
Local Government in Switzerland in the Light of the Constitutional Principle of Separation of Powers

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Abstract:

Purpose: The research aims to characterize legal aspects of constitutional determinants of local government in the Confederation of Switzerland.

Design/Methodology/Approach: Authors discuss various legal regulations of aspects explained in Swiss system, in particular in text of Federal Constitution. The aim of the topic was to demonstrate that the Swiss Confederation from the European and world perspective is seen in numerous ways as a unique country, because it is a neutral, safe, rich country with a specific system of political power, but also the socio-cultural aspect. Besides, there is a unique system of functioning of public administration in this country. Swiss Confederation consists of the central State, 26 cantons and 2495 municipalities. All parts of state power, regardless of the level of government are autonomous and independent from each other. Functioning and operation of territorial self-government in Swiss Confederation allows for better and more effective action within the framework of the functioning of the different levels of public administration in the country. Enabling the citizens to participate in decision-making referendums at federal and cantonal level and direct impact on the undertaken activities in the municipalities can effectively exercise authority in accordance with the will of the citizens. During the research, Author uses legal and comparative analysis as well as structural and functional analysis. Moreover, the interpretation method is also present, which makes it possible to interpret legal acts regulation security aspects. Author use elements of the concept - descriptive and improving functional and modeling, and diagnostic and functional.

Findings: The working hypothesis refers to assumption that current Swiss constitutional regulations highlighting the legal determinants of local government and other legal acts enable the whole system to work efficiently. Moreover, good implementation of the aforementioned regulations are to be notices as an important part. Therefore the Swiss system can be taken as an example for other countries.

Practical Implications: As a result of conducting the research, it is possible to identify and present some recommendation for legal and determinants of local government.

Originality/Value: For the purposes of this article, a multifaceted, synthetic and critical analysis of data available in the source literature was carried out. The proposed solutions are to contribute to legal determinant on of public administration in the Swiss

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Confederation. The conclusion is that, despite the fact that the legal determinant of local government in the Confederation of Switzerland is system, in particular in text of Federal Constitution.

Keywords: *Swiss local government, Swiss Constitution, cantons, public administration, federation, municipalities.*

JEL classification: *H 56, F52, O33.*

Paper Type: *Research article.*

1. Introduction

The scope and method of research in the study was based on an analysis using legal and constitutional determinants of local government responsibility for system in the Confederation of Switzerland. The analysis of available literature and legal acts was also conducted.

The theoretical issues were determined based on the analysis of available literature and legal regulations. The practical examples were taken under considerations as thoroughly analyzed. The research methods used in the study included a critical analysis of the literature, legal acts, comparative analysis and secondary data analysis.

Deliberations concerning the functioning of territorial self-government in Swiss Confederation should be started by explaining, that from the European and world perspective Switzerland in numerous ways is seen as a unique country. Switzerland is a neutral and safe state, but also rich with a specific system of political power and cultural – social diversity.

Moreover, this country is tied to tradition, well organized and friendly to foreigners (Gołębiowska, 2015a). In Switzerland it is possible to communicate in several different languages, and for this reason, it is a unique state in terms of national content (Porebski, 2009).

In addition, the specific is also Swiss statehood, functioning in exceptional geographical and political conditions, formed on created from the centuries tradition of direct political power linking democracy with the principles of federalism. Therefore, worth attention is the issue of structure and functioning of territorial self-government in Swiss Confederation (Gołębiowska and Jakubczak, 2021).

It is worth explaining that the idea of federalism appears in many concepts when creating a world empire where peace would be ensured between states. Moreover, the idea of federalism is understood as a kind of striving for the greatest possible decision-making power to be as close to the citizen as possible. Thus, it can be said that federalism is a philosophical concept that assigns a large role to human freedom and autonomy and is a fundamental principle of the Swiss system (Gołębiowska, 2015d).

The preamble to the Constitution emphasizes that „the Swiss people and the cantons” are considered to be the source of power, while „the restoration of the Federation” is the purpose of the enactment of the Federal Constitution of the Swiss Confederation. In art. 2 of the Constitution presents the basis goals of the Federation, which include, inter alia, protection of the freedoms and rights of the nation, the independence and security of the country (Gołębiowska and Jakubczak, 2021).

Swiss law presents the principle of a federal state, while the Swiss statehood was founded as a bottom process of connecting independent (*sovereign*) cantons. Traditions and principles of the territorial self- government were built when there was not Swiss State (*Confederatio Helvetica*).

It is worth noting that at the beginning of building a modern concept of local government, that is in 18th century, it was based on the thesis that the decentralization of power should be understood as full independence of the municipalities of the central government. Currently, since the end of 19th century the legal position of territorial government units in a federal constitutional state is determined in accordance with the doctrine of *Rechtsstaat* (*state law*).

The state recognizes created and established local municipalities as corporations of citizens engaged on the basis of rights and obligation in the tasks of public administration (Gołębiowska, 2015b; Gołębiowska and Jakubczak, 2021).

Switzerland in accordance with the legal regulations contained in the *Federal Constitution of the Swiss Confederation* (dated 18th April 1999 Preamble, art. 1 and 3, title 4) is a federal state divided into federal states, or cantons (Gołębiowska and Jakubczak, 2021; Rycerska, 2010), which in turn are divided into municipalities. Such division of Switzerland allows the identification of three groups of administrative units, namely: the federation, cantons, municipalities (Kriesi and Trechsel, 2008; Chuch and Dardaneli, 2005).

At the same time it should be clarified that, in the meaning of organizational and legal aspect the essence of municipalities is determined in the individual cantons and not federations, which are more varied. All municipalities have two attributes, which are state local authorities, due to the fact that they perform tasks of the state (*public functions*), as well they are territorial self-government corporations

authorized to self-regulation of their cases with regard to the legal order (Gołębiowska and Jakubczak, 2021).

Swiss municipality is a corporation with legal status under public law, which the core structure are population, territory and legally defined scope of regulations.. The municipality, as the basic unit of territorial self- government is an intrastate territorial relationship of reign (*Herrschaftsverband*) of the people settled within its borders, that has the status of a legal person.

Swiss Confederation is a federal state divided into 26 cantons and 2495 municipalities. It is worth to state that the number of cantons is the same for years, but the number of municipalities is gradually declining, which is caused by the result of joining together individual units of public administration. In addition, each Swiss canton has both its own constitution and government authorities and therefore it has a wide range of power and independence. In turn, the Swiss municipalities are the only territorial self- government units.

2. Cantons of Swiss Confederation

Discussing the issue concerning cantons of Swiss Confederation it is worth noting that the borders are irregular alike as well as their sizes. The largest are the cantons of Graubünden, Valais, Berne, where the surface is over 5000 km². The smallest cities are Basel and Geneva.

Similarly diverse is the number of people living in different cantons, since the cantons with the largest population is Zurich (1,373 million inhabitants), Bern (over 978 thousand inhabitants) having in its area large cities.

The smallest cantons in terms of population are Appenzell Inner Rhodes (15.7 thousand inhabitants), Uri (35.4 thousand inhabitants), Glarus (38.6 thousand inhabitants), Obwalden (35.6 thousand inhabitants).

It is worth noting that the canton of Basel - city has more inhabitants than the largest canton, which is Graubunden (Basel Canton – city of 37,1 km² inhabited with 195 495 of people, Grisons canton of 7 105 km² area is inhabited with 193 920 people). In canton of Zurich population is 1 373 068, while in canton of Appenzell Inner Rhodes lives only 15 688 people.

Moreover, differences appear in the population density in individual cantons, because in the largest in terms of area canton of Grisons on 1 km² there are 27 people on average, and the smallest canton of Basel - City, this number increases to 5078 people per 1 km² (Gołębiowska and Jakubczak, 2021). Another differentiating element in the cantons of Swiss Confederation is the existence of the four official languages, namely: German, French, Italian, Romansh (Gołębiowska and Jakubczak, 2021).

Territorial self- government is widely used in European countries manner to exercise public authority and organizing local (*territorial*) administrative activities. Territorial self- government is the institution of legal system to enable the implementation of local public issues. In addition, the territorial self- government is the value of the political culture of the West, deeply located in the ideas of its civilization, especially in the ideas of freedom and social pluralism.

It is worth noting that 17 of 26 cantons are German-speaking, 4 cantons are French-speaking (Geneva, Jura, Neuchâtel and Vaud), (Jones, 2009; Gołębiowska and Jakubczak, 2021) while 3 cantons are bilingual French-speaking and German-speaking (Bern, Fribourg, Valais). In the canton of Grisons (Graubünden) are used three languages, German, Italian, Romansh. Whereas, there is only one Italian-speaking canton that is Ticino, although this language is spoken in four southern valleys of Grisons canton. In Swiss Confederation 64% of the population speaks German, 20% French, 6.5% Italian language, only 0.5% Romansh (Lüdi and Werlen, 2005).

In addition, in Switzerland there are bilingual municipalities, mainly larger cities in bilingual cantons, for example, Biel and Fribourg. Noteworthy is the fact that not all cantons are uniform territorial units. In two cantons they are located enclave belonging to third countries. Thus, in the canton of Schaffhausen, the city of Büsingen Am Hochrhein belongs to Germany, while Campione d'Italia is an Italian commune lying in the canton of Ticino (Gołębiowska and Jakubczak, 2021).

Considerations regarding territorial self-government in Switzerland bring to explanations, because the cantons are independent units of Swiss Confederation, which means, that each of them has its own legislative and executive bodies. In addition, all authorities are legislative one chamber parliaments, and in two cantons, which in Appenzell Inner Rhodes and Glarus legislative body is the People's Assembly.

The number of members of parliament go to 55, and in canton of Obwalden to 200 deputies in Bern, Waadt and Aargau (Kriesi and Trechsel, 2008). In addition, the legislative authorities in cantons are varied in terms of the length of term of office, that for the cantonal parliaments varies from 2 to 4 years (Gołębiowska and Jakubczak, 2021). The cantons have their own cantonal governments, that vary in terms of the number of ministers from 2 to 7, and their content is dependent on the social structure of individual cantons of Swiss Confederation.

In accordance with art. 3 of *Federal Constitution of Swiss Confederation* of April 18th, 1999 year "Cantons are sovereign, insofar as their sovereignty is not limited by the Federal Constitution; they perform all these laws, that have not been transferred to Federation". *Federal Constitution* also provides mutual support and cooperation of the federation and cantons, mutual assistance and respect, and in the case of

disputes between cantons or cantons and Federation it is assumed to solve them as far as possible by negotiation or mediation.

The Federal Constitution of Swiss Confederation guarantees canons the possibility of cooperation in the regulation of law at the federal level through the Council of States. Besides, it stipulates that the Federation is obliged to inform cantons of its intentions and seek their opinion, if they relate to their operation. In addition, cantons are obliged to implement federal laws in accordance with the constitutional provisions and laws, although Federation should leave cantons the greatest possible freedom to create legal relationship and it should take into account the autonomy of individual cantons (Gołębiowska and Jakubczak, 2021).

According to the regulations of *the Federal Constitution of Swiss Confederation* duty of Federation is to safeguard the independence of cantons, which have the right to enter into agreements among themselves, as well as create common organizations and institutions and joint performance of tasks in the regional business area.

However, mutual agreements concluded between cantons may not be in conflict with the law and business of Swiss Confederation, and also the rights and interests of other cantons. In addition, the federal law takes precedence in case of conflict with the cantonal law, and the duty of Swiss Federation is ensuring the respect of law by cantons (Art. 47 *Federal Constitution*, Gołębiowska and Jakubczak, 2021).

With the legal provisions of art. 51 of *Federal Constitution of Swiss Confederation* results, that each canton has its own constitution, but under the condition that it will be accepted by the nation and it must be revised, if it is demanded by majority of those entitled to vote. In addition, cantonal constitutions need guarantee of Federation of Switzerland, that accept them if they are not in contrary to federal law (Art. 51 *Federal Constitution*).

Duty of Federation of Switzerland is to protect the territory of cantons, which means, that any changes in number and territorial changes of cantons require the consent of their citizens, as well the majority of citizens of Confederation, living in other cantons. In addition, the cantons may among themselves and on the basis of an agreement make regulation of their borders (Gołębiowska and Jakubczak, 2021).

3. Municipalities in Swiss Confederation

In Switzerland municipalities are part of cantons, and their number is 2495. The municipalities, just as cantons are varied in terms of area and population of inhabiting them. The largest municipalities in terms of population size are the cities of Swiss Confederation that is: Zurich – 368,7 thousand residents, Geneva - 186 thousand residents, Basel – 166,2 thousand residents, Bern – 123,5 thousand residents.

On the other hand, the smallest municipality is Corippo in canton of Ticino, which in 2013 had only 12 thousand residents. Therefore, using the criterion of the territory, the largest municipality is Bagnes with size of 282 km², and the smallest municipality is Rivaz with size of 0.3 km². At the same time, it should be clarified, that the number of municipalities is constantly changing, which is associated with connecting them together, what concerns the smallest municipalities the most, as it is exemplified by municipality of Portein in canton of Grisons, which in 2010 was merged with the municipalities of Cazis, Prâz, Sarn and Tartar creating a municipality of Cazis.

Policy of linking municipalities is related to offered financial benefits, which are undoubtedly argument for the fact that some municipalities decide to change their borders (Gołębiowska and Jakubczak, 2021).

This phenomenon is noticeable, because in 1848 in Switzerland there were 3205 municipalities, 200 of which in 1990 was merged reducing their number to 3006. However, in 1991-2000 there were joined another 100 municipalities. It is worth noting, that in 2004 year in the territory of Swiss Confederation there were about 2900 municipalities, in January 2006 year there were already 2740 in 2007 year there were operating 2721 municipalities, in 2008 year 2715 municipalities in 2009 year 2636 municipalities, in 2011 year there were only 2551 municipalities, and currently they reach the number of 2495 municipalities.

It follows that, from 1848 until 2014 there were made more than 900 changes to the merger or division of municipalities aimed at general desire to reduce their numbers, although there were cases of division the existing municipalities (Gołębiowska and Jakubczak, 2021). As the cooperation between the individual municipalities it runs just similarly as in the cantons.

The individual units are characterized by different institutions of the legislative, executive and judicial power. Undoubtedly, it affects the autonomy of local government units of Swiss Confederation, according to cantonal law (Art. 50 *Federal Constitution*).

Therefore, within the range of this autonomy, the municipalities are free to be connected with other municipalities or keep their independence, which cannot be taken away from them by cantons. In addition, the cantonal legislation gives them both freedom to choose the appropriate structure of political power and administration, as well as the right to provide taxes to satisfy their own needs and freedom of action in matters, which do not belong to the competence of the cantons or Federation (Gołębiowska and Jakubczak, 2021).

In Swiss Confederation municipalities are divided into many types, but the most common is a general municipality - political, which is the basic unit, where residents organize administration and authorities, depending on the specifics of the same

municipality. The tasks of municipalities include all political matters, not reserved for the federation and the canton. Another type of municipalities are so called, special municipalities, which can be divided into municipalities with a limited scope of competence and municipalities with limited personal structure.

In Swiss Confederation there are special municipalities, which are divided into church municipality, responsible for matters concerning the local parish, school municipality which has the aim to conduct education in the particular, the poor municipality dedicated to the field of social policy at the local level (Gołębiowska, 2015b; Gołębiowska and Jakubczak, 2021).

In Switzerland there is a specific type of special municipalities, separated directly from Swiss tradition, that is citizens municipality. In turn, the municipalities that have been created in the result of joint resolution of local problems by people managing the neighboring farms with a period of time has been transformed into a legal public-corporate groups. The uniqueness of these municipalities consists of an hereditary citizenship, regardless of the current residence, but now those municipalities are in the minority, and their activity is confined to grant the citizenship and operating with current funds.

In the municipalities of Swiss Confederation, there are two types of governance and therefore there are municipalities of ordinary and of extraordinary power structure. In the municipalities of the ordinary structure of power, the legislative power belongs to the municipal assembly, and the executive council to municipal council (at the same time the attention should be paid to the terminology used in Switzerland. In most countries, *the resolution entities* are called municipal councils, while in Switzerland the municipal council is the executive entity).

The Municipal Council is elected by all citizens entitled to vote at the municipal assembly. During the assembly meeting citizens vote on the election of their authorities and on submitted projects, as well as they discuss issues relevant to the municipal. Once a year, at a meeting, the citizens vote on the budget for the next year. Persons having positions in the authorities usually work as volunteers or they are employed as a part-time.

In the smallest municipalities they usually keep two positions; president of the municipality, who chairs the council and the assembly, and his secretary. Due to the fact, that usually there is a large number of decisions to be taken, and carrying out such large assembly causes organizational problems, the authorities organize referendum, during which the inhabitants vote "for" or "against" the project. On the other hand, in large municipalities where the legislative power belongs to municipal parliament performing public function it is payable (Gołębiowska, 2015b; Gołębiowska and Jakubczak, 2021).

Another way of keeping the power are municipalities with extraordinary power structure, in which residents are eligible to vote, so the assembly of municipalities elect the parliament, that is legislative body, which then selects the municipal council, as the executive body. In the municipalities located within German-speaking cantons, where the municipal council is directly elected by the assembly of the municipality the situation is different. Assembly of the municipality has a lot of powers, that belong exclusively to this entity, that is enacting the calculation of the annual tax rate and estimates.

The municipal council is obliged to order and set a deadline for municipal assemblies, next set the order and cause that the largest possible number of eligible citizens could participate in it (Gołębiowska, 2015b; Gołębiowska and Jakubczak, 2021). In Swiss Confederation, there are rural and city municipalities. The cities (villes or Städte) are the municipalities with more than 10 000 inhabitants or less, and they have a city rights granted even in time of the medieval period. In Switzerland the cities have the same rights as rural municipalities.

The Swiss municipalities have the right to join in unions of municipalities, which may be dedicated and they can perform defined tasks. They are created in case of small municipalities, which are unable to cope with specific tasks independently or municipal unions, which are formed by a larger number of municipalities. Then, they form a corporation under public law, having legal entity and usually they perform numerous tasks.

"Multi-purpose" municipal unions execute such functions, such as water supply and building the sewage system, running specific types of schools, hospitals and nursing homes, welfare institutions, the tasks of regional planning, local traffic.

In addition, some municipalities conclude together various cooperation agreements, allowing specific tasks to be performed (Gołębiowska, 2015b). Municipalities of Swiss Confederation are characterized by developed financial autonomy, because they can be financed through external funds in the form of subsidies and grants and they can come from the central budget and cantons (Gołębiowska and Jakubczak, 2021).

They can also come from own funds of municipal, because they have the right to have its own budget. Moreover, they can collect taxes - fees that are the source of their income. In turn, the budget can be enacted by the municipal parliament, assembly or directly by citizens.

The supervision of finances is conducted by committees and administration of canton, which of the task is to define matters concerning the taxes on property and income. Furthermore, citizens of Swiss Confederation pay taxes to all three levels of government, with the note, that more than one-third of the total tax capita is paid

to the municipality, less than one-third for canton and less than 30% is transferred to the federation (Gołębiowska and Jakubczak, 2021).

In Swiss Confederation the supervision of municipalities is given to cantons, that is justice department of the given canton, which of the task is to control finance and confirmation of legality of higher government of local law acts. In addition, cantons provide to municipalities information that are needed for their operations and they support reforms related to the merger of the municipalities, implementation of the policy, which aims to improve the management of municipalities and increasing efficiency of their action (Gołębiowska and Jakubczak, 2021).

On the other hand, larger municipalities have less detailed cantonal law, and weaker cantons pass greater autonomy to municipalities. In French-speaking cantons the autonomy of municipalities is weaker, while the municipalities are more autonomous in the north east and in the central mountainous regions.

Over control of the municipalities of canton is in contrary to the principles of autonomy and subsidiarity, although cantons do not have the possibility to appeal against a selected municipal council and questioning the decisions of the municipality entities. They may intervene, in a situation, where a municipality goes bankrupt or citizens can not choose the local authorities. Then, as long as a new council is not selected, the municipality is managed by the commissioner of canton (Gołębiowska and Jakubczak, 2021).

4. Conclusion

Functioning of public administration in Swiss Confederation is based on the independence and autonomy of each unit of territorial self- government, but with the necessary relationships and dependencies from the federal government. This allows for effective and efficient execution of state power at all levels of political power.

Therefore, independently in many areas cantons, despite of diversity in terms of area and population are able to execute the power, satisfying the needs of the residents. Similarly, autonomously and independently municipalities, they perform specified by cantonal law tasks, but not always their size allows for the expected independence and efficiency. So this type of actions allow to notify Swiss Confederation, as a state of exceptional and unique specificity of public administration.

Swiss Confederation from the European and world perspective is seen in numerous ways as a unique country, because it is a neutral, safe, rich country with a specific system of political power, but also the socio – cultural aspect. Besides, there is a unique system of functioning of public administration in this country. Swiss Confederation consists of the central State, 26 cantons and 2495 municipalities.

All parts of state power, regardless of the level of government are autonomous and independent from each other. Functioning and operation of territorial self-government in Swiss Confederation allows for better and more effective action within the framework of the functioning of the different levels of public administration in the country. Enabling the citizens to participate in decision-making referendums at federal and cantonal level and direct impact on the undertaken activities in the municipalities can effectively exercise authority in accordance with the will of the citizens.

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