

MUNICIPALITIES AND NGOS IN POLAND: A NEW FRAMEWORK FOR STABLE COOPERATION?

Abstract

Public institutions need private for-profit sector to execute their strategies. There is also no doubt that it is a well organized symbiosis, but why it is so obvious. The answer is different nature of 1st and 2nd sector, its different strengths and weaknesses. Why not to use an analogy to prove that such cooperation is also obvious between 1st and 3rd sector? We can use the same rationality to explain bureaucrats why they must cooperate with 3rd sector actors.

Keywords: NGOs; municipalities; non-profit; governance.

1. Introduction¹

History of modern local government in Poland begins in the 1920s, when the country got back its independence. The country had to struggle many difficulties then, including diversity of administrative solutions within local and regional self-government. Such situation lasted until 1933 when new act on unification of local government was introduced².

After World War II Poland got under strong influence of the Soviet Union. That meant also introduction of centralism vision of state organs system. When the Act of 20th of March, 1950, on Local Organs and Unitary State Authority

¹ The following text, in a much broader version, has been first presented at the 23rd World International Political Science Cooperation Congress in 2014 and is available at the events website at: http://paperroom.ipsa.org/papers/paper_35188.pdf. The concept is also presented in: M. Popławski, *Municipalities and Local Associations as Subjects of Public Power Decentralization*, Toruń 2014.

² See: A.K. Piasecki, *Samorząd terytorialny i wspólnoty lokalne*, Warszawa 2009, p. 130.

came into force local government ceased to exist³. In 1990, when transition has begun, one of first major system reforms was bringing that structure back to life. It has not been one of major issues debated at the Polish Round Table, but a group of scientists, including Jerzy Regulski and Michał Kulesza, convinced new Solidarity government to introduce it ⁴.

NGOs in Poland have a long and rich tradition. In the nineteenth and twentieth century a lot of charity and science organizations emerged ⁵. Under communists regime after 1945 the third sector could not develop its activity. Thanks to determination of the Solidarity new Law on Associations has been introduced in April 1989, even before first free elections in held June the same year.

Legal regulations regarding non-governmental organizations in Poland are clear and simple. There are separate acts on associations and foundations and one must admit that it is relatively easy to establish any of these. A special category are public benefit organizations, which have been introduced in 2003. NGO may apply for such status after two years of its activity. In order to get one you must prove that you perform public benefit activity as defined in law. There is a detailed, broad list of what is qualified as such activity. The most beneficial right, that public benefit organization acquire, is the fact that it may get 1% of tax of any natural person, if it declares so in annual tax return completion⁶.

According to Polish law there are seven forms of cooperation of municipalities with NGOs:

- a. “contracting out to NGOs (...) implementation of public tasks (...);
- b. mutual notification on planned activity directions;
- c. consulting (...) projects of normative acts on issues relating to statutory activities of these organizations;
- d. consulting draft legislation regarding the sphere of public tasks (...) with public benefit works councils, if such councils have been establishment by local authorities;

³ See: W. Witkowski, *Historia administracji w Polsce 1764–1989*, Warszawa 2007, p. 426–427.

⁴ J. Regulski, M. Kulesza, *Droga do samorządu. Od pierwszych koncepcji do inicjatywy Senatu (1981–1989)*, Warszawa 2009, p. 111–123.

⁵ Compare: M.H. Kurlito, *Organizacje pozarządowe w działalności pożytku publicznego*, Warszawa 2008, p. 25–35; Z. Tokarski, *Wolontariat w Polsce. Raport z badań w Polsce w latach 2000–2003*, Łódź 2008, p. 38–39.

⁶ See: M. Kisilowski, *Prawo sektora pozarządowego. Analiza funkcjonowania*, Warszawa 2009, p. 254.

- e. creating joint teams of an advisory and initiative character, composed of representatives of NGOs (...) and authorities representing public administration;
- f. contracting performance of local initiatives (...);
- g. signing partnership agreements”⁷.

Presented list contains possible forms of cooperation. It is obligatory for each municipality to cooperate, but the legislator has left selection of forms of cooperation to local authorities. The criteria that must be kept, can be summarized as follows:

- a. cooperation has to refer to performance of public benefit activity as specified by law,
- b. this activity coincides with public tasks of certain public administration unit,
- c. territorial jurisdiction of public administration unit (in regard to this cooperation) has to be kept.⁸

2. Classical approach to cooperation benefits

Explaining why the two actors should interact is in most cases based on a assumption that it helps development of political culture. NGOs get a strong partner, which makes their own potential bigger and bigger. That in turn makes them more attractive as a place where people may want to work together in order to help others or just to spend their free time. In result of presence and activity of the third sector, culture of participation and taking voice is being spread among people. It helps building a better society of citizens, who are aware of their rights and duties.

If cooperation means transfer of implementation of public tasks to NGOs it is fruitful for public administration as it has less work and may concentrate on its other duties. We also shall remember that third sector is very diverse and usually this diversity is offered to citizens. Cooperation helps public administration meet expectations of people because each individual is different.

Another commonly recognized benefit comes from the concept of three sectors. The first one – public institutions, are public and non-profit. Second

⁷ Act of 24th of April 2003 on Public Benefit Activity and Volunteerism, consolidated version Journal of Laws 2016, pos. 239 with amendments, art. 5 para. 2.

⁸ Compare: P. Suski, *Stowarzyszenia i fundacje*, Warszawa 2008, p. 63.

one is private and for-profit, and the third is also private but non-profit. Due to that its activity is aimed at meeting peoples needs that cannot be satisfied by market economy, as performance of some services or delivery of some products is not profitable, and governments cannot afford them or deliver effectively.

Activity within third sector is not aimed at bringing financial profit and it also is not under democratic mechanisms, which means that their goals do not have result from common agreement of the society. NGOs work within socially unpopular spheres, e.g. with drug addicts or with homeless men.

Benefits of cooperation listed above are quite obvious in well developed countries, where political culture is at a higher level. Because of its deficit in Poland it is hard for bureaucrats to accept these reasons, so in everyday living it is a matter of good will of authorities whether cooperation does or does not take place.

3. Decentralization as a reason

In the search for a simple reason why municipalities must cooperate with third sector one may take a closer look at decentralization. It is not easy explain this phenomenon as often it means what person using it wants it to mean⁹. There are different definitions around the world in various languages. Its common feature is transfer of tasks, resources and competences to lower bodies in the government and administrative structure. In Polish law studies it means “defined in statues, protected by courts, transfer of tasks, resources and competences from higher to lower bodies. Relationship between that bodies is defined as supervision”¹⁰. It means that some sphere of independence is created and the higher body may interfere only if a crisis situation takes place. When crisis is over central government should withdraw from taking over tasks of the lower body. On that assumptions whole local government system in Poland is created¹¹.

⁹ R.M. Bird, *Threading the Fiscal Labyrinth: Some Issues in Fiscal Decentralization*, “National Tax Journal” 1993, No. 46 (3), p. 208. See also: D. Conyers, *Decentralization and development: A review of the literature*, “Public Administration and Development” 1984, Vol. 4, No. 2, p. 187; J.M. Cohen, S.B. Peterson, *Methodological Issues in the Analysis of Decentralization*, “Development Discussion Papers”, October 1996, p. 3.

¹⁰ H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, Warszawa 2008, p. 16.

¹¹ See: B. Dolnicki, *Samorząd terytorialny*, Warszawa 2009, p. 27.

Decentralization is a process as well a state after that process. It is a very popular mechanism used around the world in order to enhance quality and effectiveness of public tasks delivery¹². Nevertheless, it is just one of solutions and as such it does not contain an explanation why it should be used. The same as in history of medicine bloodletting had been perceived as a cure for various illnesses. Sometimes it did help, but recently condition of the patient got even worse. Doctors did not know why. Also in public management it is crucial to know when we shall use decentralization as a proper tool.

The answer is in the principle of subsidiarity. This idea has been developed since ancient times and, among others, it has been well explained within catholic social teaching¹³. It is pope Pius XIth, who in his encyclical *Quadragesimo Anno* (1931) wrote that:

“It is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do”¹⁴.

The principle is important when we want to answer the question regarding when we should decentralize, and when we must not. Also it is used to explain when a public task is created. If we look at the society as a vertical construct at the bottom we find an individual and above it other private subjects, which are respectively: its family, group of friends, neighborhood, local community, regional community. Above them located are public institutions: municipality, regional authority, central government and international organization. According to the principle if a task cannot be performed at the bottom it shall be moved to higher level, but not the highest one. It shall be performed at the lowest possible (optimal) level. When the selected level is public entity, then such task should be become a public task.

¹² See: D.A. Rondinelli, J.R. Nellis, G.S. Cheema, *Decentralization in Developing Countries. A Review of Recent Experience*, “World Bank Working Papers”, No. 581, p. 13; G.S. Cheema, D.A. Rondinelli, *Decentralizing Governance: Emerging Concepts and Practices*, Harvard 2007, p. 6–8; D.A. Rondinelli, *Government Decentralization in Comparative Perspective: Theory and Practice in Developing Countries*, “International Review of Administrative Sciences” 1980, Vol. 47, p. 137–140; N. Furniss, *The Practical Significance of Decentralization*, “Journal of Politics” 1974, No. 36 (4), p. 62.

¹³ See: M. Kisilowski, *Prawo sektora...*, p. 53–56.

¹⁴ Pius XI, *Quadragesimo Anno*, http://w2.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html, (accessed 28.07.2016).

Why principle of subsidiarity is so important for decentralization? It is its ideological background. It points out circumstances that allow us decentralize. Still, it has some serious imperfections. It is more a guideline, than a ready solution. Principle of subsidiarity suggest seeking the most optimal solution, but it does not tell us what this “optimal” means, and if we ask even a small group of people, “optimal” will be refer to different solutions.

It is a serious problem because each decentralization process has to be precede with a proper diagnosis of what this “optimal” really is, meaning what are the goals that are to be achieved¹⁵. Public manager, who is willing to be as rational as possible, must strive to omit any mistakes when setting such goals. The problem is that the diagnosis before decentralization is *per definitionem* imperfect.

4. The problem with decentralization

Diagnosis, that precedes decentralization, is imperfect due to multiplicity of factors that has to be taken into account and their nature. These factors change – sometimes even rapidly. Socio-political sphere is never static. We cannot predict such events as natural disasters, international situation, market boom or slump, and many others.

All factors could be divided into groups, and further into subgroups. Then different priorities are given to certain elements. Some groups of factors might not be taken into account as we might not notice them or find them unimportant.

Each citizen, who has any political influence, takes part in that diagnosis. Not only by voting in a referendum, but through any other public activity that has influence on authorities that take final decisions. If we take a closer look at elections we will notice that with one vote people must express their opinion about whole vision of how the country should be governed and what decisions shall be taken. Additionally, we must remember that most of citizens are not experts and they have different rationale.

Everybody – experts, authorities and citizens may take into account different criteria of diagnosis:

- a. emotional assessment: individual attitudes are shaped by individual perceptions about the state, administration, social and economic life,

¹⁵ See: P. Olsen, *Maybe It Is Time to Rediscover Bureaucracy*, “Journal of Public Administration Research and Theory” 2006, No. 16 (1), p. 7.

individual-state relations, functions of government and administration, and about possibilities of meeting his expectations through structures of social life;

- b. ideological assessment: nature and content of evaluations depends on the type of doctrine, on its fundamental assumptions, which are related to valuation of reality;
- c. political assessment: more instrumental than ideological, are a result of doctrinal attitudes, though discussion transforming it to specific aims, selection of means and strategies, used in programs with relations of goals and strategies;
- d. praxiological assessment: allows defining certain systems, in terms of efficiency and in some areas of public administration the criterion will be profit and economy;
- e. legal assessment: refer primarily to issues of legitimacy of public administration, and the legality of its actions¹⁶.

Hardly any market mechanisms can be used in regard to local government and its tasks¹⁷. When we want to buy a car different manufacturers present us their offer. They compete to bring our attention by offering better equipment, higher maximum speed, more safety or comfort. Incredibly important is also price of the product. But when we want to get a new passport or social help we cannot choose between competing offers. Competition is the driving force of development of the private sector, that makes its services and products better and better. In case of public bodies we may express our opinion through elections and consultations, but such competition of political offers is always less effective as market mechanisms.

Furthermore the diagnosis is hampered by the difficulty to gather and process all necessary data. No citizen or sometimes even the government has to act in a state of risk. Of course it could be smaller or bigger, but we almost never can be sure that we know all what is necessary.

In unitary states, like Poland, another problem has to be taken into account. In federal states – Germany, USA, or Austria – different diagnoses are better suited for smaller parts of the country. In Poland it has to be the same system for the whole country, meaning – the same solutions apply to poorly developed east as to rich west and south. Additionally, if we would like to be as precise

¹⁶ Compare: J. Łukasiewicz, *Zarys nauki administracji*, Warszawa 2004, p. 267–275.

¹⁷ See: M. Bugdol, *Zarządzanie jakością w urzędach administracji publicznej. Teoria i praktyka*, Warszawa 2008, p. 41.

as possible, we would have to introduce individual solutions for each municipality, which is impossible.

Other issue is the fact how difficult it is to apply any change that is a result of the diagnosis. Situation that occurred in Poland at the end of 1990s, when the government began amalgamation reforms, shows how big emotions accompany change of territorial division. People protested on streets, thousands of letters to MPs was written, even musicians composed special songs defending *status quo* of their towns, cities or regions.

Good conditions for any change in local government system are hard to achieve. Reforms shall be justified by serious obstacles, so that local and regional communities are more opened to accept them. Problems have to be noticeable for a long time, and one must be sure that they will not fade away itself. Imperfections of current system must influence delivery of many types of public tasks. These problems must be experienced by people, who are suppose to accept the reform, not just by authorities or private companies. If the will to reform is not supported by such circumstances, then authorities shall not undertake any action, as they will meet huge resistance.

5. Solution for imperfections of decentralization

Best solution for imperfections of decentralization should be as little harmful for the society as possible, so that it is widely accepted and elected representatives are not afraid to introduce it instead of keeping inefficient but approvable system. It is not always proper to just transfer bigger resources, because it is often not lack of money which caused the problem. Additionally, we may assume that it might be perceived as unfair and resources are always limited. About corrections of decentralization imperfections each municipal unit should have the right to decide itself, so that decision is more individual as proponents of principle of subsidiarity would suggest. Then the central government is clear from any accusations of interfering relative independence of communities and if anything goes wrong then local authorities and local community are the only to blame for bad decisions. Correction should also leave territorial division as it is, because it is a part of peoples local identity¹⁸

¹⁸ See: A. Śliz, M. Szczepański, *Spółeczności lokalne: od platońskiego polis do systemów lokalnych*, [in:] E. Ganowicz, L. Rubisz (eds.), *Polityka lokalna. Właściwości, determinanty, podmioty*, Toruń 2008, p. 33.

and they will strongly defend it as described before on the example of Poland in late 1990s¹⁹. It is also beneficial if correction mechanism is applicable in case of short-term difficulties, as these are the most common ones.

6. Correction mechanism of decentralization imperfections

Correcting decentralization in a manner that will follow listed above requirements should be simple as it might then serve as an easy explanation to bureaucrats why they should cooperate with NGOs. First of all we have to take into consideration that problems with decentralization might have appeared due to inappropriate amount of potential, according to the principle of subsidiarity, meaning – task is performed by a too weak or by a too strong unit.

If the unit is too big performance of tasks may be too far from the citizen. Always when we do things on a bigger scale we cannot have the same individual approach to a single citizen, and this ‘being close to citizens’ is especially demanded in local government. But on the opposite – when resources gathered in a unit are too small we will not be able to deliver services or products that need bigger scale. The solution here is to transfer performance of a task to a larger or a smaller body respectively. Municipality must preserve its responsibility and the right to decide on policy directions, but resources can be used then in a proper manner (according to the principle of subsidiarity).

Analysis of Polish legal system gives an answer that such qualitative change is possible within already adopted solutions. Municipalities have the right to cooperate with each other in two forms. First one is municipal association. Local authorities may transfer performance of group of tasks to such association. Separate executive body and a council of association is created. Second form is an agreement on single undertaking. No extra authorities are appointed here. Both forms are beneficial as such cooperation between municipalities brings benefits which are generated by a larger scale of production. On the opposite – when less potential is needed and tasks performance might be brought closer to citizens, municipalities may create auxiliary units in a form of neighborhood or village councils²⁰. These councils have their own tasks and usually small resources, but the effect that is gained here is more individual approach to everyday

¹⁹ A.K. Piasecki, *Samorząd terytorialny...*, p. 184.

²⁰ See: B. Dolnicki, *Samorząd terytorialny...*, p. 93.

problems of citizens. In result of the two options we get a better suited system without any major reforms.

Another situation, that shall be considered, in context of decentralization correction, is when problems are caused not by inappropriate quantity of potential, but by features of character of a public institution, and one must admit that this is more serious. If one takes a closer look at public administration we may create a list of main features that make us consider its work as sometimes ineffective and uncreative. Following list contains problems grouped into categories.

- a. General pathology:
 - bureaucratic nature,
 - nepotism,
 - corruption,
 - clientelism.
- b. Human resources:
 - difficulties in recruiting the most talented employees,
 - linking promotion with work experience – not necessarily with actual skills,
 - protection of work contract by more stringent rules than in other sectors,
 - less pressure to achieve results than in the private sector,
 - indifference of clerks to goal and client,
 - dispersion of power and responsibility,
 - meeting ambitions of leadership, through expansion of hierarchical structure,
 - problems of communication between different organizational units.
- c. Adaptability:
 - general lack of ability skills to react to sudden changes,
 - resistance to new management strategies,
 - being chained to procedures and hierarchical structure.
- d. Efficiency and competitiveness:
 - lack of consumer-oriented approach,
 - waste of resources,
 - lack of entrepreneurship,
 - no relationship of effectiveness with implementation of statutory objectives,
 - no relationship of efficiency with the system of salaries,

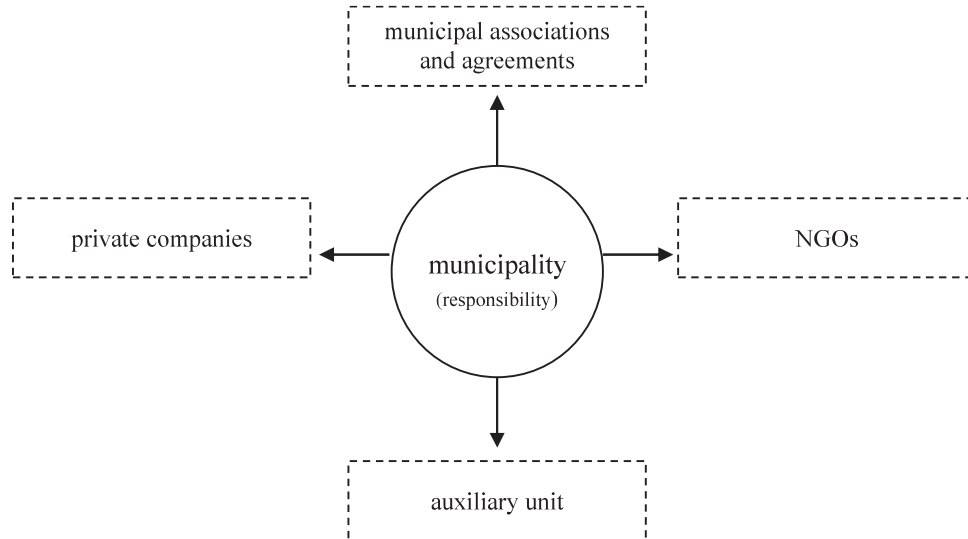
- hardly measureable performance,
 - being sufficient with mediocrity.
- e. innovation:
- general lack of innovation,
 - avoiding risk,
 - innovation is hardly ever rewarded,
 - correct implementation of routine tasks²¹.

Considering listed above features we shall look for a solution outside that sector – in other words – change searched here has a qualitative character. If we want to make a correction because of negative features of the first sector we must take a look at the other two.

Full model of correction mechanism, including quantitative and qualitative change, is illustrated on Figure 1.

²¹ See: O.E. Hughes, *Public Management & Administration. An Introduction*, Basingstoke 2003, p. 32–43; J. Hausner, *Od idealnej biurokracji do zarządzania publicznego*, [in:] K. Zuba (ed.), *Biurokracja. Fenomen władzy politycznej w strukturach administracyjnych*, Toruń 2009, p. 45; B. Chroś, E. Skrabacza, *Biurokracja w Polsce: Piętno korupcji*, [in:] K. Zuba (ed.), *Biurokracja. Fenomen...*, p. 236–249; B. Pietras-Goc, *Cztery klucze. Pasywność w ocenie doradcy lokalnego*, [in:] W. Dziemianowicz, P. Swianiewicz (eds.), *Gmina pasywna*, Warszawa 2007, p. 148–156; J.P. Tarno, *Polski model samorządu terytorialnego*, [in:] J.P. Tarno, M. Sieniuc, J. Sulimirski, J. Wyporska (eds.), *Samorząd terytorialny w Polsce*, Warszawa 2004, p. 300–305; E. Koniuszewska, *Środki prawne ograniczające nadużycia władzy w jednostkach samorządu terytorialnego w ustrojowym prawie administracyjnym*, Warszawa 2009, p. 27–31; P. Modzelewski, *Świadczenie usług administracyjnych przez urzędy jako dobro publiczne*, [in:] J. Kleer (ed.), *Samorząd lokalny. Od teorii do badań empirycznych*, Warszawa 2009, p. 149–156; R. Przybyszewski, *Administracja publiczna wobec przemian społeczno-ekonomicznych epoki informacyjnej*, Toruń 2009, p. 25–48; J. Osiński, *Administracja publiczna na tle zmian instytucji państwa w XXI wieku*, [in:] J. Czaputowicz (ed.), *Administracja publiczna na progu XXI wieku. Wyzwania i oczekiwania*, Warszawa 2008, p. 54–55; P. Olsen, *Maybe It Is Time...*, p. 2–12; K.J. Meier, G.C. Hill, *Bureaucracy in the Twenty-First Century*, [in:] E. Ferlie, L.E. Lynn Jr., C. Pollitt (eds.), *The Oxford Handbook of Public Management*, Oxford 2007, p. 53–67; D.F. Kettl, *Public Bureaucracies*, [in:] R.A.W. Rhodes, S.A. Binder, B.A. Rockman (eds.), *The Oxford Handbook of Political Institutions*, Oxford 2006, p. 366–382.

Figure 1. Model of correction mechanism of decentralization imperfections.



Source: own elaboration.

On the model presented on Figure 1 municipality is located in the center. It is responsible for conducting the diagnosis and any transfer that results from it. Above and below we find two options that shall be applied when inappropriate amount of potential to perform certain task has been located within municipality. When results of analyses show that different features are need local authorities may contract out its implementation or delivery to second or third sector partners.

Such model has strong merits. Municipality keeps its independence, because the government has to intervene only in critical situations. Private partners might be involved so tasks are performed more effectively. These forms of correction are available at nearly all time, and it is up to the public party when to use them.

What is crucial here is to notice that bureaucrats find it natural and obvious to contract out tasks to private enterprises. When a road is to be build rational authorities always launch a tender, and choose the best offer. It is a lot more effective than establishing own road building company. But the same is with many other much trivial products as computers or even paperclips.

So why not to remind bureaucrats that they can contract out not only to the second sector? They should remember that there is another partner available, which suits some public challenges better. Now we come to the argument that

I have searched for, and that should be used when explaining bureaucrats why they must cooperate with the third sector, which is an observation that NGOs are equally important partners the same as for-profit corporations. It is the language that they, I believe, will understand.

Private companies and enterprises are aimed at financial profit of owners. Thanks to free market mechanisms we may choose the best option from many offers. But second sector actors often fail when certain service or product does not bring any or very small profit. Just to give an example – all around the world many social problems remain unsolved as famine or AIDS, as governments are inefficient or just do not have enough resources at their disposal and the private sector will not take action for free. It is the when third sector which is the only option left.

7. Concluding remarks

Arguments presented here shall be analyzed in regard to reality of a country in transition. As many examples around the world show it is never an easy task to shift from non-democratic to democratic form of government. For Poland this is a still ongoing process.

Development of political culture demands involving ordinary people into decision-making processes. Non-governmental organizations are key actors in regard to gathering people and strengthening their belief that their voice will be heard. This is why it is important that the third sector must be getting stronger every day. In order to achieve that it has to be perceived as a strong partner of any public undertakings, including performance of public tasks, but also formulating public policy priorities.

Presented explanation definitely is not the one that should be permanent. It is temporal as long as authorities and public administration does not learn that reasoning, which here I call classical approach to cooperation, is something much more than just a slogan without any significant value. It is a matter of political culture development that Poland has to through. After decades of centralism people have to learn that participation and taking responsibility are some sort of a shield protecting them from many social and political problems.

Explanation that I suggest to use is some sort of an element that we may put between two types of attitudes towards political organization of a society. First is the old one, originating in the former socialist system of government,

in which people were taught not to take action as the government is responsible for them. The second one is a vision based on taking matters into one's own hands.

The model is not aimed against bureaucratic form of public administration, because despite all of expressed criticism one shall remember about huge responsibility that it has to deal with all of its duties. NGOs and bureaucrats will never speak the same language, because they have different nature, but they cannot treat each other as rivals or enemies. It is a matter of being opened to each other and trying to understand your potential partner.

Finally, in my opinion, this model shall help to "break the ice". When serious will for interaction appears, then more natural cooperation is possible. Third sector organizations cannot just expect public administration to accept all of their ideas and want to involve them into decision-making just because they are NGOs. They need to be creative, innovative, bright, but also full of responsibility for resources and chances they are willing to get. Then presented here reasoning, why public administration should treat them more seriously, will make sense. Cooperation with NGOs will be perceived as highly beneficial.

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