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REGIONALISM VERSUS DECENTRALISATION FROM THE POINT OF VIEW OF EUROPEAN EXPERIENCE (part II)

Summary

The political concept of regions that are practically equal to the state, is not likely to be implemented in the near future. It should also be remarked, however, that there are very strong decentralist circles which tend, and will probably continue that tendency, to increase their powers. Regionalisation seems to be quite attractive to a majority of them. It certainly is highly significant in the economic area, while it generates certain political threats. If regionalism is not so much accepted, but rather achieved from the bottom up, it may have a highly significant impact on cultural life. It may become a dam, preventing the spread of European culture, understood as the universal 'Englishisation' of European languages, the predominance of Anglo-Saxon culture in literature, film, music and theatre.

Key words: region, regionalism, regionalization, economic approach to region, region in political science, administrative and legal approach to region

The *Declaration on regionalism in Europe*, drawn up by the Assembly of European Regions indicates that “[r]egions, federated states and autonomous communities are above all mainstays of democracy.” The Declaration defines the region as “the territorial body of public law established at the level immediately below that of the state and endowed with political self-government.”¹ Going deeper into this definition, one cannot help feeling that the authors of the *Declaration*, whether on purpose or by accident, were seeking to divide the European state structure into regions that are by nature smaller in terms of their area but endowed with their own executive and legislative power, as indicated in Article 2, sections 2 and 3 (a representative assembly whose members are directly elected by free and secret ballot on the basis of equal and universal

¹ The *Declaration* was adopted at the General Meeting of the Assembly of European Regions (AER) in Basel on 4 December, 1996.

suffrage may have legislative powers, within the limits laid down in the domestic legal order). Further on, the *Declaration* stipulates that a region should be recognised in the national constitution or legislation, which guarantees its autonomy, identity, powers and organisational structures. It is also indicated that a region should have its own constitution, statute of autonomy or other law of the highest rank, establishing at the very least its organisation and powers. Regions within the same state may have a different status, in keeping with their historical, political, social or cultural characteristics. It is stressed that regions express a distinct political identity which may take very different forms, insignia and assets. It is also noted that the apportionment of powers between the state and the region should be stipulated in the national constitution or legislation on the basis of the principle of political decentralisation and subsidiarity. Under these principles, functions should be exercised at the levels as close to the citizens as possible.² It is worth noting that according to the *Declaration*, regions should have the right to undertake international activities, conclude international treaties and agreements, subject to approval by the central government where required by national legislation. Under these circumstances, regions are virtually granted full sovereignty both internally and externally.³ Although lawyers and political scientists understand sovereignty in different ways, from the point of view of international law, one of the properties of sovereignty is that a sovereign entity cannot be a part of a greater whole. Understood in this way, sovereignty means being an international and legal entity and the ability to participate in the international community. In the modern legal doctrine, sovereignty is about the possibilities of acting within the framework of international law, the active and passive law of legation and a treaty-making capacity. See in this subject: Czaputowicz, 2013, p. 22; compare also Kwiecień, 2004, p. 116; see also Nagan, Hammer, 1964, pp. 3–5). International law stipulates that sovereignty is inalienable, indivisible, exclusive and unlimited, and it can be transferred only in the case of one state incorporat-

² The following areas were indicated as powers of regions: regional economic policy, regional planning, building and housing policy, telecommunications and transport infrastructures, energy and environment, agriculture and fisheries, education at all levels, universities and research. Other areas include culture and media, public health, tourism, leisure and sport, police and public order.

³ According to the definition by Hans Kelsen, a state is established when it achieves a certain level of centralisation and becomes the subject and object of the international legal order (Kelsen, 1992, p. 22).

ing another one (Zajadło, 2005, p.40). It is observed, however, that in a time of globalisation, the sovereignty of the modern state is subject to limitations and the issue of the division of sovereignty can be considered (Schachter, 1994, p. 671; see also Marszałek, 2000, p. 300 ff.). So far, the issue of the sovereignty of regions is purely theoretical, nevertheless it has to be taken into account, given the idea of a 'Europe of homelands' and of the European Union as a federated state (Kinsky, 1999, pp. 47, 55; compare also Keohane, Hoffman, 1999, p. 279; Wallace, 1982, p. 65). As regards the powers of the regions, the *Declaration* indicates (Article 10, section 3) that regions have the right to set up their own representation, either individually or in conjunction with other regions, in other states and in appropriate international organisations. The *Declaration* does not stipulate the rank of such representations. It is doubtful that these should be embassies, although the authors of the *Declaration* could have that in mind. It is also stated that regions take part in the international activities of their state, in accordance with the relevant domestic legislations, whenever their own powers or essential interests are concerned (Article 10, section 4). In principle, this can concern all activities. The *Declaration* also indicates that prior to concluding any international treaty which affects the essential interests of the regions, the state should consult them. If the state intends to sign an international treaty which affects the powers of the regions, the regions should participate in the drafting and conclusion of the treaty. The manner of such participation should be determined by domestic procedures agreed by the state and the regions. By this token, the state becomes an equal partner of the regions, losing the supervisory role it had over administrative units.

The *Declaration* addresses the issue of transfrontier cooperation as well, noting that frontier areas promote transfrontier cooperation within their powers and in compliance with the domestic law of the respective countries and international law (Article 11, section 1). Regions are also given the right to conclude transfrontier agreements for the purpose of carrying out joint projects (Article 10, section 2).

The *Declaration* stresses that the European Union should recognise the regions of its member states to be "active participants in its policies." It should also have a body of regional representatives which would participate in decision-making on issues concerning regional powers and interests. Regions should have the right to establish representation in the European Union. They should also participate in the determination of the positions taken by their states in Community institutions (Article 12, sec-

tions 1–3). It was also observed in the *Declaration* that regions should have the powers to conclude agreements designed to improve the implementation of Community policies. Supervision over the implementation of Community legislation should be exercised by the appropriate courts. Whereas a state and its regions keep one another informed of the measures they have adopted in the implementation of Community legislation and programmes, the *Declaration* clearly supports the concept of practical equality of a state and its regions.⁴ The *Declaration* also grants regions with the right to bring proceedings before the European Court of Justice where measures taken by Community institutions affect their powers or interests (Article 12, section 8).

The *Declaration* states that a region should be financially independent and receive the income necessary for the performance of all its powers. When managing its income, a region should observe the principles of economy, efficiency, effective use of resources, service to the citizen and transparency in its budgetary decisions. A region's financial resources should be primarily generated by taxes partly or wholly transferred by the state, and its own taxes.

The *Declaration* is a political document and has not been subjected to any serious investigation. The Committee of the Regions to a certain extent acts as the representative of the interests of all the regions within the European Union. Both the EU Commission and the Council are obliged to consult the Committee of the Regions on matters of direct concern to local and regional authorities. The Committee can also express its opinion on its own initiative (Cf. Articles 263–265 of the *Treaty establishing the European Community*. Cf. also *Rules of Procedure of the Committee of the Regions*; These rules expired as of 10 January 2010: Wierzychowska, 2010, pp. 229–233).

From the point of view of administrative law, regions are defined as the highest organisational units of state territory, with a relatively large area and considerable population. They are perceived as economically, socially and culturally homogeneous areas where territorial institutions, which have been established for this purpose, implement autonomous

⁴ The *Declaration* suggests that the legislation on elections to the European Parliament define regional constituencies in the states which have decentralised political or administrative structures (Article 12, section 9). It also calls for the principles to be introduced to govern contacts between the European Parliament and regional parliaments as the institutions which directly represent the will of the citizen (Article 12, section 10).

economic, social and cultural policies. The literature indicates that regions are administrative units functioning below the level of central authorities and above that of local authorities or administrative units. The structure of territorial organisation of EU states at the regional level differs from country to country (Tkaczyński, Świstak, 2013, pp. 454–458; see also Rudnicki, 2000, p. 22; Gąsior-Niemiec, 2008).

The legal doctrine typically contrasts functional regions with self-governing ones. The former are usually governed by the administration, with strictly determined powers and a clearly defined position in the system of territorial organisation that is centrally imposed for the purpose of performing one or several administrative tasks. They are different from the local and federal division of a state. They are founded on the assumption that some tasks of public administration are impossible to be performed on the basis of the extant territorial structures (Lemańska, 2008, p. 137). A self-governing region is a unit of a lower level of territorial division with authorities that are independent from the central administration and granted the power to act at the local and regional level. This independence also encompasses legislative powers with respect to the region, thereby creating an autonomous region, typical primarily of a federated state structure. Seeking to develop the definition of the region, it is frequently stressed that regional authorities should be independent from the central administration and that a region should have a legal personality. Regions should also have legislative, supervisory, executive and administrative bodies, a budget with its own sources of income, and a considerable range of tasks and powers. Regions should also be relatively homogeneous territories in economic, social and cultural terms (Lemańska, 2008, p. 138). The socio-cultural aspect concerns matters of regional identity (Sługocki, 2008, p. 183 ff). Regional identity, as noted in the literature, should be primarily understood as the cultural identity of the region “described via the following synonymous terms: understanding of its own regional identity, presentation of one’s own region and the identification of its unique features.” (Stummann, 1991, p. 169). The literature stresses that socio-cultural identity can be identified in the subjective and objective dimensions. J. Sługocki observes that the “territorial organisation of the country can be a factor that strengthens the historically formed regional identity, or just the opposite, it can be a destructive element in the present territorial organisation.” (Sługocki, 1990, p. 35 ff; Sługocki, 2008, p. 183). Territorial organisation has an objective influence on regional identity through the range of powers of self-governing bodies, the insignia, name,

emblems, coat of arms, and so on, the protection of cultural heritage and through shaping the economic infrastructure (Sługocki, 2008). In subjective terms, identity concerns the bonds between the inhabitants of a given region and their identification with this region.⁵

In modern Europe the concept of region is associated both with a unit of territorial division and with various forms of regional democracy, such as self-government or regional autonomy, operating within such a unit. While regionalist tendencies emerged in Europe in the mid-19th century, the concept of the region comes slightly later, as was mentioned above. The emergence of new regions on the one hand followed from the de-concentration process, involving the transfer of tasks and powers from the administrative centre to territorial bodies, and on the other – from decentralisation, where regions took over the tasks of the public administration. In the next stage, regions were granted legislative independence thereby becoming autonomous units.

There are different legal and political types of regions: federal, autonomous, administrative-self-governing and administrative-functional ones. The first one occurs in federated states, the second in unitary-regional states (such as Spain), the administrative-self-governing model occurs in decentralised unitary states (such as France), while the administrative-functional one in centralised unitary states (such as Portugal). Tomasz Kaczmarek notes that from the point of view of the political organisation and the complexity of the administrative system of the state, the following kinds of regionalisation can be identified: federal – which occurs where the state is a federation, autonomous – leading to the emergence of autonomous regions with special status, self-governing regionalisation resulting in the emergence of self-governing regions whose institutions share powers with the de-concentrated central administration, and, finally, functional regionalisation leading to the establishment of functional regions of the de-concentrated central administration. This allows weak and strong regionalisation to be distinguished (Kaczmarek, 2005, pp. 188–189). Irena Pietrzyk suggests a similar division, identifying functional regionalisation, regional decentralisation, political regionalisation, regionalisation through federalisation and decentralisation on the basis of existing local self-governments (Pietrzyk, 2000, *passim*). Regionalisation can be inspired by the state and result from the decentralisation of pow-

⁵ This applies both to the region (the ‘little homeland’) and the whole country, see Bardach, 1988, pp. 191–246; compare also Ossowski, 1984, p. 35 ff. Ossowski distinguishes a private homeland from an ideological one.

ers (a 'top-bottom' regionalisation),⁶ alternatively, it can follow from the demands made by regionalist circles (a grassroots regionalisation).⁷

Regionalisation must not be confused with decentralisation, de-concentration and autonomy. Decentralisation, which is the opposite of centralisation, assumes the legal independence of lower level bodies. It leads to their limited subordination to higher level organs. In terms of organisation, decentralisation basically translates into the independence of lower level bodies, both with respect to staffing and issues handled. In a decentralised system, superior organs cannot interfere in the staffing of the lower level bodies or impose their will on how certain issues should be resolved. They are only authorised to monitor the activities of lower level organs, supervise and stimulate them as prescribed by law. Legal doctrine usually differentiates between decentralisation concerning the types of issues handled and territorial decentralisation. Territorial self-government⁸ is the fundamental form of the latter. Decentralisation concerns the relations between the lower level bodies and those from the higher level rather than the powers of these bodies. It needs to be observed that the issue-related decentralisation, which is not covered by Article 15 of the Constitution, consists in independent bodies or organisations being endowed with the governance over certain types of issues. Legal doctrine stresses that for that purpose, decentralised regions should be granted legal personality (Ura, 2001, p. 35; cf. Szmulik, Serafin, Miaskowska, 2007, p. 22).

Decentralisation should not be confused with de-concentration, which refers to the dispersion of powers, regardless of whether the lower level bodies are independent of the superior ones to any extent.⁹ As stated by

⁶ This is exemplified by the regionalisation in France and Portugal (Mendel, 1996, p. 46 ff; Ruśkowski, 1993, p. 102 ff; Choraży, 1998, p. 49 ff).

⁷ This is exemplified by the regionalisation in Spain, Italy and Belgium (Skrzypczak, 1984, p. 64; Skrzypczak, 1979, p. 68; Skrzypczak, 1985, p. 91; Misiuda-Rewera, 2004, *passim*).

⁸ It is axiomatic in the literature that a decentralised political system is more democratic than a centralised one, where the bodies at a lower level are hierarchically subordinated to those at a higher level and subjected to them in the matters of staffing and resolving issues. In a centralised system, the bodies at a lower level either do not have the possibility to make their own decisions, or it is limited to a larger or smaller degree (see: Wierzbowski, Wiktorowska, 2009, pp. 91–93; also Wierzbowski, Wiktorowska, 1975, pp. 34–36).

⁹ Legal doctrine indicates two types of de-concentration: issue-related and territorial. The former is typically understood as the apportionment of the powers of a single

M. Wierzbowski and A. Wiktorowska, the apportionment of a central body's powers among territorial bodies is the essence of the de-concentration process. It may transform into a process of decentralisation provided that the lower level bodies acquire an adequate degree of independence from superior bodies. It is stressed here that in decentralised administration territorial bodies are always endowed with their own powers, which results in the de-concentration of administration (Wierzbowski, Wiktorowska, 1975, p. 37).

The principle of decentralisation of public administration does not only mean that the higher level units of public administration hand over their powers to the bodies of a lower level, but they also hand over the resources at their disposal, including finances, for the performance of tasks by lower level bodies.

For a decentralised structure to exist in the territorial system it is significant that the powers of territorial bodies be based on general legislation, rather than stem from the particular empowerment by central authorities that is always subject to limitation or withdrawal. Such powers should also cover an extensive range, they should not be merely marginal public functions performed in the area of territorial units. The point here is the decentralisation of the 'authority,' not all of it obviously, but within the scope that justifies the use of the concept of decentralisation. Independence in exercising these powers and deciding about the manner of their implementation is equally important, at least as a general operational principle of territorial authorities. The decisions should be made by local authorities on their own behalf and responsibility. They can be brought before a court as decisions made by a certain body, but not as decisions made 'on behalf of' another entity (a central body). A decentralised system does not encompass the structures of hierarchical subordination, where by means of orders and instructions central authorities can make binding decisions on the manner of implementation of the statutory powers of territorial authorities (Banaszak, 2009, pp. 108–109).

In a decentralised system, the powers of central authorities in relation to the territorial authorities should be limited and relatively narrowly determined by law. Territorial authorities should have the right to defend their powers where such intervention breaches the statutory provisions. Central authorities designating individuals to perform managerial func-

body to several other bodies at the same level. Territorial de-concentration means the transfer of the powers of bodies at a higher level to subordinate local bodies (Szmulik, Serafin, Miaskowska, 2007, p. 22).

tions in the territorial bodies must not be the only method of appointing them. In practice, only territorial bodies operating exclusively in a given area should designate their candidates. It is also necessary for territorial bodies to be autonomous in terms of organisation and finance. Organisational autonomy can be defined by legislation, but it should be detailed in statutes and regulations. Financial autonomy means having one's own sources of income and freedom in allocating them. Operating solely on the basis of subsidies, and in particular of targeted grants, practically defines the idea of decentralisation (Kronberg-Sokołowska, 2001, p. 17).

The concept of decentralisation is recognised in the European Union's legislation. It is expressed in the *White Paper on European Governance*. It states that although regions and towns bear increasing accountability for the implementation of EU policies, their role is not fully utilised. It clearly stresses that the European Commission expects national governments to use the skills and hands-on experience of regional and local entities to a greater extent, and to seek to involve them more in the implementation of EU policies in line with constitutional principles and national administrative orders (*European Governance*, 2001, p. 12; see also in this issue Grosse, 2008, p. 88 ff.). Decentralisation turned out to be particularly topical when drafting the Constitution Treaty. Consequently, on 13 January, 2003, the European Parliament passed a resolution which stresses that for the European Union to be closer to the citizen, new forms of participation are required, and that regional and local authorities should play an essential role in developing such forms. It was also indicated that the principle of subsidiarity, its implementation and supervision need to be strictly defined. The European Commission was called on to seek to involve regional and self-governing entities in drafting legislation on EU policies. The need to introduce trilateral relations between the Union, member states and territorial units was also stressed (*Rezolucja PE*, 2003, p. 167).¹⁰ The standpoint expressed in the resolution is in line with

¹⁰ The resolution states that the European Union is founded on the double legitimisation of the states and citizens, and that over recent decades the integration process is increasingly accompanied by regionalisation and decentralisation trends. This strengthens the responsibilities of numerous territorial entities in the field of formulating the law and policies of the European Union. It is also noted that recent years have witnessed the increasing awareness of the autonomy of individual regional and local administrations which contribute to successful European integration. It is observed that protecting and strengthening regional and local autonomy in different European countries makes a significant contribution to the process of European integration.

the EU's concept of territorial self-government functioning (Jóskowiak, 2008, pp. 103–127; see also Gajda, 2005, p. 33; Zieliński, 1997, p. 243; Sturm, 2004, p. 122; Mik, 2002, p. 166; Gach-Violleau, Koczur, 2004, p. 398). There are contradictory opinions in European doctrine as to the influence of European integration on decentralisation and regionalisation (see among others Hooghe, 1996, *passim*; Marks, Hooghe, Blank, 1996; positions presented in the literature competently and in details discusses Grosse, 2008, pp. 89–90). The literature stresses that the advancements in the decentralisation of authority in EU member states are influenced by the changing standpoints of European institutions. It is stressed that the currently promoted proposals to strengthen the powers of national governments in the implementation of cohesion policies are conducive to centralised governance, in particular as regards public funds (Grosse, 2004, pp. 94–109).

The phenomenon and process of decentralisation must not be confused with autonomy, which consists in granting the bodies that govern a certain part of state territory with legislative powers to enact laws without the involvement of the central authorities. Therefore, autonomy is about legislation, whereas decentralisation concerns its execution (Wierzbowski, Wiktorowska, 2009, p. 92). The literature emphasises that self-government is one of the forms of decentralisation. In this case, decentralisation means that administration is transferred from centralised organs of governmental institutions to local communities endowed with legal personality. However, self-governments are supervised by the state. Regardless of how self-government is understood, an organisational unit termed as a self-government or its body is a decentralised unit, therefore it cannot be hierarchically subordinated to a higher level body, which can only supervise it by means typical of decentralised organisations (Wierzbowski, Wiktorowska, 2009, pp. 95–96; cf. also Piasecki, 2009, pp. 30–45. In the issue of self-government's functioning in the European Union see Kulesza, 2000).

It should be noted that the endorsed political concept of regions that are practically equal to the state, is not likely to be implemented in the near future. It should also be remarked, however, that there are very strong decentralist circles which tend, and will probably continue that tendency, to increase their powers. Regionalisation seems to be quite attractive to a majority of them. It certainly is highly significant in the economic area, while it generates certain political threats. If regionalism is not so much accepted, but rather achieved from the bottom up, it may have a highly

significant impact on cultural life. It may become a dam, preventing the spread of European culture, understood as the universal ‘Englishisation’ of European languages, the predominance of Anglo-Saxon culture in literature, film, music and theatre. Regionalisation cannot, however, be reduced to the level of folk culture and assumed to be exclusively represented by regional song and dance ensembles and the works of local artists who cannot get recognition above the local level. Consequently, the concept of regionalism depends on the sense of community among the inhabitants of a given region and their beliefs concerning certain historical relations that bind them. What is also important are eating habits, leisure habits and, ironically, sport – in particular such sports as soccer or basketball that generate so-called tribal relations between sports fans. These bonds are primarily regionally justified, by the fact that a given team comes from somewhere in the region. On the other hand, frontier regions have an opportunity to present the cultural and artistic achievements of neighbours to each other. The presence of higher educational institutions (such as Viadrina) in such regions can play a significant role in this respect.

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Streszczenie

Polityczna koncepcja regionów zrównanych praktycznie z państwem nie zostanie chyba w najbliższej przyszłości zrealizowana. Zauważyć jednak należy, iż w ramach Unii Europejskiej istnieją bardzo silne ośrodki odśrodkowe, które zmierzają i chyba zmierzać będą do poszerzenia swoich kompetencji. Regionalizacja wydaje się być ideą pociągającą dla większości z nich. Niewątpliwie jest ona bardzo istotna w płaszczyźnie gospodarczej. Niesie za sobą pewne niebezpieczeństwo o charakterze politycznym. W sferze kultury regionalizm, jeżeli istotnie będzie nie tyle akceptowany, co zdobywany oddolnie może mieć bardzo istotny wpływ na życie kulturalne. Być może stanie się tamą niepozwalającą na rozlewanie się kultury europejskiej rozumianej jako powszechna „anglizacja” języków europejskich, dominowanie kultury anglosaskiej w literaturze pięknej, filmie, muzyce i przekazach teatralnych.

Słowa kluczowe: region, regionalizm, regionalizacja, ekonomiczne, politologiczne i administracyjno-prawne ujęcie regionu

Резюме

Политическая концепция регионов, практически уравненных с государством, вероятно, не будет осуществлена в ближайшем будущем. Однако следует отметить, что в рамках Европейского Союза существуют очень сильные центробежные центры, которые стремятся и, вероятно, будут стремиться расширять свои компетенции. Регионализация кажется привлекательной идеей для большинства из них. Несомненно, она является очень существенной в экономической плоскости. Несет с собой определенную опасность политического характера. В сфере культуры регионализм, если на самом деле будет не столько принят, сколько завоеван снизу вверх, может иметь весьма существенное влияние на культурную жизнь. Возможно, это станет плотиной, не позволяющей европейской культуре разливаться, понимаемой как всеобщая “англизация” европейских языков, доминирование англосаксонской культуры в художественной литературе, кино, музыке и театральных постановках.

Ключевые слова: регион, регионализм, регионализация, экономическое, политологическое и административно-правовое истолкование региона

Резюме

В найближчому майбутньому не буде реалізована політична концепція регіонів, які мають державний статус. В Європейському Союзі існують сильні осередки, які намагаються розширити свої права. Регіоналізація є для більшості з них привабливою. Є істотною з точки зору економіки. Є небезпечною в політичному плані. При певних обставинах може мати вплив на культурне життя. Може стати своєрідною дамбою, що стримуватиме розлив європейської культури, яка розуміється як загальна «англізація» європейських мов, домінування англосаксонської культури в художній літературі, кіно, музиці та театрі.

Ключові слова: регіон, регіоналізм, регіоналізація, економіка регіону, політика регіону, адміністративно-правовий статус регіону

