government. It suffices to say that when the National Assembly adopted the Constitution, no arrangements had yet been made for the next stage of self-government changes. The agreement only involved the basic level, i.e. the municipalities. It should also be noted, in the context of local self-governance, that the constitutional regulations of 1997 are very detailed and quite insightful. For the first time in a Polish constitutional act, there are as many as 12 articles referring to the issue of local

[16] Act of 12 January 1991 on local taxes and charges (Journal of Laws 1991, no. 9, item 31).

[17] Journal of Laws 1992, no. 85, item 428.

[18] See Act of 15 September 2000 on the principles of accession of local government units to international associations of local and regional communities (Journal of Laws 2000, no. 91, item 1009).

[19] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

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self-government (in the pre-war constitutions from the Second Polish Republic, there were four-five). This elaborate legal and constitutional structure is a direct result of several premises. One should bear in mind that the entire constitutional matter is quite extensive and consists of as many as 243 articles. Secondly, after the period of an undemocratic and centralised regime, the legislator tried to regulate in great detail certain matters that are usually left to be regulated by ordinary laws. In the intention of the legislator, it was supposed to be a kind of safeguard for the existence of local self-government in the future of the Polish state, in the face of potential centralising tendencies. This is how – in the opinion of many commentators and theorists – the detailed provisions relating to the issue of local self-government should be perceived.

As already mentioned, the current Polish Constitution contains as many as 12 articles dedicated to local self-government. They were included in two chapters – two (i.e. 15 and 16) in chapter 1 entitled "The Republic", and the remaining ten in chapter 7 entitled "Local government". Particularly noteworthy are the provisions contained in the introductory chapter of the constitutional act. Special emphasis should be placed on the elevation of the principle of decentralization of public authority to a constitutional principle.[20] It constitutes a certain canon of the modern democratic state, these trends are seen in many European basic laws. In the Polish legal and constitutional order, it is the foundation for the formation of local self-governing communities. It is a specific raison d'etre of the Polish local self-government. It is also worth pointing out that the legislator considered it appropriate to include the principle of creating local units (including, first of all, self-governmental units) in the constitutional order. The two key conditions include: the homogeneity of the area in social, economic or cultural terms, and the ability to perform public tasks (Article 15 of the Constitution). These two principles, taken together, were the basis for the development of a municipal map, with the decision to create medium-sized municipalities (whose average population is around 2,500). It was an effort to avoid the fragmentation of local units which can be seen, for example, in the Czech Republic, Slovakia or Hungary.[21] In these countries, virtually every larger village is a municipality-level self-governing community. Also important is the next article defining local communities. In the beginning, there is an important declaration of the legislator saying that all inhabitants of units of the fundamental territorial organization of the state constitute a self-governing community by virtue

[20] See *Zasady podstawowe polskiej Konstytucji*, ed. W. Sokolewicz, Warszawa 1998; *Zasady ustroju III Rzeczypospolitej*, ed. D. Dudek, Warszawa–Kraków 2009; J. Kuciński, W.J. Wołpiuk, *Zasady ustroju politycznego państwa w Konstytucji Rzeczypospolitej Polskiej z 1997 roku*, Warszawa 2012.

[21] See T. Kaczmarek, *Struktury terytorialno-administracyjne i ich reformy w krajach europejskich*, Poznań 2005.

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of law. In accordance with this declaration, since 1 January 1999 Poland has had three units of the fundamental organization of the state – municipalities, districts and voivodeships, and three self-governing communities – municipal, district and voivodeship communities. The legislator also decided to expand the constitutional definition of self-government. It was emphasised that local self-government participates in the exercise of public authority, i.e. it was explicitly included among the political and systemic institutions of the state (like the Sejm, the Senate, the President or the Council of Ministers). The autonomous nature of local self-government – performing public tasks (i.e. on behalf of the state) in its own name and on its own responsibility – was strongly stressed. An important aspect of the authority exercised by local self-government was also indicated – it performs a significant part of state tasks, so following this assumption, it is a real partner of the government administration (Article 16 of the Constitution). This should be seen as a serious harbinger of efforts to decentralise public power in the Polish state after 1997 (as a kind of continuation of the work begun with the 1990 municipal reform).

Turning our attention to the regulations set out in the chapter dedicated to local self-government, we should mention the adopted negative definition of local government tasks. In accordance with the presumption that local government tasks belong to the scope of local public administration, local self-government performs public tasks that have not been reserved for bodies of other authorities. The legislator specifies, however, that such a reservation must be contained in legal acts of statutory and constitutional rank (Article 163 of the Constitution). This should be treated as upholding the doctrine of administrative law existing since 1990 and referring to pre-war Poland (1918–1939).

The next article is crucial for the structure of the Polish self-government model. It explicitly stipulates that the basic unit of local self-government is the municipal level, which is also presumed to perform local tasks apart from those expressly reserved for other local units. Therefore, a similar solution was adopted here as for defining the scope of general tasks of local self-government (the so-called negative definition). It should be noted, however, that the definition of the municipality as the basic unit can be interpreted in two different ways. On the one hand, analysts took the view that the basic dimension of the municipal level stems from the fact that it is closest to people. Secondly, in 1997 (at the time when the constitutional act was passed) the municipality was the only level of the Polish local government administration. The issue of the structure of Polish local self-government was settled in an interesting way. In view of the dispute within the then constitutional commission, it was not possible to decide on the introduction of the district level. In fact, for a moment the district was included in the draft basic law thanks to the votes of parliamentarians from the Democratic Left Alliance and the Freedom Union, but in the face of strong opposition from the two other parties (especially the Polish People' Party, to a lesser extent the Labour Union) a different legal solution was

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chosen. The legislator opted not to enumerate all the levels of local self-government administration and only the municipality is constitutionally recognized (Article 164 of the Constitution). But at the same time, the creation of new local government units (implicitly the district) and regional government units (implicitly the self-governing voivodeship) was not excluded. However, they do not have a constitutional anchoring (unlike the basic level), only a statutory one. And this is what happened in June 1998, when the Sejm passed two further acts on local self-government: on district self-government and on voivodeship self-government.[22]

It should be noted that the Constitution upholds the previous regulations relating to the legal personality and property rights of local governments. It is similar with judicial protection of the independence of local government units (Article 165 of the Constitution).

In the context of local government tasks, the legislator maintained the distinction between their own and delegated tasks. It was clarified, however, that separate acts would regulate the mode of delegating and the manner of performing tasks delegated to self-governments by the government administration. At the same time, the Constitution specifies that any potential competence disputes between the government administration and the local self-government administration will fall under the jurisdiction of administrative courts.

A huge and admittedly still unresolved problem related to the functioning of local authorities is the issue of local finances. The problem should be looked at from two sides. Firstly: local governments (this remark does not apply only to municipalities) complain about their limited financial autonomy, i.e. without grants and subsidies their budgets cannot be balanced, while their statutorily established own revenues prove to be insufficient to perform their own tasks. Hence, there are calls for local self-governments to receive larger shares of PIT and CIT tax revenues and for greater freedom in levying local taxes and charges. The other major problem is the issue of transferring further tasks delegated by the government administration without providing funds for these public tasks. Local and regional self-governments have been drawing attention to this systemic problem for a long time, particularly after 2007 (so it does not only apply to the current government coalition and the post-2015 parliamentary majority).[23]

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[22] Act of 5 June 1998 on District Self-Government (consolidated text, Journal of Laws 2019, item 511); Act of 5 June 1998 on Voivodeship Self-Government (consolidated text, Journal of Laws 2019, item 512). See also B. Zawadzka, E. Sękowska, *Samorząd gminny w praktyce. Pierwsze doświadczenia*, Warszawa 1994; *Samorząd gminny w III RP: doświadczenia i perspektywy*, ed. M. Klimek, Lublin 2013; *Samorząd gminny. Komentarz*, eds. A. Szewc, G. Jyż, Z. Pławecki, Warszawa 2006; *Samorząd gminny. Wybrane zagadnienia*, ed. R. Kania, Płock 2012.

[23] See A. Łuczyszyn, *Zmiany w sektorze finansów publicznych i ich konsekwencje dla rozwoju lokalnego*, "Biblioteka Regionalisty" 2010, no. 10, pp. 103–113; *Zarządzanie finansami lokalnymi w opinii skarbników jednostek samorządu terytorialnego. Raport z badań*, ed. A. Kopańska, War-

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Following this path of our considerations, we should mention some modifications in this respect that appeared in the 1997 Constitution. Analysts point to their declarative character, without binding legal force. The legislator declared, but in a soft manner, that local self-government units are guaranteed a share in the state revenues adequate to the public tasks assigned to them (Article 167 (1) of the Constitution). In its present form, this provision should be regarded as a blanket statement that does not provide local government bodies with any possibility to enforce their rights. This declaration, not being a legal norm, has been bypassed by subsequent governments, which should be particularly emphasized in this context. Another declaration of the legislator referring to the issue of future changes in the scope of tasks and competences of local and regional units is of a similar nature. The Constitution declares in a rather vague manner that such changes in the sphere of self-government tasks should take place together with appropriate changes in the division of state revenues. In this way, the legislator's intention – this opinion can be expressed with little risk of mistake – was to ensure an increasing share for local self-governments as new tasks and competences are transferred to them (Article 167 (4) of the Constitution). But in this case, as well, the blanket nature of the provision is evident. A certain nod to local self-governments was the provision on local taxes contained in the next article of the Constitution. The Polish legislator declared that local units have the right to set the level of local taxes and charges. This right was granted to them by the previously mentioned Act on local taxes and charges of January 1991. It should be noted, however, that local governments have this right only to the extent specified in the provisions of ordinary laws. It means that they do not have the competence to abolish and establish local taxes, but only to set their rates annually (staying within the statutorily adopted "bracket").[24]

It should be noted that the legislator further clarified the provisions relating to the structure of local self-government bodies. On the grounds of dualism of these bodies, the Constitution specifies in more detail only elections of decision-making bodies, maintaining the electoral adjectives (equal, direct, universal and secret) proclaimed in the 1992 Small Constitution. The more detailed specification refers to the issues regulated in a separate law – in this context, the legislator indicates the principles and procedures for submitting candidates, holding elections, as well as the conditions for elections to be valid. A new regulation is an issue of creating executive bodies. In this respect, the legislator stipulates that the principles and procedures for

szawa 2019; P. Swianiewicz, J. Łukomska, *Finanse samorządu terytorialnego w dobie pandemii*, Warszawa 2020; A. Cieślak-Wróblewska, *Finanse samorządowe. Zapaść lokalnych budżetów coraz bliżej*, "Rzeczpospolita", 4.10.2020.

[24] More broadly, see H. Sochacka-Krysiak, *Finanse lokalne*, Warszawa 1994; E. Ruśkowski, *Finanse lokalne (zarys wykładu)*, Siedlce 2001; P. Swianiewicz, *Finanse lokalne. Teoria i praktyka*, Warszawa 2001; *Finanse lokalne: wybrane zagadnienia*, ed. L. Patrzałek, Poznań 2009.

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election and recall of these bodies are to be governed by a separate law. This was related to two reasons, which should be noted here for clarity of analysis. Firstly, the political practice associated with the mode of indirect elections in the first three local self-government terms (1990–2002), e.g. the required majority for election and the required quorum for election, e.g. two-thirds of the statutory number of councilors (which greatly paralyzed the procedure for electing executive bodies, especially at the start of the second term [1994–1998], when political parties appeared en masse in local government councils). Secondly, as we have already signaled above, there were already discussions at that time about the merits of introducing direct elections of executive bodies at the municipal level. Hence, the constitutional opportunity to change the procedure for electing executive bodies was seized at the session of the Sejm on 20 June 2002 with an Act on direct elections of village heads, mayors and city presidents.[25] The Constitution also included a provision referring to the statutes of local government units, which define their internal structure. Adopting the statute is the competence of the decision-making body, within the scope of statutory regulations (Article 169 of the Constitution). It should be noted that among the acts of local law, only the statute has been given the possibility of constitutionalizing of its adoption, which underscores its role among local normative acts.[26]

Also worth noting is the elaboration of provisions relating to the institution of local referendum. The very institution of popular vote at the municipal level was introduced into the constitutional order in 1992. Currently, the legislator has specified the material scope of referendum. It can involve matters relating to the members of a given self-governing community. At the same time, decision can be made through the institution of referendum on the dismissal of directly elected local government bodies (Article 170 of the Constitution). It is worth noting how the political practice of this legal regulation has evolved. While at the time of its adoption (1997) it referred only to the municipal council, after 1999 it also applied to the district council and the voivodeship assembly, and from 2002 – also to the village head, mayor and city president (as a single-person executive body at the municipal level).[27]

[25] Journal of Laws 2002, no. 113, item 984.

[26] More broadly, see K. Tybuchowska-Hartlińska, *Wybory do samorządu terytorialnego w Polsce*, Toruń 2012; *Wybory samorządowe w kontekście mediów i polityki*, ed. M. Magoska, Kraków 2008; *Wybory samorządowe 2010*, eds. M. Kolczyński, W. Wojtasik, Sosnowiec 2011.

[27] See D. Dąbkowski, W. Zając, *Referendum lokalne. Praktyczny komentarz do ustawy*, Zielona Góra 2002; A. Wierzbica, *Referendum i wybory oraz zarządzenia i uchwały jednostek samorządu terytorialnego: władcze, administracyjne formy wyrażania woli przez jednostki samorządu terytorialnego*, Warszawa 2014; E. Olejniczak-Szałowska, *Referendum lokalne w świetle ustawodawstwa polskiego*, Warszawa 2002.

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The issues of supervision should be given considerable attention. We have pointed to their superficial treatment by the legislator in 1992.[28] It should be indicated that they are regulated in greater detail in the current Constitution (Artcle 171 of the Constitution). Firstly, the basic criterion of supervision over the activities of local government is indicated – it is legality (i.e., compliance with the law in force). Secondly, the legislator lists the organs of supervision – they include the Prime Minister, voivodes and regional chambers of audit, which have already been mentioned. Therefore, supervisory bodies can be divided in the Polish systemic conditions into general and specialised (in financial matters). Thirdly, a special supervisory measure is indicated, namely the possibility that the Sejm dissolves the decision-making body in the event of gross violations of the Constitution and other laws. In this respect, the Sejm acts on a proposal from the Prime Minister and can only approve or reject the motion of the oversight body, but cannot correct it. At this point, it should be noted that the Prime Minister's supervisory powers have been weakened as he cannot dissolve a directly elected local government council on his own. This is a safeguard against any politicisation of the use of supervisory instruments in political games between parties seated both in the Sejm and in local government councils. Nonetheless, it should be pointed out that after more than 23 years of these regulations being in force, they have failed to completely eliminate this negative phenomenon.

The legislator sets out in detail the principles of association of local self-government units. For the first time, such a provision appeared in the 1992 Small Constitution. Currently, the legislator specifies that local governments have the right to join both national and international associations of local and regional communities. At the same time, the basic law allows for the possibility of establishing cooperation with local and regional communities in other countries (Article 172 of the Constitution). This cooperation has often taken the form of so-called partner cities. These forms of cooperation became very popular in the early 1990s and brought together cities from different parts of Europe as well as other continents. They were a charming form of exchanging experiences and opinions in many aspects of social and economic life. At the same time, the legislator declares that the rules of cooperation are determined by separate statutory regulations.[29]

[28] See B. Dolnicki, *Nadzór nad samorządem terytorialnym*, Katowice 1993; idem, *Samorząd terytorialny*, Warszawa 2016; *Nadzór administracyjny: od prewencji do weryfikacji*, ed. C. Kosiński, Wrocław 2006.

[29] See B. Dolnicki, *Samorząd terytorialny w polskich konstytucjach*, [in:] *W kręgu zagadnień konstytucyjnych. Profesorowi Eugeniuszowi Zwierzchowskiemu w darze*, ed. M. Kudej, Katowice 1999, pp. 315–328.

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LOCAL GOVERNMENT IN THE CROATIAN CONSTITUTION OF 1990

In the December 1990 Croatian Constitution, the issues of local self-government were covered in chapter 6 entitled "Organization of local self-government and administration".[30] In its original version, the chapter consisted of four articles (Articles 128 to 131). The Croatian legislator guaranteed the right of citizens to local self-government. The definition of local self-government in Croatian state law was also outlined. The legislator declared that this right included the following elements – the right to decide on local needs and interests of citizens, including the issues of spatial management and urban planning, settlement management, housing, public utilities, child care, social welfare, culture, physical culture, sports, technical culture, protection and improvement of the environment (Article 128 of the 1990 Constitution). This way of defining the right to local self-governance can be described as a model of enumerative definition, as it lists the key elements of the definitional approach to local self-governance. It is therefore a different approach than the one adopted by the Polish legislator, who opted for a model of negative definition. At the same time, reference was made to statutory regulation, which was supposed to specify in detail the tasks and organization of the self-government administration.

The Croatian legislator proclaimed the autonomy of local self-government units.[31] Its bodies were guaranteed independence in resolving public issues at the local level, within the framework of statutory regulations and statutes. At the same time, the basic criterion for supervision by the authorities of the Republic was defined – it was the legality of their activities. The December 1990 Constitution also provided for the possibility of creating local administrative bodies at the level of the municipality, kotar (district) or city. These bodies could be created to perform activities specific to state administration, in accordance with statutory regulations.[32] At the same time, the state law provided for the transfer of certain state administration tasks to the competence of local self-government bodies. The Croatian legislator declared unequivocally that in the performance of these delegated tasks, local self-government bodies were structurally subordinate to state administration bodies (Article 130 of the 1990 Constitution). It was therefore a different form of transferring delegated tasks than the one adopted in Polish solutions of the early 1990s.[33]

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[30] See *Konstytucja Republiki Chorwacji z 22 grudnia 1990 roku*, eds. A. and L. Garliccy, Warszawa 1995; I. Koprič, *Karakteristike lokalne samouprave u Hrvatskoj*, "Lokalna Samouprava i Decentralizacija" 2010, vol. 10(2), pp. 371–386.

[31] See K. Krysieniel, *System polityczny Republiki Chorwacji*, Poznań–Chorzów 2007; I. Koprić, *Stanje lokalne samouprave u Hrvatskoj*, "Lokalna Samouprava i Decentralizacija" 2010, vol. 10(3), pp. 665–681.

[32] See V. Đulabić, *Lokalna samouprava i decentralizacija u Hrvatskoj*, Zagreb 2018.

[33] See Zakon o područjima županija, gradova i općina u Republici Hrvatskoj ("Narodne novine", 86/06, 125/06, 16/07, 95/08, 46/10, 145/10, 37/13, 44/13, 45/13, 110/15), (2333), 30 December 1992.

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At the same time, the legislator decided to establish the županija as both a unit of local self-government and local administration. The constitution also stipulated that the territory of a županija was to be defined by statutory regulations, according to specific criteria: historical, transportation and economic factors. The most important condition for the creation of self-government of the županija was the possibility of creating self-governing units within the republic. It can be assumed that the legislator emphasised in this way the ability to perform public tasks – similarly to how Poland's 1997 Constitution defines similar issues, but for all local government units. Separate statutory regulations were to determine the organization and scope of activity of županija self-government bodies. At the same time, the legislator envisaged that large urban centers could be granted the status of a županija (Article 131 of the 1990 Constitution). On the basis of the Constitution of the Republic of Croatia, Sabor passed a law on the areas of county, cities and municipalities[34] according to which 21 counties, 2 districts, 70 cities and 419 municipalities were created. In Croatia, Županija is a unit of territorial division corresponding to the Polish voivodeship. Both the municipality and the city belong to local government units, while the county belongs to the regional one.[35] And it was not proclaimed as a regional unit until 2000. It was simply a second level of local government.

When defining the organizational structure of local self-government in the Republic of Croatia, the legislator specified the levels of municipality, kotar (as the traditional and historical name of the second-level unit of territorial division in the Croatian state) and city. The area of a local unit is determined by statutory regulations. An important element in determining the boundaries of these units was the obligation to consult the residents concerned. The legislator pointed to the key legal significance of the statutes of local self-government units – they determined the organization and scope of activity of their bodies. However, the provisions in the statutes had to be consistent with legal norms. The Constitution guaranteed direct participation of citizens in the management of local affairs. It is worth noting in this context that the institution of referendum was not mentioned. As far as the application of direct democracy within local communities was concerned, the legislator referred to statutory regulations and statutes. Other forms of local self-government could be established – under statutory regulations – both in housing estates and in their constituent parts (Article 129 of the Constitution).

[34] Zakon o područjima županija, gradova i općina u Republici Hrvatskoj ("Narodne Novine", 90/92), (2333), 30 December 1992.

[35] See Zakon o lokalnoj samoupravi i upravi ("Narodne novine", 90/92), (2334), 30 December 1992.

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CHANGES AFTER 2000 – LOCAL GOVERNMENT AND POLITICAL SYSTEM

After the period of demokratura (a hybrid system combining elements of both democratic and authoritarian systems), when political and systemic institutions were curtailed by the administration of the first President of the Republic Franjo Tudjman, a decision was made to amend constitutional regulations.[36] These amendments referred to the issues of the state organization, the regulation of mutual relations between the supreme authorities, but also involved the elaboration of local self-government provisions. This was related to the practice of limiting the autonomy of local governments that were governed by other political groups than the then-ruling Croatian Democratic Union (*Hrvatska demokratska zajednica*, HDZ).[37] A glaring example of these anti-democratic and centralising tendencies was a block on the election of an opposition politician to the post of mayor of Zagreb after 1995. The first important step towards the creation of a modern administration in Croatia was the creation and publication in 2000 of the Action Plan of the Croatian Government, constituted after the parliamentary elections. The plan assumed the initiation of a large-scale decentralization process, strengthening the role of local and regional self-government. The next Croatian Government in its programme for 2004–2007 has given high priority to the continuation of local government reforms.[38]

After the 2001 amendment, the Croatian legislator declares that state power is built on the principle of separation of powers according to the Montesquieu model (legislative, executive and judiciary branches).[39] It is worth emphasising the proclamation made by the legislator in the 2001 constitutional amendment that state power is limited by the constitutionally guaranteed right to local and regional (also called county) self-government (Article 4 of the 2001 Constitution).[40]

In the Constitution amended in 2001, the issues of local self-governance were covered by the sixth chapter with a changed title – "Sub-municipal, local and county (regional) self-government". In its current version, this chapter has six articles (Articles 132 to 137). A significant change in the organizational structure of local and regional self-government was the indication of the role and importance of representative bodies. The legislator also underlined the essence of electing

[36] See M. Grzybowski, J. Karp, *System konstytucyjny Chorwacji*, Warszawa 2007; N. Zakošek, *Politički sustav Hrvatske*, Zagreb 2002.

[37] See N. Zakošek, *Pravna država i demokracija u postsocijalizmu*, "Politička misao" 1997, vol. 34(4), pp. 78–85.

[38] See *Samorządy w Unii Europejskiej*, Warszawa 2007, pp. 11–12.

[39] See *Konstytucja Republiki Chorwacji*, eds. A. and L. Garliccy, Warszawa 2007; *Reforma lokalne i regionalne samouprave u Hrvatskoj*, ed. I.I. Koprič, Zagreb 2013.

[40] See I. Koprić, *Priority Areas in Reforming Governance and Public Administration in Croatia*, Zagreb 2001.

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representative bodies by defining the so-called electoral adjectives (secret, direct, equal and universal suffrage). At the same time, the institutions of direct democracy that can be used in self-governing communities were made more specific – in this context, the legislator mentioned referendums and assemblies.

The Constitution introduces a modification to the structure of self-government administration. Municipalities and cities were recognized as local self-government units, so the term "kotar", mentioned in the original version of the December 1990 Constitution, is not used. On the other hand, županijas were explicitly mentioned as units of county (regional) self-government. By means of statutory regulation, it is possible to give the capital city, Zagreb, the status of a županija self-government, and other larger cities in the Republic may be granted the competences of a županija self-government.[41]

With regard to the tasks and competences of regional self-government, the legislator mentioned education, health care, spatial management and urban planning, economic development, transportation and transport infrastructure, and planning and development of the network of educational, health, social and cultural institutions. The legislator unambiguously states that priority in the allocation of tasks of local and regional self-government is given to local units closest to the citizens. This provision reflects the principle of subsidiarity which is also present in Polish constitutional and statutory regulations. Another important aspect of constitutional regulations is the specification of criteria for the scope of activity of local and regional government units. The legislator identifies the following criteria: the extent, nature of tasks and the requirement of efficiency and economy.[42]

Statute regulations of local and regional units were made more precise. The statutes of these units determine the internal organization and scope of activity of their bodies, and are also intended to adapt them to local needs and capabilities (Article 135 of the Constitution).

The inclusion of the issue of local self-government finances in the amendment to the Constitution should be considered an important change.[43] The legislator declared that local and regional units have the right to their own revenues. They can freely use them to perform the tasks within the scope of self-government administration. At the same time, the legislator declared that revenues of local and regional units should be adequate to the powers delegated to them under statutory and constitutional regulations. We also find an imprecise constitutional regulation

[41] See Zakon o Gradu Zagrebu ("Narodne novine", 62/01, 125/08, 36/09, 119/14), (1001), 11 July 2001.

[42] See Zakon o regionalnom razvoju republike Hrvatske ("Narodne novine", 153/2009), (3746), 21 December 2009.

[43] See Zakon o financiranju jedinica lokalne i područne (regionalne) samouprave ("Narodne novine", 117/93, 69/97, 33/00, 73/00, 127/00, 59/01, 107/01, 117/01, 150/02, 147/03, 132/06, 26/07, 73/08, 25/12, 147/14, 100/15, 115/16), (2276), 31 December 1993.

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under which state authorities are obliged to financially support weaker local units. Such assistance should be provided under the provisions of a separate law (Article 137 of the Constitution).[44]

CONCLUSIONS

The presented text presents the constitutionalizing of territorial administrations in two post-socialist countries – Poland and Croatia. In both cases, the creators of the local government model referred to three solutions – domestic legal regulations from before the communist rule, Western European self-government solutions (in the Polish case – mainly from France and Germany, while in the Croatian case – from Austria). This is justified by the historical links with the indicated European countries in the 19th and 20th centuries, when European models of local authorities were formed. The described constitutionalizing proceeded in a different way. In the case of Poland, we were dealing with several amendments to the existing constitutional order (1989–1990), the establishment of a provisional Constitution in 1992 and the adoption of a new constitutional law in 1997. The constitutional order was accompanied by a broad reference to the regulation of ordinary legislation. In the case of Croatia, on the other hand, we are dealing with a Constitution adopted in December 1990 and a few amendments in 2001. Significant changes in the legal order in the context of local and regional self-government were introduced in the 1990s and after 2000 under ordinary legislation. It is worth noting in the context of the phases of individual local government reforms in both post-socialist countries that in Poland the formation of local and regional authorities took place in two phases (1990 – commune level, 1998 – poviat and self-government voivodship level). In turn, already at the beginning of the formation of the independent statehood of the Republic of Croatia, it was decided to create a two-stage structure of local administration based on the municipality and the county.

Fundamental changes in the structure and functioning of the self-governing authorities in the Croatian case were carried out as part of the process of democratization after 2000 (first alternation of power) and the decentralization and Europeanisation of the Republic, related to accession to the European Union (2013).[45] Comparing constitutional regulations in both post-socialist countries, one should

[44] More broadly, see A. Bajo, M. Bronic, *The effectiveness of instruments of fiscal policy in the palliation of regional inequalities in Croatia*, [in:] *Decentralisation and regionalisation: the Slovenian experience in an international perspective*, eds. S. Setnikar Cankar, Z. Sevic, Greenwich–Ljubljana 2008.

[45] More broadly, see A.L. Ivan, C.A. Iov, *Croatia-administrative reform and regional development in the context of EU accession*, "Transylvanian Review of Administrative Sciences" 2010, no. 31E; Z. Fröhlich, I. Dokić, *Challenges in Implementing Croatian Regional Policy within semi-Eu-*

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point out the very detailed regulations that were included in the Polish constitutional law, it contains as many as 12 articles referring to local authorities. This is the most extensive constitutional regulation in the current political tradition of the Polish. In Croatia, on the other hand, the constitutional regulation is more concise, we find more reference to the regulation of ordinary laws. At the same time, it should be pointed out that in both cases attempts were made to model the European Charter of Local Self-Government from 1985 and the standards developed by the institutions of the Council of Europe.[46] In accordance with the provisions of the Charter, the regulations concerning local authorities have been given constitutional and statutory legitimacy. The decisive authority in the local unit was made the councils of universal suffrage. The main part of the state's tasks in the field of local issues has been transferred to the competence of local authorities. Local government communities have been guaranteed judicial protection of their rights (separate administrative courts). The latest planned changes relate to the issue of increasing citizens' participation in the management of local communities and the decentralization of public finances in order to increase the participation of local authorities. It can be said that the contemporary challenges facing local government administration are related to the overlap of three processes – political transformation, democratization and Europeanization. The task related to the Europeanization of local governments is related, for example, to the absorption of EU funds, often distributed at the level of regional self-governments. This was one of the main prerequisites for the creation of self-governing voivodships in Poland at the end of the 1990s. The process in this regard in Croatia was similar. European integration is also a new platform for international cooperation between local and regional actors, for example in the Committee of the Regions. It is an important advisory body for the EU institutions (the European Commission or the European Parliament). The issue facing public administration is to determine the optimal size of local units and to determine the scale of optimal functionality of local authorities. The above problem refers to the number of municipalities as a basic unit and to a large extent also to the second level of local government administration – the poviat. Similar discussions also took place in the Republic of Croatia, both in the world of experts and decision-makers.

ropean context: 52nd Congress of the European Regional Science Association "Regions in Motion – Breaking the Path", Bratislava 2012.

[46] See M. Škarica, *Functional Decentralization in Croatia: Implementation Problems within the Existing Local Self-Government System*, [in:] *On the Way EU Membership Present and Future Challenges for Candidate and Potential Candidate Countries*, Zagreb 2010.

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ABSTRAKT

Przedmiotem analizy jest przywracanie instytucji samorządu lokalnego w dwóch państwach socjalistycznych – Polsce i Chorwacji – na początku lat 90. XX w., z pewnymi odwołaniami do przeszłości. Kluczowe pytanie badawcze odnosi się do kwestii konstytucjonalizacji samorządów lokalnych w tych dwóch państwach postsocjalistycznych. Zbadano: jak proces konstytucjonalizacji przebiegał, jakie konkretne fazy można wyróżnić w jego ewolucji oraz czy konstytucjonalizacja wpisuje się w szersze środkowoeuropejskie, czy nawet szerzej – europejskie, trendy. Podstawowe pytanie badawcze brzmi: Jaki faktyczny model samorządu terytorialnego kreślili ustrojodawcy, zarówno w przypadku polskim, jak i chorwackim? Wykorzystano kilka metod badawczych, które uznano za właściwe dla przeprowadzenia analizy, w tym analizę prawno-instytucjonalną, analizę historyczno-opisową oraz metodę komparatystyczną. Artykuł został napisany z punktu widzenia nauki o polityce i administracji, ale obecne są w nim również wątki podejmowane w analizach rodem z nauk prawnych. Stoimy na stanowisku, iż poszerzenie perspektywy badawczej należy uznać za fakt pozytywny dla uzyskanych wniosków analitycznych.

Słowa kluczowe: samorząd lokalny; konstytucjonalizacja; restytucja; Polska; Chorwacja; państwa postsocjalistyczne