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THE OPPOSITION WITHIN THE COMMUNE AUTHORITIES IN LIGHT OF THE REGULATIONS INCLUDED IN THE STATUTE OF THE CITY OF RZESZÓW

Territorial self-government plays an ever bigger role in contemporary democratic states. The broad spectrum of functions pending on the state brings about a situation in which their adequate fulfilling is not possible without decentralization of public power. „Decentralization means increasing competences, responsibilities and resources of local authorities as compared to those that remain within the sphere of central authorities’ competencies” (Regulski 2005: 60).

The delegation of competences and responsibilities for a broad spectrum of issues which are important for local communities and which have an impact on their living conditions and developmental options onto the local authorities means that these authorities are forced to make many political decisions that determine whose interests and to what extent will be pursued. Whenever such decisions are taken, conditions might arise in which the opposition will emerge since arbitrary decisions concerning the distribution of scarce resources are likely to provoke their contestation. The phenomenon of the opposition is most frequently analyzed at the central level where it is associated with government and parliament, even though in reality we find it at a variety of levels. Obviously, not every case of opposing or resisting a decision justifies speaking of an opposition, especially in the sense that is relevant for the exercise of power and the functioning of the political system, including the local one – as exemplified by the commune (*gmina*) (Barański 1994: 89). To speak of an opposition in this meaning, certain conditions must be fulfilled.

The term „opposition” denotes a reverse stance, an antagonism. It is also used to question authorities or accepted views and to express

individual or collective resistance to someone or something (Zwierzchowski 2000: 9). According to *Słownik polityki*, an opposition is „an organized group articulating in a formalized (political party, parliamentary coalition) or informal manner resistance to policies by the state authorities (a systemic opposition) or resistance to the political regime (an anti-systemic opposition)” (Bankowicz 1999: 160).

The adduced sample of definitions evidences loose understanding of the term. Even though they refer it to government and power relations, these definitions do not emphasize the issue of power interception. Therefore, „opposition *sensu largo* may denote any form in which resistance to a certain policy by the governing actors and/or the political regime is articulated” (Krawczyk 2000: 132). In turn, an element of power interception is stressed in a *sensu stricto* definition of political opposition. In this type of definition it is political groupings, including political parties that in a more or less organized manner strive for interception of power or replacement of the state authorities (Antoszewski, Herbut 1998: 250). Political opposition is one of the basic institutions in democracy. It makes it possible to implement the principle of political alternation” (Sokół, Żmigrodzki 1999: 208). The term political opposition does not include either individuals or public opinion for they do not meet the organizational criterion – either formal or informal (Krawczyk 2005: 115).

Institutionalization might be listed as an important feature of the opposition but one must take into account the specific meaning that this term acquires in the political sense (Bożyk 2006: 36–38). Since no concrete regulations refer specifically to the opposition, the political rules that condition its functioning take on a special importance.

Some features of the political system are relevant as far as the opposition in territorial self-government. These features include legal provisions that create guarantees for the opposition and its activities within organs such as councilors’ clubs (*kluby radnych*), which might facilitate the opposition’s emergence in an organized form within *sejmik województwa* (regional parliament), *rada powiatu* (district council) or *rada gminy* (commune council). The legal provisions leave specific arrangements in this area to the legislative organs concerned. These organs define those arrangements in their statutes (*Ustawa o samorządzie województwa...: art. 29; Ustawa o samorządzie powiatowym...: art. 18; Ustawa o samorządzie gminnym...: art. 23*). One element that reinforces the role of *kluby radnych*, including clubs of the opposition, are legal guarantees for representatives of all clubs to take

part in
komisja rewizyjna (audit committee), which enables the councilors representing all political options to exercise control over the executive organ and/or its organizational units (Bukowski, Jędrzejewski, Rączka 2003: 158).

The institution of opposition in territorial self-government has a different nature than the parliamentary or extra-parliamentary opposition whose aim is to critically review activities authored by the majority forming the government or the parliamentary majority. This difference in nature originates from both legal-systemic principles and the different scale and scope of their respective activities. However, it is possible to analyze the opposition and conditions on which it operates at the level of self-government in relation to the „central-level opposition”. This kind of analytical perspective allows one both to emphasize their common features and to stress differences between them. One of such differences, as exemplified by the *gmina* tier, lies in the fact that some unusual types of oppositional arrangements might emerge. This has to do with direct elections of *wójt* (commune’s top executive), *burmistrz* (town’s top executive) and *prezydent* (city’s top executive). On the national level, the executive organ – government – is nominated by the parliamentary majority, so that the divide between the governing and the oppositional actors is clear. By contrast, the fact that the elections of the executive organ of *gmina* have been made independent from the results of the elections for the commune’s legislative organ (*rada gminy*) might give rise to the situation when *wójt* (*burmistrz*, *prezydent*) is not supported by the majority in the legislative organ. Nonetheless, s/he may enjoy strong legitimacy and have a strong position resulting from normative premises. One could assume that in such cases it is the majority in the council that forms the opposition *vis-à-vis* the executive organ, which then makes the majority play a double role. Exactly this kind of situation took place in Rzeszów during the IV term of self-government (2002–2006).

Rzeszów is a city which has been granted the rights of a district (*miasto na prawach powiatu*). According to the law defining the status of district-level self-government, the regime and operative rules of the organs of the city which has been granted the rights of a district are determined by *Ustawa o samorządzie gminnym* (Act on commune-level self-government). Art. 3, p. 1 of this Act stipulates that „*gmina*’s regime is determined by its statute” (tekst jedn. DzU 2001, nr 142, poz. 1591). The statute is a collection of self-contained regulations,

created on the basis of enabling legislation (*delegacja ustawowa*), which regulate the tasks, structures and operational procedures of institutions or organizations (Kotulski 2001: 38). However, as noticed by Andrzej Szewc, the statement that „*gmina*’s regime is determined by its statute” is not entirely true since the commune’s regime is co-determined by more legal acts, such as the Constitution and the very Act on commune-level self-government. „The Statute determines in detail regime-organization issues that are regulated in a general manner in the Act as well as those matters that are omitted in the Act’s provisions [...]. Moreover in those communes where so called auxiliary units (*jednostki pomocnicze*) exist [...], the statutes of those units contain additional regulations pertinent to the commune’s regime” (Szewc 2005: 43). According to Zbigniew Leoński (1994: 16), „commune statutes constitute, alongside constitutional provisions and the self-government act’s provisions, the basic source of the regime-determining laws”.

The conditions in which the opposition functions within the commune authorities are influenced by those statutory regulations that facilitate the opposition’s actions aimed at making an effective impact on final decisions and blocking or at least delaying of undesired resolutions, including those actions owing to which the opposition can strengthen its position and by this increase its chances for victory in the next elections. The latter could be achieved inter alia by producing its attractive image and damaging the image of the ruling majority as well as that of other political competitors. In other words, those are all regulations pertinent to internal organization of the commune organs, procedures according to which they operate as well as the ones defining the mode in which *komisja rewizyjna* operates.

The significance of solutions adopted in the commune statutes is evidenced by the fact that revisions might be made to them by means of which the competing groups could secure their most advantageous positions. Exactly this kind of situation took place at Rzeszów’s self-government, whose statute constitutes an object of the present analysis. The aim of the analysis is to evidence the impact of the pertinent regulations on possibilities of the opposition’s functioning within the commune authorities.

At the beginning of the IV term of self-government, which was the first term under the law introducing direct elections of executive heads of communes, towns and cities – the law that had considerably changed the mode in which *gmina* authorities operate – in Rzeszów its 1996 statute was still in force (*Uchwała nr XXXIV/32/96...*), which was sub-

sequently modified in 1999 (*Uchwała nr XXVI/203/99...*) and 2001 (*Uchwała nr LV/115/2001...*) respectively. Some contents of the statute, important for the opposition's operation, followed regulations inherent in the Act (which is a phenomenon quite common as far as legal acts created at the level of self-government even though it goes against the principles of law-making). Such contents are not taken into account in the present paper since their mandatory status was not dependent upon their inclusion in the Statute. By contrast, it is worth drawing attention to those contents that were complementary to the provisions inherent in the Act but specified the latter in more detail. In Chapter III of the Statute, which refers to the city authorities, a principle had been laid down that the councilors' clubs should be represented in the city committees' membership proportionally to the number of their members – provided there was such a possibility. Even though this principle was not made mandatory, it did provide some guidance and constituted a kind of political declaration aimed at enabling the opposition's participation in all of the committees. Furthermore, this option allowed not only for the opposition's access to all kinds of information pertinent to pre-planned activities and decisions (usually drafted and proposed by the City President), but also – for initiatives aimed at influencing the final shape of a proposed bill at an early stage of the decision-making process, including by means of a possibility to take part in the vote (this provision did not cover other councilors even though they might take part in the committees' sessions and take the floor during them).

Regulamin Rady Miasta Rzeszowa determined the internal organization, rules and the working mode of the City Council as well as its competencies, in particular the procedures used during the Council's sessions and the mode in which its bills were adopted, which formed an integral part of the City Statute. In the analyzed period the opposition emerged both *vis-à-vis* the Council's majority and *vis-à-vis* the President. That is why the rules determining the mode of interpellation-making and question-posing by the councilors were so important. These rules made it possible to articulate issues which were „uneasy” for the governing majority or the President – such that could be used in political struggling. These rules stipulated that interpellations should address issues related to current city-management. Moreover, they should contain a statement indicating a necessity to solve a specific problem as well as a request that the President should issue an opinion on the matter. The councilor's interpellation should be answered in a written form and – upon the councilor's request – it should be also dealt with in

the interpellations (*interpelacje*) section during the nearest session following the fortnight after the date when the interpellation had been put in. In turn, an inquiry (*zapytanie*) was defined as a request for information or explanation pertinent to issues falling within the sphere of the President's competencies or those of the Council's organs. It could be articulated in an oral form during a session or put in a written form in-between the sessions. The inquiring councilor could evaluate the received answer as insufficient and demand that it should be supplemented.

These regulations introduced another interesting arrangement that made it possible for a councilor to declare publicly his/her *votum separatum* which had to be accompanied with its justification in case s/he had been dissatisfied with the voting results. Even though this did not translate directly into a possibility to have the taken decision changed, which was – according to the opposition – not favorable, nonetheless it did provide an opportunity to manifest the opposition's attitude and opinion on the given matter. This, in turn, could contribute to creating its desired image in the eyes of the local community, while simultaneously providing an opportunity to discredit the majority's or the President's actions.

The institutionalization of the opposition in the City Council had been also influenced by the regulation stipulating that the councilors' clubs should consist of at least three members. It needs to be stressed that this was not a demanding threshold and that there were no other specific (hindering) criteria related to the establishing of the councilors' clubs. The establishing of a club simply involved a written statement notifying the Council's chairman about the fact that a club had been established. The chairman on his/her part notified the councilors about the fact that a new club had been established during the nearest session. The institutionalization of a club produced advantages such as the right (stipulated in the regulations) to delegate a representative with a right to articulate an opinion on any matter which was discussed during the Council's session. This was reinforced by a provision that the delegate could express his/her opinion immediately after the given issue had been presented to (an) appropriate commission(s).

The discussed regulations were in force during the period when, as already mentioned, the balance of forces in the City of Rzeszów's authorities was rather peculiar. Namely, the City Council's majority had to co-operate with the President who was related to the minority (opposition) in the legislative organ, simultaneously constituting an opposi-

tion *vis-à-vis* the President. Factors such as poor co-operation between the *gmina* organs, the opposition's accusations that the President was unwilling to co-operate, disregard for the Council and the lack of consultations regarding the planned decisions had all translated into efforts whose aim was to modify the City Statute in such a way that the President could be – in a way – „forced” to behave in a manner expected by the Council, which meant especially the Council's majority which constituted an opposition *vis-à-vis* the President.

On 17 February 2004 the Council of the City of Rzeszów voted through a motion concerning adoption of *Statut Miasta Rzeszowa* (DzUrz Woj. Podkarpackiego 2004, nr 71, poz. 774). This simultaneously meant that the former *Statut* was discarded. As far as the new Statute, no separate document was added that was titled *Regulamin Rady Miasta Rzeszowa*. Rather, the contents of the new *Regulamin* had been included in *Statut Miasta Rzeszowa*. Modifications that affected the functioning of the opposition included a rule which stipulated that upon request of at least 1/4 of statutory members of the Council its chairman (chairwoman) is obliged to introduce to the Council's agenda a section whose purpose is to discuss a reply to an interpellation. Owing to this provision, the opposition gained a right to publicly debate with the President about issues that produced political benefits to the opposition.

Moreover, another provision was added in the Statute that granted a possibility to repeat the vote on a motion (draft) during the same session (so called *reasumpcja głosowania*). Even though this possibility was restricted to cases when some previously unknown circumstances affecting the manner in which the motion (draft) could be evaluated had appeared, its introduction created a potential opportunity for the opposition to engage in attempts aimed at changing those already taken decisions that had not met the opposition's expectations. The arena in which the opposition could take action against the President and those executive organ's employees who supported the President was similarly broadened by a regulation stipulating that *komisja rewizyjna* had to present during the Council's sessions not only opinions concerning complaints against the President but also complaints against the executive heads of the City's organizational units.

In 2007 new modifications were introduced that concerned the City Council's internal organization and procedures related to law-making (*Uchwała nr XX/329/07...*). Again, these modifications affected the position of the opposition within the City authorities. They entailed introduc-

ing a reservation of the first right to take the floor in the discussion concerning drafts for the clubs' representatives (including the clubs of the opposition). At the same time, these regulations specified in detail the categories of issues to be included in a session's agenda. A regulation stating that a reply to an interpellation should be included in the agenda upon request of the interpellating councilor was an important change (notably, the provision that the reply to the interpellation may be further discussed was discarded). Furthermore, the new provisions granted the councilors the right to inquire, including the right to make inquiries concerning the President's activity reports that covered the periods in-between the Council's sessions. This provision was relevant because the peculiar „independence” of the President from the City Council and the very strong constitutional position granted to the President's Office kept provoking criticism on part of the councilors representing the opposition who complained that the President did not reckon with the legislative organ at all, did not present complete information on his activities to the councilors etc. On the one hand, the obligation to include those points into the Council session's agenda created an opportunity to gain access to fuller information. On the other hand they created an opportunity to publicly present one's views while simultaneously engaging in political criticism aimed at one's competitors. It is to be noted that the modified Statute specified in detail what information and in which form the President was obliged to present, which left no leeway for the President to „dose” the information at will and in accordance with the political interests of himself and of that group of the City authorities' members that supported the President.

Restrictions on political power in terms of time („stints”, „terms”) as well as in terms of respect for minorities belong to universally recognized principles in democratic countries (Zwierzchowski 2000: 17). In Giovanni Sartori's words, the minority rights constitute a sine qua non condition for democracy to function. If we value its functioning, then we must value the fact that the rule by majority should be curbed and restricted by the minority rights (Sartori 1994: 52). Political life is played out at various levels. The level of territorial self-government is one of them. The rights of the minorities should be respected at this level, too, if the state as a whole is to be qualified as a democratic state. Respect for the minority rights is helped inter alia by some legal regulations, even though they do not always support it directly, especially as far as the opposition's operation is concerned. Our analysis demonstrated that it is possible to adopt at the *gmina* level such legal-

constitutional solutions that foster the minority rights, including an organized minority which meets the criteria applied to the opposition. The *gmina* statute has proven to be this kind of a document that might provide for an important supplement to constitutional provisions. As demonstrated, some regulations included in the *gmina* statute may foster the opposition's functioning within the *gmina* authorities. It might facilitate the articulation of views by the opposition and undertaking actions that could serve to pursue interests of those social groups that the opposition represents, simultaneously contributing to the opposition's building its better political position which might have an impact on the opposition's chance to intercept power in the next elections. Owing to this, another important democratic principle – alternation of governing elites – is not a purely theoretical assumption but a real possibility at the level of self-government.

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