

Dawid Bunikowski\*

Robert Musiatkiewicz\*\*

## THE PRINCIPLES OF SUBSIDIARITY AND DECENTRALISATION DURING THE COVID-19 PANDEMIC, WITH PARTICULAR EMPHASIS ON THE POLISH AND FINNISH LEGAL SYSTEMS

### Abstract

*The article focuses on the principles of subsidiarity and decentralisation during the COVID-19 pandemic, with particular emphasis on the Polish and Finnish legal systems (both countries in the Baltic Sea Region). How were those constitutional principles concerning self-government “treated” (dealt with) by public authorities? It analyses the principles of subsidiarity and decentralisation, interpretations of the principle of decentralisation in both Poland and Finland, relations between the state and local self-government, cooperation between the government and self-government administration in combating the pandemic in selected countries, and Polish and Finnish regulations during the pandemic. Methodologically speaking, many different methods and sources are applied. The methodological approach is analytical (analysis of legal acts, literature, media releases and different reports), but also empirical (observation of reality). The thesis is that the principles of subsidiarity and decentralisation during the COVID-19 pandemic were commonly disregarded during the pandemic.*

---

\* Dr, Visiting Researcher/University of Eastern Finland, Visiting Scholar/Cardiff University, Lecturer/University of Guyana, University Professor/State University of Applied Sciences in Wloclawek, <https://orcid.org/0000-0001-5152-7468>; e-mail: dawidbu@uef.fi.

\*\* Dr, Rector, University Professor/State University of Applied Sciences in Wloclawek, <https://orcid.org/0000-0001-7466-1934>; e-mail: robert.musiatkiewicz@puz.wloclawek.pl.

## Keywords

*subsidiarity; decentralisation; the COVID-19 pandemic; Poland; Finland*

## INTRODUCTION

The article is intended to shed some light on the principles of subsidiarity and decentralisation during the COVID-19 pandemic (mostly, in 2020–2021), with particular emphasis on the Polish and Finnish legal systems (both countries in the Baltic Sea Region). The paper focuses on how those constitutional principles concerning self-government were “treated” (dealt with) by public authorities during the pandemic. The most important question might be put also in the following simple way: was self-government<sup>1</sup> really appreciated (duly taken into account) in decision making processes (concerning regulation of human behaviour) during the pandemic? The paper combines administrative law, consti-

---

<sup>1</sup> „Self-government” (also, “self-governance”, “self-rule”) is a broad term. In practice, it includes e.g. local (self-)government and regional (self-)government as well as other forms of citizens/residents/members ruling themselves in some units without external government control/an external authority.

In the paper, we use the terms „self-government” and “local government” often interchangeably as local government in municipalities is the essence of self-government. Also, in the English language and English translations of foreign legal acts, “local government” is a broad term and seems often used for the description of the concept of “territorial self-government” (in Polish, *samorząd terytorialny*), for both local and regional self-government units. It is not only about municipalities then.

However, the term “local government” has some limitations in the Polish and Finnish languages as it reduces “self-government” in such cases to only self-government in municipalities (at the lowest level), often skipping self-government in regions (a regional level). It is necessary to be aware of all those subtle nuances in the meanings of the terms (words, names) and concepts (ideas) used. For example, the Finns use the constitutional term “municipal and other regional self-government” (*kunnallinen ja muu alueellinen itsehallinto*).

Also, when the term “government” is used in the paper it is meant “central government”. Simply, this paper strongly distinguishes “government” from “self-government”. “Self-government” is “territorial self-government” here, mostly related to “local self-government” in the Polish or Finnish understandings of the term (“local government”, “municipal self-government”) but also to other higher regional forms.

The English understanding of the term “local government” equals the Polish “territorial self-government” then.

tutional law, comparative law, sociology of law, as well as public health law (and, to some extent, legal theory and political sciences).

The paper structure is as follows. First, the principles of subsidiarity and decentralisation are presented in general. Second, it is considered how in Poland the principle of decentralisation is interpreted. Third, the same as above is considered in relation to Finland. Fourth, relations between the state (i.e. government administration) and local self-government are discussed. Fifth, cooperation between the government and self-government administration in combating the pandemic in selected countries is analysed. Sixth, Polish regulations adopted during the pandemic (and related to the pandemic) are presented. Seventh, Finnish regulations during the pandemic are discussed. At the end of the paper, there are conclusions to sum up these considerations.

The authors employ a broad range of methods and sources. The approach is analytical, but also empirical. One of the objectives of the paper is to analyse legal acts and literature as well as media releases or different reports, but also to observe and (as much as possible) try to objectively describe the “reality we live in”. It is important to analyse different legal systems and compare them and to take a closer look at legal reality during the pandemic. Some lessons about trends may be learned from such an analysis. The focus is on the two following countries in the Baltic Sea Region: Poland and Finland. The paper authors reside in these countries. Thus, they can cooperate in the field. This kind of comparison seems original in the legal literature concerning the pandemic. The comparison is justified by many other arguments which are described below.

It is good to remind the reader of the fact that both Baltic countries are now European Union members, but were occupied by the Russian Empire in the 19<sup>th</sup> century and attacked or controlled by the Soviet Union in the 20<sup>th</sup> century. Both countries share similar experiences concerning Russia’s authoritarian interference in their external and internal policies. Notwithstanding this, Finland has been recognised as a human rights – and rule of law-oriented country, while Poland was criticized for the erosion of the rule of law after 2015. The legal cultures of both countries are not analysed as the authors focus on the principles of subsidiarity and decentralisation as well as the pandemic regulations. The expected added value resulting from the comparison to be made seems as follows: first, despite the centralist approach, the Finnish expe-

rience enriches the Polish legal system and enhances its understanding (e.g. how to limit rights and freedoms without exaggerated sanctions or how to understand the principles discussed in the paper); second; there are good practices to be implemented like the Finnish introduction of a state of emergency in the pandemic; third, the regulations to be compared are similar, but their application has led to diverging results and this comes from different political cultures; fourth, in both countries, central government played the most important role in the pandemic and this shows the domination (but also the significance) of central government during such crises.

The topic was chosen not only because the authors live in different countries and observe the pandemic reality/legal regulations during the pandemic from a different angle, but also because the authors perceive many serious, also constitutional, problems concerning the axiology of contemporary constitutional orders in (real or formally established) states of emergency during the pandemic. In fact, those problems concern the implementation of constitutional principles and values. Certainly, such axiological, constitutional problems may appear in the future during similar pandemics or other disasters. It is claimed that the principles of subsidiarity and decentralisation during the COVID-19 pandemic were commonly disregarded (not taken into account duly) in many countries and the role of self-government was limited to minimum by the central authorities. The cases of the Polish and Finnish legal systems, but not only of these, show this attitude. It seems that only some (but not all) federal states like Germany paid more attention to the principles of subsidiarity and decentralisation during the COVID-19 pandemic. This finding seems significant for jurisprudence (and legal science).

Of course, theoretically or in practice, there might be some correlation between a federal or unitary form of a country and the role of territorial self-government in combating the pandemic. Nevertheless, the authors do not pretend to make any absolute or categorical claims about this correlation as some unitary states may also adopt a similar approach to the German one and, *vice versa*, some federal states may follow a more centralist approach.

## I. PRINCIPLES OF SUBSIDIARITY AND DECENTRALISATION

The origins of the principle of subsidiarity can be found in the philosophy of Aristotle and St. Thomas Aquinas. Aristotle treated subsidiarity as the principle of justice, equity, according to which the union (association) is not an end, but a means for its participants to help themselves. Thomas Aquinas understood subsidiarity as the idea on which cooperation between individuals and communities should be based.<sup>2</sup> The principle of subsidiarity was developed in the social teaching of the Catholic Church expressed in the encyclicals of Leo XIII's *Rerum Novarum*<sup>3</sup> (1891) and Pius XI's *Quadragesimo Anno*<sup>4</sup> (1931). From the encyclical *Quadragesimo Anno* one can derive the principle of a fair division of public/social tasks. It is based on a multitude of entities carrying out tasks resulting from their needs and serving their communities. Tasks cannot be imposed by anyone, because they result from the nature of those entities that have the best knowledge and ability to implement them. Therefore, delegating tasks to other higher-ranking units against the will of lower units is a destructive and unfair process.

The principle of subsidiarity is regarded by many scholars as the fundamental principle of the existence of local self-government. In this approach, subsidiarity is closely related to the performance of public tasks. George Stigler sees this as an opportunity to effectively manage public affairs. First of all, public authority works better when it is closer to people. Second, residents should have the right to decide the type and quantity of public services to be provided for them.<sup>5</sup> Stigler, therefore, postulates that public decisions should be made at a level that ensures

---

<sup>2</sup> W. Piwowarski, „Zasada pomocniczości w życiu Kościoła”, *Collectanea Theologica*, 1971, Issue 41/4, p. 6.

<sup>3</sup> Leo XIII, *Rerum Novarum. On Capital and Labor*, 1891, available at: [https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum.html](https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html) [last accessed 20.4.2022].

<sup>4</sup> Pius XI, *Quadragesimo Anno. On the reconstruction of the social order*, 1931, available at: [https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf\\_p-xi\\_enc\\_19310515\\_quadragesimo-anno.html](https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html) [last accessed 20.4.2022].

<sup>5</sup> G. Stigler, “The Tenable Range of Functions of Local Government”, in Joint Economic Committee, Subcommittee on Fiscal Policy, U.S. Congress (ed.), *Federal Expenditure*

allocative efficiency by entities appropriate to the scale of specific cases/tasks. Mancur Olson attributes subsidiarity to the cost of implementing public tasks. Each public service is associated with a specific fiscal cost, hence, as he points out, one should strive for an optimal fiscal balance – equivalence between the public service and its cost, which in the case of some public services may be lower if it is provided by the local government.<sup>6</sup> Wallace E. Oates, on the other hand, believes that the level of authority carrying out specific tasks should correspond to the addressees (beneficiaries) of these tasks – a set of people who consume (use) these benefits (certainly, tasks are not benefits). According to Oates, the performance of public tasks by local governments leads to specific benefits owing to a better understanding by local authorities of the residents' needs, their greater responsibility for the performance of tasks, elimination of unnecessary intermediate levels of power and fiscal benefits. In an ideal, decentralised system, as Oates argues, it is up to residents (voters) to decide which of the public tasks should be carried out by certain levels of power, with the proviso that there is a justification for the control of local government by the central authorities, as well as for partial financing of its tasks from the state budget.<sup>7</sup>

From a legal and political perspective, the organization of the state on the principle of subsidiarity is based on the following assumptions: decentralisation of the state organization and the transfer of important attributes of state power to local and regional communities/entities; self-reliance and independence (legal and financial) of local government units in the organization of local and regional affairs; identifying issues of local and regional importance and transferring them with tasks to the entities closest to their recipients (the entities responsible for carrying out public tasks are situated as closest as possible to the recipi-

---

*Policy for Economic Growth and Stability*, U.S. Government Printing Office: Washington, DC, 1957, pp. 213-219.

<sup>6</sup> M. Olson, "The Principle of Fiscal Equivalence: The Division of Responsibilities among Different Levels of Government", *American Economic Review*, 1969, Issue 59 (2), pp. 479-487.

<sup>7</sup> W. Oates, "The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and Tiebout Hypothesis", *Journal of Political Economy*, 1969, Issue 77, pp. 957-971.

ents of those tasks); the possibility of delegating tasks “upstream” in the case of a guarantee of their more effective implementation.<sup>8</sup>

The principle of subsidiarity is often linked to the principle of decentralisation (the definition of the principle of decentralisation is provided in the next paragraph). Both of these principles overlap and work together, but they are not the same. The relations between the principles of decentralisation and subsidiarity are aptly defined by Irena Lipowicz, who points out that it cannot be stated which of these two system (constitutional) principles is more important or more valuable – both perfectly complement each other in creating a balance, which is typical of the European heritage, between freedom and security, participation and hierarchy, discipline and creativity. This form (understanding) of the principle of subsidiarity is an important component of the European constitutional tradition and should be nurtured by successive generations of lawyers. To rely solely on the principle of decentralisation with the addition of a narrowly interpreted or even distorted principle of subsidiarity would weaken the position of local government.<sup>9</sup>

The principle of decentralisation assumes the creation of specific systems of tasks and competences, which, as a rule, comes down to the formula of “transferring public tasks from the top down” to the lower links of their performance (as there are different links of performance of tasks).<sup>10</sup> A feature of decentralisation is such a way of organizing the administrative apparatus in which lower-level bodies are not hierarchically subordinate to higher-level bodies, while interference in the scope of their activities may only take place on the basis of statutes and in forms provided for by law.<sup>11</sup>

In recent decades, decentralisation has been recognised as the fundamental principle of the functioning of modern states. The transformations of economies in Latin America, Africa, and Asia were based

---

<sup>8</sup> J. Ciapała, „Konstytucyjny status samorządu terytorialnego”, in M. Ofiarska, J. Ciapała (eds.), *Zarys prawa samorządu terytorialnego*, Przedsiębiorstwo Wydawnicze Ars boni et aequi: Poznań, 2001, p. 36.

<sup>9</sup> I. Lipowicz, *Samorząd terytorialny XXI wieku*, Wolters Kluwer Polska SA, 2019, p. 145.

<sup>10</sup> K. Kokocińska, „Decentralizacja jako ustrojowa zasada relacji pomiędzy organami władzy publicznej”, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2016, Issue 78(2), p. 28.

<sup>11</sup> D. Kurzyńska-Chmiel, „Samorząd terytorialny – terażniejszość i wnioski na przyszłość”, *Samorząd Terytorialny*, 2020, Issue 9, pp. 7-15.



on this principle. The World Bank recognises decentralisation as one of the most important elements of state management.<sup>12</sup> In the two largest countries in the world (in terms of population), China and India, the introduction of the principle of decentralisation in the early 1990s is recognised as the main cause of their phenomenal industrial growth.<sup>13</sup>

Until the outbreak of the Covid-19 epidemic, there was a widespread belief that a centrally managed state is ineffective, and that the effectiveness of public tasks is ensured by delegating power to lower-level entities. Decentralisation is often perceived as reducing the role of the state, weakening its central bodies in favour of regional and local structures.

## II. POLAND – HOW IS THE PRINCIPLE OF DECENTRALISATION INTERPRETED?

The self-government sector in Poland started in 1990 after the collapse of communism. The Local Self-Government Act (The Municipal Act) of 8 March 1990 introduced municipalities as a form of self-government.<sup>14</sup> Local government was organized in municipalities (in Polish: *gmina*) as the main units.<sup>15</sup> Authorities of municipalities were chosen by people (citizens who were residents), which was a novelty in comparison with the communist centralist regime.<sup>16</sup>

---

<sup>12</sup> S.J. Burki, G.E. Perry, W.R. Dillinger, *Beyond the Center: Decentralizing the State*, World Bank, 1999, pp. 9 and next.

<sup>13</sup> P. Bardhan, *Decentralization of Governance and Development*, *The Journal of Economic Perspectives*, 2002, Vol. 16, No. 4 (Autumn), pp. 185-205, especially p. 185.

<sup>14</sup> See *Ustawa o samorządzie gminnym z 8 marca 1990 r. (The Local Self-Government Act (The Municipal Government Act) of 8 March 1990)*, *Dz.U. 1990, nr 16, poz. 95*. It is good to mention Article 1, which reads that "The inhabitants of the commune (municipality) form a self-governing community by law".

<sup>15</sup> Under the first statute (1990), only communes (municipalities) enjoyed the status of territorial self-government bodies.

<sup>16</sup> It is necessary to highlight that the novelty was not the very existence of local authorities. It was rather their character as entities of territorial self-government. According the socialist Constitution of 1952 (Article 34), national councils (*rady narodowe*) were elected by the people, but these were certainly conceived as territorial units of state (centralised) authority.



The 1998 reform<sup>17</sup> added two other (higher) units of the self-government structure: poviats (in Polish: *powiat*<sup>18</sup>; including municipalities) and voivodeships (in Polish: *województwo*; including poviats and gminas). The administrative division of Poland has been on three levels of sub-division since 1999 as the following: there are 16 voivodeships (regions), 380 poviats (including 66 cities with poviat status), and 2 478 gminas (municipalities). Thus, voivodeships are like regions, poviats resemble counties, and gminas are municipalities.

In Poland, the principle of decentralisation of public administration is a normative principle. First of all, it was expressed in Article 15 par. 1 of the Constitution of the Republic of Poland<sup>19</sup>, according to which the territorial system of the Republic of Poland is to ensure the decentralisation of public power (authority). In turn, Article 15 par. 2 of the Constitution of the Republic of Poland stipulates that the fundamental (basic) territorial division of the state, taking into account social, economic, or cultural ties, and ensuring the ability of territorial units to perform public tasks, is specified by statute. The Constitution also stipulates that local self-government participates in the exercise of public authority. Local government, being entitled to do so under statutes, performs a significant part of public tasks on its own behalf and under its own responsibility. The task of local self-government in the structure of public authority in the state is to “participate” in the exercise of public power – the exercise of public authority, the scope of which is a manifestation of decentralised and integrated state authority.<sup>20</sup> The constitutional regulation is a manifestation of the decentralisation of public administration, a legally established degree of independence in the performance

---

<sup>17</sup> See these two important legal acts on self-government in poviats and voivodeships: *Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym* (The Poviat Local Government Act of 5 June 1998), *Dz.U.* 1998, nr 91, poz. 578 and *Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa* (The Voivodship Self-Government Act of 5 June 1998), *Dz.U.* 1998, nr 91, poz. 576.

<sup>18</sup> Sometimes *poviat* is translated as „county”.

<sup>19</sup> *The Constitution of the Republic of Poland of 2<sup>nd</sup> April 1997*, as published in *Dziennik Ustaw* No. 78, item 483, available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [last accessed 20.4.2022].

<sup>20</sup> P. Sarnecki, „Art. 16”, in L. Garlicki, M. Zubik (eds.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I*, 2nd ed., Wydawnictwo Sejmowe: Warszawa, 2016, available at: <https://sip.lex.pl/#/commentary/587734544/531984?tocHit=1> [last accessed 19.4.2022].

of certain types of tasks by a decentralised unit. It is relative independence – the limits of independence of bodies performing tasks on the basis of decentralised administration are determined by the means of supervision.<sup>21</sup> It is worth noting that Poland is a unitary state (Article 3 of the Constitution<sup>22</sup>) and the most important principles of the government are highlighted in Article 2<sup>23</sup>: these are democracy, the rule of law, and social justice.

Chapter VII of the Constitution (“Local Government”) consists of important provisions concerning subsidiarity and decentralisation. According to Article 163, “Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”. The Constitution establishes different forms of local government: “The commune (*gmina*) shall be the basic unit of local government” (Article 164 par. 1) and “Other units of regional and/or local government shall be specified by statute” (par. 2). The lowest level of local government, the commune/municipality is crucial in terms of subsidiarity, which is visible in Article 164 par. 3 (“The commune shall perform all tasks of local government not reserved to other units of local government”). The principle of subsidiarity is also present in other provisions of the chapter as in Article 166 par. 1, which reads: “Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility”. Also, the Polish judiciary should protect the nature of local government, its tasks and independence (see Article 165 par. 2<sup>24</sup>; Article 166 par. 3<sup>25</sup>). Local government funds are protected by Article 167, which establishes that “Units of local government shall be assured of public funds adequate for the performance of the duties assigned to them” (par. 1) and

---

<sup>21</sup> Z. Duniewska, B. Jaworska-Dębska, R. Michalska-Badziak, E. Olejniczak-Szałowska, M. Stahl, *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, Difin, 2002, p. 132. It is worth mentioning that the scope of supervision is determined by the law and limited to the criterion of legality (see Article 171 of the Constitution).

<sup>22</sup> It reads: “The Republic of Poland shall be a unitary State.”

<sup>23</sup> It reads: “The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.”

<sup>24</sup> It reads: “The self-governing nature of units of local government shall be protected by the courts.”

<sup>25</sup> It reads: “The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration.”

units of local government have “their own revenues as well as general subsidies and specific grants from the State Budget” (par. 2). In legal, economic and political practice, of course, official representatives of units of local government may complain at times as these often have many duties, but not enough funding for those tasks.

### III. FINLAND – HOW IS THE PRINCIPLE OF DECENTRALISATION INTERPRETED?

The answer to this question is complex. Nevertheless, one needs to go to Finland’s little known history of self-government. Generally, Finland, being famous for its Nordic welfare state and educational systems of high quality, is not so well-known in terms of its constitutional framework. However, the Finnish system seems interesting. This is why one should focus on this country and its self-government.

Finland is a parliamentary republic according to the 1999 Constitution. This is a unitary state organized on a decentralised basis. It is an officially bilingual state (Finnish; Swedish) and this is important for both the state organization and the country’s political culture. In fact, Finland enjoys three levels of governance: central, regional, and local. However the self-governing powers of the regional level in mainland Finland were limited for a long time. Local self-government (municipalities) was introduced in the 1860s legislation and this remains the basis for the current system (in municipalities). It has long traditions. Independence from Russia in 1917 brought new legislation. There was adopted “universal direct suffrage at the municipal level”. Local government has evolved little by little ever since. It is important to notice that in 1995, the Local Government Act was established. However, it was revised in 2015. In addition, the Åland Islands are granted special status. It has been a “self-governing, unilingual province” since 1921. The aim is “to safeguard the position of the Swedish language, culture, and local customs on the Islands”.<sup>26</sup>

---

<sup>26</sup> *Finland*, available at: <https://portal.cor.europa.eu/divisionpowers/Pages/Finland.aspx> [last accessed 11.4.2022].

Finland has 19 provinces/regions (*maakunta/landskap*), of which 18 are on the mainland and one is the self-governing Åland Islands. Finland also consists of 310 municipalities (*kunta/kommun*).<sup>27</sup> For now, there are also 18 Regional Councils (*maakunnan liitto/landskapsförbund*) which are “indirectly composed by the local authorities of the mainland province and constituted mandatory joint municipal authorities”.<sup>28</sup> The Regional Councils are certainly enshrined in the law and are organs representing some municipalities. Each council is granted funding from its member municipalities (but also by funds for regional development from the government and the European Union<sup>29</sup>). Moreover, 6 Regional State Administrative Agencies (AVI) and 15 Centres for Economic Development, Transport and the Environment (ELY) have had competencies of the former counties (*lääni/län*) since 2010 and constitute the regional level of deconcentrated state administration. The Åland Islands have a large Swedish speaking majority (88%). They have been a self-governing province (since 1921). This province has its own parliament and government. It consists of 16 municipalities.<sup>30</sup> Moreover, the Åland Islands status is shaped by international law. The province Åland has legislative powers, that said, and this body is regulated by the Finnish Autonomy Act<sup>31</sup> (*itsehallintolaki/självtystyrelselagen*).<sup>32</sup> In practice, AVIs are the most significant and responsible for public security, also during pandemics. They make local laws in this field (restrictions of the freedom of assembly, etc.).

It is worth adding that there was a reform of regional self-government last year. The idea was that the County Councils (at a regional level) should be elected by the people/residents and that health, social and rescue services should be transferred to them from municipalities.

---

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> In practice, the Regional Councils deal with e.g. European funds. They provide funding for local projects. Generally, their tasks “include regional and land-use planning, and the promotion of local and regional interests in general”. See: *Regional Councils in Finland*, available at: [https://www.uudenmaanliitto.fi/en/regional\\_council/regional\\_councils\\_in\\_finland](https://www.uudenmaanliitto.fi/en/regional_council/regional_councils_in_finland) [last accessed 22.4.2022].

<sup>30</sup> *Finland, supra* note 26.

<sup>31</sup> *Act on the Autonomy of Åland (16 August 1991/1144)*, available at: <https://www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf> [last accessed 11.4.2022].

<sup>32</sup> *Finland, supra* note 26.

Consequently, on 23 January 2022, there were held the first ever regional elections<sup>33</sup> to the 20 County Councils which, that mentioned, are/will be mostly responsible for issues concerning healthcare (such as hospitals, etc.). The municipalities will hand over those services to the counties in the beginning of 2023.<sup>34</sup>

No doubt, the local self-government principle is laid down and appreciated by the Finnish Constitution (Section 121<sup>35</sup>). Generally, local authorities enjoy administrative competences under law (which is obvious). Regional Councils also have administrative duties. Municipalities possess regulatory/legislative powers though. Local authorities are entitled to levy taxes, according to Section 121 par. 2 of the Constitution.<sup>36</sup> Besides many references to lower legislation, the principle of self-government is a constitutional principle.

Moreover, Section 119 of the Constitution states, regarding the role of deconcentrated state administration that “In addition to the Government and the Ministries, the central administration of the State may consist of agencies, institutions, and other bodies. The State may also have regional and local public authorities. More detailed provisions on the administration subordinate to the Parliament are laid down by an Act” (par. 1) and “The general principles governing the bodies of State

---

<sup>33</sup> One of the authors took part in these historic elections.

<sup>34</sup> *New kind of election in Finland selects decision-makers for wellbeing services*, available at: <https://finland.fi/life-society/new-kind-of-election-in-finland-selects-decision-makers-for-wellbeing-services/> [last accessed 11.4.2022].

<sup>35</sup> See: *The Constitution of Finland of 11 June 1999 (731/1999, amendments up to 817/2018 included)*, available at: <https://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf> [last accessed 11.4.2022]. Section 121 has a title “Municipal and other regional self-government” and it reads:

“Finland is divided into municipalities, whose administration shall be based on the self-government of their residents. Provisions on the general principles governing municipal administration and the duties of the municipalities are laid down by an Act. The municipalities have the right to levy municipal tax. Provisions on the general principles governing tax liability and the grounds for the tax as well as on the legal remedies available to the persons or entities liable to taxation are laid down by an Act. Provisions on self-government in administrative areas larger than a municipality are laid down by an Act. In their native region, the Sami have linguistic and cultural self-government, as provided by an Act.”

It is worth noting that the Sami self-government is only cultural and not political. So the Sami self-determination is very much limited by the Constitution.

<sup>36</sup> *Finland*, *supra* note 26.

administration shall be laid down by an Act, if their duties involve the exercise of public powers. The principles governing the regional and local authorities of the State shall likewise be governed by an Act. In other respects, provisions on the entities of State administration may be laid down by a Decree” (par. 2).

Nevertheless, the position of central government is strong in relation to local government and e.g. Ministry of Finance “monitors local operations and finances in general” and ensures that “municipal autonomy is taken into account in the preparation of legislation concerning local authorities”.<sup>37</sup>

There are some important acts (outside the Constitution) which regulate “the vertical division of powers on the Finnish mainland” such as the following<sup>38</sup>: 1) The Local Government Act (410/2015)<sup>39</sup>, 2) The Division into Regions Act 1159/1997<sup>40</sup>, 3) The Law on Regional Development and the Management of Structural Fund Operations (7/2014)<sup>41</sup>, 4) The Act on Restructuring Local Governments and Services (Framework Act) 169/2007.<sup>42</sup>

It is relevant to highlight that the State is in charge of the civil service. The civil service is further devolved at the regional (Regional State Administrative Agencies and Centres for Economic Development, Transport, and the Environment Agencies), and local levels of public administration.<sup>43</sup>

The competences of the self-government at the local level include for example: healthcare (primary and secondary healthcare), dental services, social services (social welfare, child day care and services for the elderly and disabled), education (pre-school, primary, secondary, vocational training, adult education, library services), culture programming;

---

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Laki Kainuun hallintokokeilusta (määräaikainen)*, 9.5.2003/343, available at: <https://www.finlex.fi/fi/laki/ajantasa/kumotut/2003/20030343> [last accessed 11.4.2022].

<sup>40</sup> *Maakuntajakolaki*, 1159/1997, available at: <https://www.finlex.fi/en/laki/kaanokset/1997/en19971159> [last accessed 11.4.2022].

<sup>41</sup> *Laki alueiden kehittämisestä ja rakennerahastotoiminnan hallinnoinnista*, 7/2014, available at: <https://www.finlex.fi/fi/laki/smur/2014/20140007> [last accessed 11.4.2022].

<sup>42</sup> *Laki kunta- ja palvelurakennemuutuksesta*, 9.2.2007/169, available at: <https://www.finlex.fi/fi/laki/ajantasa/2007/20070169> [last accessed 11.4.2022].

<sup>43</sup> *Finland*, *supra* note 26.

sports programming, land use planning, construction and maintenance of local infrastructure and the municipal environment including streets, energy, water and wastewater management, and harbours, public transportation, and promotion of local business and employment.<sup>44</sup>

#### IV. RELATIONS BETWEEN THE STATE AND LOCAL SELF-GOVERNMENT

It eventuates from the essence of the modern state that the objective of a state is to perform specific tasks for and in the public interest. The complexity of public administration implies assigning tasks to its individual levels which may implement them directly or outsource their organization (implementation) to entities from the social and private sectors. This can lead to competition between its levels in different areas – the scope of rulership (public authority, power), social favour (popular opinion), independence, and finances. In decentralised countries, the functioning of the duality of public administration is associated with establishing the division of tasks between the sphere of self-government and the sphere of government administration. This may lead to competition between these levels, in particular as regards the scope of powers and the distribution of public funds.<sup>45</sup>

Local government functions in most modern countries in the world. Its formal authorization results from national constitutions (including Germany, Brazil, Denmark, France, India, Italy, Japan, Poland), state constitutions (Australia, United States), central legislation (Great Britain, New Zealand) or state legislation (Canada, Pakistan).<sup>46</sup>

Local self-government is a legal concept shaped under the influence of changes taking place in countries over the last two centuries. Although some trace its predecessors to the Greek *polis*, local self-government in its present form was established in the 19<sup>th</sup> century with a change in the approach of absolute rulers to their subjects and the

---

<sup>44</sup> *Ibid.*

<sup>45</sup> R. Gawłowski, *Między współpracą a przetargiem i rywalizacją. Relacje rządowo-samorządowe w systemie administracji publicznej*, Oficyna Wydawnicza Aspra, 2019, p. 72 and n.

<sup>46</sup> A. Shah, *Local governance in industrial countries*, The World Bank, 2006, p. 1.



acquisition of public rights by them. The constitutions adopted at that time regulated the scope of the power of public authority and the methods and forms of its exercise, and established municipal unions and incorporated them as public-legal entities into the structure of the state.<sup>47</sup>

Along with the establishment of local government, a transfer of tasks between the state and local government, which changed in time and in scale, began. It was not uniform for all countries, just as there is no “model of local self-government” – a uniform, universal system of separation of powers. Individual countries developed “their own” (specific) model of self-government, which was shaped by a number of factors of historical, political, social, economic, and geographical background.

Sabine Kuhlmann and Hellmut Wollmann, who described the position of local governments in individual European countries, adopted a typology based on two features. The first feature is the legal and cultural premises influencing the formation of local government. The authors indicate that the legal tradition of the country has a significant impact on the dominant values in the activities of public administration and the manner of performing public tasks, as well as on the relations between politics, citizens, and public administration. The second feature on which the typology of European models of local self-government is based is the structure of the state and public administration, including its degree of centralisation or decentralisation, as well as the relationship between centralised and decentralised local government. Kuhlmann and Wollmann distinguished three models of the state in this category (of the degree of centralisation and decentralisation): federal, unitary-centralised, and unitary-decentralised. Based on the above criteria, the following models of countries with similar characteristics were differentiated: the model of continental Europe with a legal tradition which was derived from the Napoleonic period, including the southern European subgroup; federal, Nordic, Anglo-Saxon model(s) and the model of Eastern and Southern Europe.<sup>48</sup>

---

<sup>47</sup> J. Panejko, *Geneza i podstawy samorządu europejskiego*, Seria Klasyki Samorządowej (reprinty)/Wydawnictwo Przemiany, 1990, p. 10. Originally, the book was published by *Imprimerie de Navarre* in Paris in 1926. The reprint was published in Warsaw in 1990.

<sup>48</sup> S. Kuhlmann, H. Wollmann, *Introduction to comparative public administration: administrative systems and reform in Europe*, Edward Elgar Publishing, 2nd ed., 2019, p. 24.

The local government (territorial self-government) model translates into the scope of tasks assigned to self-implementation by local government units. It varies greatly from country to country. The “strength” and scope of the tasks of local governments in individual countries depends on the degree of financial autonomy and the number of tasks transferred to local government units. It is the highest in the countries with the Nordic model (it refers to financial autonomy). In the case of Finland, it ranks third among the European Union countries both in terms of the tax autonomy of its local self-government and the total public expenditure incurred by these units. In the case of Poland, this indicator is also relatively high – Poland is in the 8th and 4th place, respectively, among the EU countries.

Countries 2019		%
1.	Sweden	12,9
2.	Denmark	11,9
3.	Finland	9,6
4.	Latvia	6,1
5.	France	5,9
6.	Czechia	5,6
7.	Croatia	4,6
8.	Poland	4,5

Table 1. *Total local government receipts from taxes and social contributions/percentage gross domestic product*, available at: <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do> [last accessed 1.11.2021].

Countries 2019		%
1.	Denmark	32,6
2.	Sweden	25,1
3.	Finland	21,9
4.	Poland	14,3
5.	Italy	13,9
6.	Croatia	12,9

Table 2. *Total local government expenditure/percentage gross domestic product*, available at: <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do> [last accessed 1.11.2021].

It cannot be argued that the current models of local government are the final models. Rather, they are now a “certain stage” in the development of the state-inhabitants relationship, appropriate for our times, both a state of things produced in the evolution of power relations, and a transitional state of things that is constantly being changed. Local self-government units, although acting on behalf of the state, may have different political interests from the government administration. Rivalry on this line can often be noticed and it appears most often in the case of representing different political colours/parties.

## V. COOPERATION BETWEEN THE GOVERNMENT AND SELF-GOVERNMENT ADMINISTRATION IN COMBATING THE PANDEMIC IN SELECTED COUNTRIES

The years 2020–2021 will be remembered as the years of the COVID-19 disease – its global spread and impact on the communities of individual countries, in particular in the health, economic, social, educational, and technological dimensions. From a perspective of recent decades, it is also a period of unprecedented challenges for the enterprise sector and the public sector.

The World Health Organization (WHO) already at the outset of the pandemic (April 2020) emphasized the importance of cooperation between national and local authorities in joint, regular, and transparent actions.<sup>49</sup> The problem of developing clear rules of cooperation between the national government and local government administration and the division of responsibilities concerned many countries. The most common model of cooperation in this area was the model of vertical centralisation, in which the national/central government, on the basis of specially granted powers by the parliament acting as the highest legislative power, was authorized to apply extraordinary preventive measures (Great Britain, Spain, Germany, Poland, Switzerland) or its special powers resulted from the previously adopted laws (Lithuania, the Netherlands, Serbia). In the model of vertical centralisation, the decision-making autonomy of local government was limited to execution, coordination, and consultation activities.<sup>50</sup>

Associations of regional and local authorities and committees composed of representatives of central and local government have played an important role in supporting coordination in the OECD countries. On the one hand, they have played the role of intermediaries between national and local authorities, and on the other hand, they coordinate

---

<sup>49</sup> WHO, *Covid19 Strategy Update*, 14.04.2020, available at: [https://www.who.int/docs/default-source/coronaviruse/covid-strategy-update-14april2020.pdf?sfvrsn=29da3ba0\\_19&download=true](https://www.who.int/docs/default-source/coronaviruse/covid-strategy-update-14april2020.pdf?sfvrsn=29da3ba0_19&download=true) [last accessed 24.4.2022]. Also, this idea of cooperation between central and local (or regional) authorities was developed later. For example, in the WHO document with the title “Operational planning guidance to support country preparedness and response. COVID19 strategic preparedness and response” (22 May 2020), it has as one of its recommendations: “Consult with neighbouring countries, other countries and regional bodies on planning and management of the COVID-19 pandemic across sectors (new May 2020)”. This also shows the importance of cooperation of central authorities with regional or local authorities to combat the pandemic. WHO was aware of this necessity and, undoubtedly, was trying to emphasize it more in its reports and recommendations during 2020. See *Operational planning guidance to support country preparedness and response*, available at: <https://www.who.int/publications/i/item/draft-operational-planning-guidance-for-un-country-teams> [last accessed 24.4.2022].

<sup>50</sup> S. Greer, H. Jarman, S. Rozenblum, M. Wismar, for The Health System Response Monitor (HSRM), *How are countries centralizing governance and at what stage are they doing it?*, 2020, available at: <https://analysis.covid19healthsystem.org/index.php/2020/04/19/how-are-countries-centralizing-governance-and-at-what-stage-are-they-doing-it/> [last accessed 11.4.2022].

efforts, identify solutions, and support the implementation of emergency measures. An example of this is the National Cabinet created by the Australian government, whose task is to deal with health and economic issues related to crisis management and economic recovery. The National Cabinet includes the Prime Minister and the first ministers of each Australian state and territory. The National Cabinet is assisted by the Australian Health Protection Principal Committee (AHPPC), which is composed of all state and territory Chief Health Officers, and is chaired by the Australian Chief Medical Officer. In May 2020, the National Cabinet established a three-step strategy to combat the COVID-19 crisis, which provides states and territories with various forms of counteracting COVID-19 and various degrees of limiting the functioning of economies, depending on the current public health situation.<sup>51</sup>

In Chile, the government established the Social Committee on COVID-19 (*Mesa Social Por COVID-19*), which included representatives of city associations (mayors), government authorities, scientists, and health professionals. The aim of the committee is to agree on actions to combat the pandemic and its consequences on a national scale. Similar committees have been established at the regional level.<sup>52</sup>

In South Korea, the prime minister chairs the Central Crisis Management Committee, where all relevant central government ministries, and 17 provinces and major cities of Korea, are represented.<sup>53</sup>

In Spain, the Conference of Presidents acts as an intermediary between the central government and the local government administration. It is a body established in 2004, the aim of which is to coordinate cooperation at the highest political level between the state and the autonomous communities. It consists of the prime minister and the presidents of the seventeen autonomous communities and the cities of Ceuta and Melilla.<sup>54</sup>

---

<sup>51</sup> Prime Minister of Australia, *Media Statement*, 2020, available at: <https://www.pm.gov.au/media/update-coronavirus-measures-08may20> [last accessed 23.4.2022].

<sup>52</sup> Government of Chile, *Action Plan COPVID-19*, 2020, available at: <https://www.gob.cl/coronavirus/plandeaccion/> [last accessed 1.11.2021].

<sup>53</sup> Government of Korea, *Korea's Fight Against COVID-19*, 2020, available at: [http://overseas.mofa.go.kr/nl-en/brd/m\\_6971/view.do?seq=761546](http://overseas.mofa.go.kr/nl-en/brd/m_6971/view.do?seq=761546) [last accessed 1.11.2021].

<sup>54</sup> *Territorial Policy in Spain*, 2020, available at: [http://www.mptfp.es/en/portal/politica-territorial/autonomica/coop\\_autonomica/Confer\\_Presidentes.html](http://www.mptfp.es/en/portal/politica-territorial/autonomica/coop_autonomica/Confer_Presidentes.html) [last accessed 23.4.2022].

In Sweden, there are district administrative councils that are responsible for coordinating the activities of the state, regions, and municipalities to counter infections and are responsible for ensuring the maintenance of social and economic functions.<sup>55</sup>

The greatest powers for regional and local authorities in determining measures to combat a pandemic can be observed, as it seems to the authors, in federal states. Germany is the greatest example. In Germany, the activities of public authorities in the field of counteracting and combating the effects of a pandemic are carried out on the basis of the 2001 Act on Protection against Infections (*Infektionsschutzgesetz, IfSG*). It presupposes the power of the federal government to make recommendations, leaving the implementation of them to the federated states (*Länder/Bundesländer*). The law gives the federated states the right to ultimately decide on the imposition of federal restrictions (in fact, federal recommendations) and to impose additional preventive measures. During the first wave of the pandemic, it was possible to observe a uniform line of restrictions imposed by individual federated states. The Chancellor consulted once a week with the prime ministers of the federated states in order to coordinate crisis management. Most of the decisions made were decentralised. The only centralised decision was to close Germany's borders with some of its neighbours. Some federated states acted independently. Mecklenburg, Western Pomerania, and Schleswig-Holstein unilaterally closed their internal borders. Saarland was the first federated state to close primary and secondary schools. The other federated states soon took the same decisions – without the coordination of the federal government. The process of easing the restrictions was also carried out on the basis of the federal government's consultations with the federated states and as a result of their independent decisions. The federal government and the federated states agreed to ease restrictions on assembly and on the operation of stores and end checks at certain international borders. The joint decision was also to maintain the ban on large events, impose quarantine obligations on some travellers, and wear masks in some public places although the details were decided by the federated states. Decisions to open schools were made on the

---

<sup>55</sup> Government Offices of Sweden, *Plan for the event of new outbreaks of COVID-19, 2020*, available at: <https://www.government.se/press-releases/2020/07/plan-for-the-event-of-new-outbreaks-of-covid-19/> [last accessed 23.4.2022].

basis of agreements of the federal government with individual federated states. In early May 2020, the federal government and the federated states agreed that the federated states would further relax the measures as they saw fit. Thus, decisions on lifting further restrictions – for example, on the organization of events, the operation of restaurants and bars, were left to the discretion of individual federated states. Brandenburg and Thuringia decided to lift all restrictions on households as early as mid-June (2020), and some federated states have unilaterally resumed direct teaching in schools ahead of the deadline agreed with the federal government. The only decision of the federal government was to reopen the borders. This was done without consulting the federated states.<sup>56</sup>

In Switzerland, according to its Constitution, the federal government (the Federal Council) has the legislative power to combat infectious diseases (Article 118). In 2012, the Epidemic Act (*Epidemiengesetz, EpG*) was adopted, the implementation of which is the responsibility of the individual cantons, subject to “exceptional” and “extraordinary” situations. On September 25, 2020, the Swiss Parliament passed the Covid-19 Law, which created the legal basis for the Federal Council to introduce the emergency measures necessary to combat COVID-19 (Federal Office of Public Health, 2020). According to the above-mentioned legislation, a “special” situation occurs when cantonal governments are unable to contain the spread of the disease or the WHO declares an international health emergency. Switzerland found itself in a “special situation” from February 28, 2020 to March 15, 2020 and after June 19, 2020. In an “emergency” situation, the Federal Council may impose restrictive measures for the entire country or individual areas, without requiring consultation with the cantons. This situation took place between March 16, 2020 and June 18, 2020. During the first wave of the pandemic in a “special state”, the federal government decided to ban major events, suspended direct education, and limited the number of people allowed in restaurants and bars. Some restrictive measures were introduced by the cantons prior to the federal government’s decision, such as closing shops or schools. In some cases, cantons have imposed stricter restric-

---

<sup>56</sup> Y. Hegele, J. Schnabel, “Federalism and the management of the COVID-19 crisis: centralisation, decentralisation and (non-)coordination”, *West European Politics*, 2021, Issue 5-6, available at: <https://www.tandfonline.com/doi/full/10.1080/01402382.2021.1873529> [last accessed 23.4.2022].



tions than the federal government restrictions, such as banning smaller events. During the “emergency” state, the cantons did not have the power to introduce or mitigate measures. A centralised and one-sided decision-making process prevailed. After the end of the “emergency”, the cantons regained the right to act independently. Cantons can regulate teaching, events, meetings, restaurants, and clubs – without coordinating these decisions with the federal government.<sup>57</sup>

In Austria, according to its Constitution, the federal government is responsible for public health, which also includes dealing with epidemics and pandemics. The Act of March 15, 2020, granted the federal executive authority the power to introduce certain restrictions in relation to counteracting the spread of the COVID-19 disease. The right to impose restrictions was also granted to federated state governments and local self-governments according to their territorial jurisdiction. Most of the restrictions were unilaterally introduced by the federal government – a ban on organizing events and gatherings, the closing of restaurants, shops, universities, and international borders. The functioning of the education system was agreed with the federated states, as was the operation of ski resorts and nursing homes. The federated states were also granted the right to define the forms of quarantine and to issue regulations on the wearing of masks. Coordination of activities at the government-self-government level took place through the communication of the federal chancellor and the *Landeshauptleute* – the heads of the management of the federated states.<sup>58</sup>

## VI. POLISH REGULATIONS DURING THE PANDEMIC

In Poland, the tasks of public administration bodies in the field of preventing the spread of, and combating, the COVID-19 disease are defined in the Act of December 5, 2008 on preventing and combating infections and infectious diseases in humans.<sup>59</sup> This act was amended fourteen

---

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ustawa z dnia 5 grudnia 2008 r. o zapobieganiu oraz zwalczaniu zakażeń i chorób zakaźnych u ludzi, Dz.U. 2020, poz. 1845.* Later, during the pandemic, there were amendments to this act.

times between March 2020 and November 2021. Already the first of the above-mentioned amendments introduced by the Act of March 2, 2020 on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases, and crisis situations caused by them<sup>60</sup> introduced a delegation to the Council of Ministers (the government) to define, by regulation, the endangered areas along with an indication of the type of zone in which the epidemic or epidemic threat occurred, as well as the right of the Council of Ministers to set a wide range of restrictions, obligations, and orders by regulation (decree) in the event of an epidemic or epidemic threat.

The adopted solutions raised doubts of a legal nature. Pursuant to the Constitution of the Republic of Poland, the formal condition for the admissibility of limiting “the freedoms and rights of persons and citizens” is to do so by statute (by the Parliament – the Sejm). Meanwhile, the Council of Ministers, by way of regulation, introduced restrictions on the freedoms and rights of persons and citizens guaranteed in the Constitution, i.e. in Article 22 (“the freedom of economic activity”), Article 41 par. 1, 3 and 5 (personal liberty; “personal inviolability and security”), Article 50 (“the inviolability of the home”), Article 52 par. 1 (freedom of movement and stay in the territory of the Republic of Poland), Article 59 par. 3 (right to strike), Article 64 (“the right to ownership”), Article 65 par. 1 (freedom to work), Article 66 par. 1 (“the right to safe and hygienic conditions of work”) and Article 66 par. 2 (right to rest).<sup>61</sup> The enumeration is not exhaustive. There were also restrictions on other constitutional rights such as freedom of peaceful assembly, freedom of religion, access to culture, etc.

The Prime Minister was also granted the power to impose on the self-government units the obligation to perform a specific task in connection with counteracting COVID-19, under implementing so called

---

<sup>60</sup> Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych, Dz. U. 2020, poz. 374. This was called „The Covid Act”, in Polish: „ustawa kovidowa”.

<sup>61</sup> Rzecznik Praw Obywatelskich, *Pismo Rzecznika Praw Obywatelskich do Prezesa Rady Ministrów*, 2020, available at: [https://www.rpo.gov.pl/sites/default/files/do%20Prezesa%20RM%20ws%20naruszania%20praw%20i%20wolno%C5%9Bci%20w%20czasie%20pandemii%2C%204.06.2020\\_0.pdf](https://www.rpo.gov.pl/sites/default/files/do%20Prezesa%20RM%20ws%20naruszania%20praw%20i%20wolno%C5%9Bci%20w%20czasie%20pandemii%2C%204.06.2020_0.pdf) [last accessed 2.5.2021].

“commissioned tasks” (*tryb realizacji zadań zleconych*<sup>62</sup>) in the field of government administration (*zakres administracji rządowej*). In turn, voivodes were granted the power to issue orders binding all government administration bodies operating in the voivodship, state legal persons, local government bodies, local government legal persons, and local government organizational units without legal personality. The orders could be issued in writing, orally, by telephone, or by electronic means of communication, and were immediately enforceable. The adopted solutions were based on the centralist management procedure and, in the authors’ opinion, contrasted with the constitutional independence of local government units. The adoption of a centralist form of managing the fight against the pandemic was previously expressed in the Amendment to the Statute on reforming the principles of the functioning of the State Sanitary Inspectorate of January 2020.<sup>63</sup> As a result, the existing self-government poviats and voivodeship sanitary inspection bodies were incorporated into “combined administration” of the central government’s territorial administration (*rządowa administracja zespolona*)<sup>64</sup>, and the creative<sup>65</sup> and supervisory function of local (territorial) self-government was abolished with regard to poviats sanitary inspectorates.

---

<sup>62</sup> This is important to explain the concept of “direct responsibility” (in other words, proper tasks). In the Polish Constitution, this is the Polish legal term *zadania własne*. According to Article 166 par. 1 of the Constitution, “Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility”. These tasks (“public duties”) are in the hands of self-government and regulated by statutes (e.g. such tasks as spatial development, public education). But there are also “commissioned tasks” (*zadania zlecone*). According to Article 166 par. 2, “If the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute”.

<sup>63</sup> *Ustawa z dnia 23 stycznia 2020 r. o zmianie ustawy o Państwowej Inspekcji Sanitarnej oraz niektórych innych ustaw*, Dz. U. 2020, poz. 332.

<sup>64</sup> In Poland, the central government’s territorial administration (*administracja terytorialna*) is split into noncombined administration (*administracja niezespolona*) and combined administration (*administracja zespolona*). Combined administration „follows the division based on the regions and is chaired by the voivode (*wojewoda*)”. See Poland, available at: <https://portal.cor.europa.eu/divisionpowers/Pages/Poland.aspx> [last accessed 26.7.2022].

<sup>65</sup> In fact, the right to fill the posts in poviats sanitary inspectorates.

The government party also did not consult the local government party on legal regulations concerning the introduced restrictions, which, in fact, were of fundamental importance for the functioning of local government units (territorial self-government units). The local government party was not consulted on both the regional/powiat planning of combating and counteracting COVID-19 and establishing recommendations and guidelines for the country's inhabitants. The formal obligation to consult about matters concerning the inhabitants of a given region was limited to voivodes and units of the State Sanitary Inspection. Local government units were not granted the power to independently decide on the introduction of additional preventive restrictions or the application of preventive measures adequate to the situation in the territory of a given local government unit (municipality-powiat-region). Its bodies, despite the systemic/constitutional power to enact local law, were not empowered to issue decisions imposing on the residents the obligation to undertake specific organizational, preventive, or control activities. Such authorization was assigned to the previously centralised State Sanitary Inspection. The Union of Polish Metropolises (*Unia Metropolii Polskich*), the Union of Polish Cities (*Związek Miast Polskich*), the Union of Polish Poviats (*Związek Powiatów Polskich*) and the Union of Rural Communes (Municipalities) of the Republic of Poland (*Związek Gmin Wiejskich RP*) strove to include the local government sector in the design of guidelines and legal acts defining the areas relevant to their competences (i.e. the mentioned organizations suggested that local government units should be included in decision-making concerning Covid restrictions that would affect areas within their powers). Attention was also paid to the lack of consultation with them not only of the guidelines, but even of the ordinance (decree) of the Minister of National Education defining the principles of functioning of the units of the educational system, for which local governments were responsible.

Despite repeated appeals of the local government side to include it in the creation of plans to combat the pandemic, its involvement by the government administration took place only when mass vaccinations were implemented, although the role of local government was limited to implementing government plans.

The disregard of the role of territorial self-government in Poland in the face of the Covid-19 pandemic, it seems, would not have raised any

legal doubts in the case of using and applying the institution of “extraordinary measures” (i.e. a state of emergency) specified in chapter XI of the Constitution. Why? The pandemic could have been considered a natural catastrophe bearing the hallmarks of a natural disaster within the meaning of Article 232 of the Constitution (literally, “a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster”). Then the Council of Ministers would have gained unquestionable legitimacy in introducing a state of natural disaster, increasing its scope of legislative power and introducing restrictions on the freedoms and rights of individuals. Meanwhile, the activity of the public authorities in combating and counteracting the effects of the Covid-19 pandemic took place on the basis of a quasi-state of emergency, circumventing the provisions of the Constitution, which consequently led to a series of conflicts between local government and government administration and seriously upset the institutional and normative order of the state.

In a state of emergency, more restrictions on constitutional rights and freedoms are possible in Poland. It seems that constitutional principles such as the principle of decentralisation can be limited during such a state. There is a constitutional justification for restricting general systemic principles during a state of emergency (see chapter XI of the Constitution). However, there are also the constitutional time limitations for doing it and this is how the Constitution protects the people (and self-government) against power abuse on the part of the central government. Moreover, the theoretical or legal-philosophical justification for restricting general systemic principles during a state of emergency, if needed, may be related to the necessity of defence of both the common good and public security/public health.

Polish lawyers strongly criticized the fact that the government did not introduce one of the constitutional states of emergency in which different restrictions, also concerning the self-government sector, are justified for a certain period of time strictly regulated by the Constitution.<sup>66</sup> Of course, it matters which of the states of emergency would have been introduced. The Polish Constitution distinguishes the following

---

<sup>66</sup> See e.g. p. Tuleja, *Pandemia Covid-19 a konstytucyjne stany nadzwyczajne*, *Palestra*, 2020, nr 9, available at: <https://palestra.pl/pl/czasopismo/wydanie/9-2020/arttykul/pandemia-covid-19-a-konstytucyjne-stany-nadzwyczajne> [last accessed 26.7.2022]. See also footnote 68.

three states of emergency (in other words, “extraordinary measures”) and calls them *stany nadzwyczajne* (which is also the title of Chapter XI): martial law, a state of emergency, or a state of natural disaster. Instead, that said, the government applied, in the authors’ opinion, some kind of “hybrid” states of “emergency” from the mentioned 2008 Act (first, a state of epidemic threat, and later, a state of epidemic) which were not so relevant<sup>67</sup> for both the scale of such a pandemic as the COVID-19 disease and all the restrictions like limitations of the freedom of movement, etc., at least in the light of the Constitution (it concerns some balance between public security and freedoms protected by the Constitution). It is called “hybrid” (thus, “combining two different things”) as there were imposed restrictions like the bans on the freedom of movement or on the freedom of assembly, by decrees of the central government and under the 2008 Act, but these might have been made only in some of the states of emergency according to the Constitution and by statute (passed by the Parliament).<sup>68</sup>

## VII. FINNISH REGULATIONS DURING THE PANDEMIC

In Finland, the tasks of public administration bodies in the field of preventing the spread and combating the COVID-19 disease are defined in the Communicable Disease Act of 2016.<sup>69</sup> According to section 1 of the Act, the objective of the Act is to prevent communicable diseases and their spread, as well as to prevent harmful effects caused by these diseases to people (individuals) and society. In Finland, the Government

---

<sup>67</sup> However, to some extent, the implementation of the 2008 Act was adequate, especially in the beginning of the pandemic, as the situation was uncertain in March 2020 and the central government was enforced to act quickly to protect the people.

<sup>68</sup> See e.g. D. Bunikowski, *Niekonstytucyjny zakaz przemieszczania się w czasie pandemii*, konstytucyjny.pl [constitutional lawyers’ portal, Jagiellonian University], 19.5.2020, available at: <https://konstytucyjny.pl/dawid-bunikowski-niekonstytucyjny-zakaz-przemieszczania-sie-w-czasie-pandemii> [last accessed 20.4.2022]; D. Bunikowski, *Koronawirus: czy władza musi przestrzegać prawa w czasie pandemii?*, Rzeczpospolita (portal), 5.4.2020, available at: <https://www.rp.pl/Urzednicy/304059966-Czy-wladza-musi-przestrzegac-prawa-w-czasie-pandemii.html> [last accessed 20.4.2022].

<sup>69</sup> *Communicable Diseases Act (1227/2016)*, available at: <https://www.finlex.fi/en/laki/kaannokset/2016/en20161227> [last accessed 11.4.2022].

and President realised very quickly, in the beginning of the pandemic in the country, i.e. in March 2020, that more powers (than allowed under the mentioned Act) needed to be in the hands of the government and more freedoms and rights could be constitutionally limited. In other words, they realised that introducing a state of emergency regulated by the Constitution was necessary.

As in the rest of the world, in the spring of 2020, Finland faced the spread of the coronavirus resulting in a infectious disease (COVID-19). On 13 March 2020, the Government, in cooperation with the President of the Republic, claimed that Finland was under emergency conditions. The reason was the coronavirus epidemic. Thus, the powers laid out by the Emergency Powers Act<sup>70</sup> were adopted.<sup>71</sup> This state was introduced in Finland for the first time in history during peacetime. It is good to add that the Emergency Powers Act was introduced by the Parliament (*Eduskunta*). The Parliament decides whether the implementation and application decrees issued by the Government can remain in force. The introduction of restriction measures provided by that Act and made in application decrees of the government are supervised by the Parliament. The Parliament also decides whether those decrees should be revoked.

In March 2020, state borders were closed, foreign tourists were not allowed, schools and universities moved to work online, museums and theatres were shut down, etc. There were limitations concerning times of service in restaurants and pubs as well as restrictions on religious ceremonies in churches, etc. What is interesting is that, in Finland, the important role was played not only by hard law, but also the institution of a recommendation, i.e. soft law suggesting how to behave, but without any sanction for not obeying the suggested rule of conduct. There were recommendations, without any criminal punishment or administrative sanctions, about social distancing and later on, since the sum-

---

<sup>70</sup> Valmiuslaki (*The Emergency Powers Act*), 29.12.2011/1552, available at: <https://www.finlex.fi/fi/laki/ajantasa/2011/20111552> [last accessed 11.4.2022]. It replaced *The Emergency Powers Act (1080/1991; Amendments up to 696/2003 included)*, available at: [https://www.finlex.fi/fi/laki/kaannokset/1991/en19911080\\_20030696.pdf](https://www.finlex.fi/fi/laki/kaannokset/1991/en19911080_20030696.pdf) [last accessed 11.4.2022].

<sup>71</sup> *Adoption of the Emergency Powers Act during the COVID-19 pandemic*, available at: [https://www.eduskunta.fi/EN/naineduskuntatoimii/kirjasto/aineistot/kotimainen\\_oikeus/LATI/Pages/valmiuslain-kayttoonottaminen-koronavirustilanteessa.aspx](https://www.eduskunta.fi/EN/naineduskuntatoimii/kirjasto/aineistot/kotimainen_oikeus/LATI/Pages/valmiuslain-kayttoonottaminen-koronavirustilanteessa.aspx) [last accessed 11.4.2022].



mer of 2020, on wearing masks indoors or in public transport. In the spring of 2020, Government recommended remote work nationally and this was followed by all the companies and institutions (in fact, by the autumn of 2021). Society was united in following the Government's recommendations. In Finland, social capital is high and people trust both each other and the government. Also, various different institutions like universities had their own recommendations, often a bit more restrictive (e.g. about the wearing of masks by lecturers and students during lectures on the campus if, exceptionally, some lectures were held there).

The first phase of the pandemic (spring-summer 2020) was full of limitations for inhabitants and companies. However, there was not any limitation of the freedom of movement, except shutting down Helsinki-Uusima for few weeks in March 30-April 19, 2020.<sup>72</sup> In fact, the government imposed a lockdown in this region for a few weeks. Also, this phase was dominated by the activities of central Government. However, it was justified in the light of the introduction of the state of emergency. It is worth mentioning that the Government passed "several policies concerning restriction measures and issued Emergency Powers Act application decrees and implementing decrees as well as decrees to repeal them".<sup>73</sup> On 15 June 2020, the Government issued a decree repealing the use of the powers of the Emergency Powers Act. The Government claimed that "the current situation in the country no longer constituted a state of emergency as laid down in Section 3 of the Act".<sup>74</sup>

Also, it is worth noting that it was the decision of the Government only that children should go back to primary schools in mid-May 2020 besides the protests of the teachers' union. The Minister of Education said that every child has the right to education at school physically, not only virtually.<sup>75</sup> The decision was difficult for municipalities responsible for schools. They prepared internal recommendations for schools concern-

---

<sup>72</sup> *Finland shuts down Helsinki-Uusimaa to fight coronavirus*, 30.3.2020, available at: [https://www.uudenmaanliitto.fi/en/news/finland\\_shuts\\_down\\_helsinki-uusimaa\\_to\\_fight\\_coronavirus.35889.news](https://www.uudenmaanliitto.fi/en/news/finland_shuts_down_helsinki-uusimaa_to_fight_coronavirus.35889.news) [last accessed 11.4.2022].

<sup>73</sup> *Adoption*, *supra* note 71.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Schools to reopen 14 May under strict rules for children and teachers*, available at: <https://www.thenomadtoday.com/articulo/finland/schools-to-reopen-on-14-may/20200429233902005557.html> [last accessed 11.4.2022].

ing social distancing, hygiene, organization of lesson breaks at schools, and limiting pupils in the same moment at school restaurants<sup>76</sup>, etc.

In the autumn of 2020, the pandemic situation was worse again. This was related to the second wave of an outbreak of the infectious disease. In this second phase of the pandemic, the Government was very active again and the role of self-government or local government was very limited. The pandemic situation was not better in the beginning of 2021, especially since February, when the Government introduced stricter rules, e.g. on bars, restaurants, hotels, incomers from different countries, etc. Again, acting according to the Constitution, the Government, in cooperation with the President of the Republic, declared a state of emergency. This was the second state of emergency in one year. The state of emergency took effect on 1 March 2021. The Emergency Powers Act was re-introduced as it had been before. However, as was the case the year before, the Government issued a decree repealing the use of the powers of the Emergency Powers Act quite quickly – on 27 April 2021. The Government claimed that “the current situation in the country no longer constituted a state of emergency, as laid down in Section 3 of the Act”. Offhandedly, one can add that it was the same reason and wording as it appeared in the Government’s relevant decree issued in 2020.<sup>77</sup>

It seems necessary to highlight one issue concerning the “decentralisation” of decision-making processes in Finland: since 2021, regulations (binding rules) and recommendations (soft law, non-binding law) were somehow decentralised, but it was not local government that was responsible for regulations and recommendations concerning the pandemic. Regional authorities (AVIs) representing the Government were encouraged (but also directed) by the Government to make regulations and recommendations in their territories, e.g. on assemblies (and numbers or people allowed), and restrictions on hobbies (like sport indoors), etc. The regional decisions were based on the pandemic situation in a given province, region, or municipality. It always concerned the scale of the coronavirus transmission. Also, the Government was strictly cooperating with the Finnish Institute for Health and Welfare (THL) and

---

<sup>76</sup> Every school in Finland has its own restaurant (maybe there are few exceptions where food is delivered by an external company). Lunches are free and teachers with their pupils eat together during the lunch break.

<sup>77</sup> *Adoption, supra* note 71.

was still issuing general recommendations based on THL's advice/recommendations (e.g. on masks, hygiene, vaccination, etc.). THL is a research and development institute under the Finnish Ministry of Social Affairs and Health.

Generally, the role of local government (in municipalities) was limited to realisation of the Government's policy during the pandemic. The municipalities were (and are) responsible for schools and healthcare centres or hospitals. The municipalities were obliged to adapt schools to the new pandemic reality and its changes as well as to re-organize the activities of healthcare centres and hospitals to follow vaccination instructions/plans and to take care of patients despite the shortage of medical workers. However, it seems relevant to notice that since the autumn of 2021 there was a higher level of decentralisation and e.g. schools directors were to make decisions on quarantine and internal rules at schools, not state sanitary inspections or regional authorities representing the Government anymore. Also, some municipalities like Helsinki made their own (even controversial<sup>78</sup>) recommendations concerning workers who had tested positive, but had not any symptoms afterwards. Moreover, also municipalities like those in southern Finland (the Uusima region) started to be more active while speaking about necessity of closing schools or quarantines of specific classes. They introduced some measures. Public companies like VR (Finland's state railway firm) also made its own recommendations and rules.<sup>79</sup>

---

<sup>78</sup> See: *Helsinki orders asymptomatic Covid patients back to work and school*, available at: <https://yle.fi/news/3-12289844> [last accessed 10.4.2022]. It reads:

"The City of Helsinki has instructed residents to return to work or school even in the event of a positive Covid test result, if they show no symptoms and it is not possible to organize remote work or studies. Yle [Finnish state TV] received the instructions given to staff of health centres and emergency services last week. In the documents, the city instructed staff to advise patients that they should return to work, school or daycare despite a positive test result, if they are suffering no symptoms.

The general guideline from the Finnish Institute for Health and Welfare (THL) is still that if a person tests positive for Covid, they should isolate for five days, regardless of symptoms."

<sup>79</sup> See *Covid updates 7.2.2022-8.3.2022*, available at: <https://yle.fi/news/3-12352235> [last accessed 10.4.2022]. For example, on 8 March 2022, VR announced that "it was changing its coronavirus-related requirement for train passengers to wear face masks in trains to a recommendation". Before this statement was made, there had been such a requirement as a part of the travel contract.

However, the “logic” of legal regulations was still “curious”: while at the end of December in 2021, the Government again introduced stricter policies on restaurants and for incomers to Finland<sup>80</sup>; then in the beginning of 2022 (especially at the end of January) the Government policy was changed drastically and all the restrictions were being systematically removed, including the mask recommendation.<sup>81</sup> One of the leading experts of the Government (Liisa-Maria Voipio-Pulkki from the Ministry of Social Affairs and Health) said on 19 February 2022 that the pandemic should be regulated and handled at local and regional levels, but not by the Government anymore as the Government has too many issues to manage.<sup>82</sup> Also, the narrative was softened and despite higher numbers of infections and deaths (January-April 2022), the topic of the pandemic became less important in society and the media coverage was somehow unexpectedly less highlighted (and finally was replaced by the Ukraine war topic). Also, local government and regional authorities started to treat this topic as a “normal” disease. However, the narrative was unstable as e.g. on 6 April 2022, the Minister of Family Affairs and Social Services Aki Lindén “urged people to get vaccinated, continue to wear face masks and to be careful” and noted that “Finland’s coronavirus situation is still serious, even though the media have largely turned to other news topics”.<sup>83</sup>

It is worth mentioning that Finland, like all the other Nordic countries, had no strong and strict pandemic policy followed by punishment/criminal law/high administrative fees, but rather focused on soft

---

<sup>80</sup> *Government, regional authorities tighten Covid restrictions as daily case numbers hit record high*, available at: <https://yle.fi/news/3-12246330> [last accessed 10.4.2022].

<sup>81</sup> *PM Marin: Finland to lift all Covid restrictions in February*, available at: <https://yle.fi/news/3-12294896> [last accessed 10.4.2022].

<sup>82</sup> *Covid updates 7.2.2022-8.3.2022*, available at: <https://yle.fi/news/3-12352235> [last accessed 10.4.2022]. The expert said that “the government could have a smaller role in managing Covid in Finland”, adding that “as the pandemic drags on, the government must also turn its attention to other matters”, “local officials should have the authority to deal with the crisis” and “Finland should rework some of its laws, particularly those in regard to how public health authority THL can guide other public agencies”. In Finland, the role of experts working for the government or of special state agencies like THL is very strong, even if they give opinions.

<sup>83</sup> *Minister: Finland’s Covid situation still serious*, available at: <https://yle.fi/news/3-12392657> [last accessed 9.4.2022].

law, recommendations, and appealing to social responsibility and freedom. Moreover, the role of local government and self-government such as it was in the process of regulating human behaviour during the pandemic was limited. The central government (and its regional agencies) remained the most important actors. However, Finnish political culture presupposes trust between the government and society. People trust and follow what the government points out as necessary to do in a state of emergency (and not only then but generally). People who are rather modest and peaceful as a nation/society think that the government has better knowledge and expertise and knows best what people should do in different crises/difficult situations. The same kind of attitude and factual dependence might be somehow referred to relations between the government and local government units.

## CONCLUSIONS

The most crucial finding of this research is that generally speaking, the principles of subsidiarity and decentralisation were disregarded during the COVID-19 pandemic. The particular emphasis on the Polish and Finnish legal systems shows that those countries of both different legal traditions and political cultures presented the same way of thinking based on centralisation of decision making processes in the pandemic (but the difference is that in the case of Finland, a state of emergency was introduced according to the Finnish Constitution and respectively, this was not the case in Poland). However, also the analysis of the legal/political/pandemic situations in other countries globally (except federal states like Germany in particular and, to some extent, Austria and, to a lesser extent, Switzerland<sup>84</sup>) made the authors come to the same con-

---

<sup>84</sup> The authors do not pretend to make any categorical or absolute claims about the correlation between the federal structure of a state and the increased involvement of self-government in decision-making concerning the pandemic. For example, the approach adopted in federations like Austria and Switzerland was quite centralised as well. Depending on the period of the pandemic, one can assess these states in a different way. Anyway, self-government in Austria or Switzerland had more powers in the pandemic than self-government in Poland or Finland. Especially, in Austria, the federated states had power to make additional restrictions and the central government consulted

clusion. This is a descriptive thesis. It may show that there is a universal trend to centralisation of decision making processes in actions of central public authorities in such states of emergency as pandemics. (Of course, this is a kind of speculation, as we do not know this yet.) This also proves that the (constitutional) principles of subsidiarity and decentralisation are not respected and “taken seriously”<sup>85</sup> (in a Dworkinian sense). The question is whether those principles are underestimated only in such dramatically observed states of things like pandemics or it is a deeper tendency to disregard self-government globally.

The authors are aware of the fact that the nature of tasks related to combating the pandemic was behind the dominating role of the central governments. The situation was also uncertain at the beginning of the pandemic. However, one can challenge this way of reasoning related to centralisation. First, the principles of subsidiarity and decentralisation are the constitutional principles and should be respected. There is always a room for the principles of subsidiarity and decentralisation in such a pandemic/crisis. For example, self-government could have been assigned more powers later, in later phases of the pandemic. Different measures could have been used in self-government units besides hard law, e.g. also instructions or recommendations made by self-government (soft law). Second, maybe diverse approaches on the local level would have been more effective as pandemic situations in different regions of a given country were never the same and differed locally or regionally. What should be done in practice? More consultations should take place (and such attempts were made in some countries – see part V of the paper). Self-government working at the grassroots level should be taken as a serious partner in such consultations. Self-government (local or regional) should decide on introducing some measures. For example, self-government should decide on wearing masks in public places (such as schools and other educational buildings, public transportation, public administration buildings, healthcare centres, hospitals, shops, bars, restaurants, cinemas, theatres, churches, workplaces, etc.) or periods of quarantine, or closing internal borders (between municipalities or re-

---

the federated states about all restrictions to be made at the state level. Moreover, to the authors’ best knowledge, there were no unitary states which took a similar approach to the German one.

<sup>85</sup> See more: R. Dworkin, *Taking rights seriously*, Harvard University Press, 1977.

gions). How may the central government decide about such issues at all? Does it have full knowledge what is going on at all local or regional levels? The central government should trust self-government more.

As a normative thesis, it is suggested that central governments and authorities should take self-government and local/regional authorities more seriously in such states of things like pandemics, environmental disasters, etc. This is about obeying the (constitutional) rules and must not be covered by a kind of “array” of securitisation as it is often presented by central governments. The voice of local government must be heard. Especially, in the Polish case, it was not visible. But also in the Finnish case, this local voice was not taken into consideration. However, complaints of local government in Finland were absent due to a different political culture.