



**WYDZIAŁ PRAWA
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Anna Gross

Social consultations in administrative law

Summary

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Department of Administrative Law
and Administrative Science under
supervision of
Professor Małgorzata Stahl
and subsidiary thesis advisor
doctor Maria Karcz-Kaczmarek

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The subject of dissertation is the system of social consultations in administrative law as a form of participation of citizens in public management. One of the basic function of modern public administration, taking into account the principles of effectiveness, economic efficiency and transparency, is taking over procedures appropriate for good governance and managing social processes to ensure legal capabilities enabling creation of balanced, comprehensive and publicly accepted decisions in public matters, improve decision-making processes and improve the quality of provided services. Social participation in the system of exercising public authority is one of the basic constitutional principles of modern democratic countries and is an inherent condition of civil society. The idea of civil society as a potential and real possibility of active participation of citizens in broadly understood state matters was considered in the dissertation. The leitmotiv of this idea is the pursuit of a state of affairs in which citizens cease to be only administered entities, but become active participants in public life. Inclusion of entities from outside public administration as intermediary structures in the process of creating law and control of public authorities is aimed at activating individuals in the public sphere, strengthening the sense of responsibility for the fate of the state and identifying with the decisions of the authorities.

In Poland, the right to wide public participation in the management of public affairs results primarily from the constitutional principle of the sovereignty of the nation, according to which power belongs to the general public and should be exercised for its good. There are various forms of its execution. It can be implemented in a direct or indirect way. A renaissance of civil society institutions has recently been observed. Many of them are being redefined, others are restituted and institutionalized and adapted to the current social and economic situation of the state. This phenomenon can also be seen in the Polish legal order. Nowadays, the power of civic decision is measured by the institutions of civil society: their number, quality, accessibility for the citizen and effectiveness of action. Classic institutions, such as a referendum or a civic legislative initiative, do not satisfy social needs, hence the need to construct new ones arised. On the basis of the Polish legal order, this deficit is to be complemented by such institutions as: social consultations, civic budget, petitions, participation in the debate on the state of the local government unit or public hearing.

This dissertation is an attempt to comprehensively capture and organize important issues related to the consultation processes provided for under the Polish legal order. The main aim of the dissertation is to present and consider the essence of social consultancy institutions as a special form of civic activity in the context of participative processes aimed at increasing the transparency of law-making processes and their legitimacy in the eyes of

citizens, determining the essential features of social consultations that distinguish them from other related institutions, an indication of their forms, types and scope, as well as the rules for conducting consultation processes.

Due to the lack of an unambiguous position in the administrative law doctrine, the dissertation attempts to answer the question whether in the current law the right to consultation can be treated as a public subjective right, and if so, to what extent, and if the individual has the right to effectively demand from public administration bodies, both government and local government to consult them in the decision-making process in matters that are important for them. In addition, the aim of the dissertation is to answer the question whether social consultations are a form of civil society in Poland. One of the objectives of this dissertation is also to compare the institution concerned to other selected forms of direct and indirect democracy as well as to supplement the debate on the participation of entities from outside public administration in managing public affairs for theoretical and legal considerations. Objectives formulated in this way set the scope of the dissertation.

The doctoral dissertation consists of 6 chapters. The first one is introductory in the subject of the discussed issue. In this chapter, terminologies necessary for further consideration were described. Subsequent chapters deepen the issues of social consultations, their legal bases, rules of conducting, types, with social consultations especially described with non-governmental sector organizations. The last chapter was devoted to selected forms of civic activity. In each of its subsections there is a detailed, sometimes critical, analysis of the normative regulations of a given institution of the legal system ensuring public participation in managing public affairs, and then a summary, which draws attention to the practice of applying specific consultation procedures.

The subject of the first chapter is to explain the basic concepts of „civil society”, „social participation” and „social consultations”. These arrangements have been made in different way, using the acquis of legal sciences, sociology, organization and management theory, and praxeology. An analysis of individual concepts was carried out in terms of their structural elements and content. Reasonings in this chapter are to serve the construction of a specific conceptual, institutional and doctrinal space.

The second chapter contains a detailed analysis of the legal basis of social consultations in Polish and international legislation. The issue of regulating social consultation institutions is extremely important, especially in the practical aspect of initiating and conducting consultative activities. This chapter answers the question whether legal solutions regarding consultations can be considered optimal from the point of view of the

need to guarantee the members of the self-government community a real influence on resolving local issues. The research confirmed that Polish law regarding consultation in local communities meets international standards.

In the third chapter, the analysis covered the principles of social consultations. Having learnt their characteristics, I decided that social consultations, like other institutions are important for public life and should be based on well-established principles, in compliance with which resulted in their effectiveness and efficiency. On the basis of the analysis of legal regulations and views fixed in the doctrine devoted to the consultation procedure, the principles of subsidiarity, proportionality, deepening and protecting citizens' trust in public administration bodies, social dialogue and civil society, publicity and related information rights and the principle of effectiveness were discussed. The considerations confirmed that these principles constitute the basic rules for conducting social consultations with knowledge and compliance with them are one of the conditions for the correctness of the consultation process and gives the participants who take part in them a sense of real participation in this form of social participation. Observance of rules also plays an important role in building mutual trust between citizens and public administration bodies.

The fourth chapter contains a discussion of issues concerning the types of social consultations, their forms and scope. It was pointed out that consultations covering the involvement of entities from outside public administration in the broadly defined decision-making process may take the form of social consultations, public consultations and expert advice. I started my discussion with the attention paid to the special role of public consultation institutions as a real form of citizens' participation in the creation of law. In functional terms, public consultations are one of the stages of the government process of preparing legal acts, serving the rationalization of the law. Both social consultations and public consultations concern the relations between public administration bodies and the consultant, and they are of an open and global nature. In the next part of the chapter, the subject of analysis was numerous in the Polish legal system, procedures of a consultative nature, addressed to members of the society, which can be categorized differently, taking into account different criteria for division. Particular attention has been paid to the typology of consultations common in jurisprudence and doctrine due to the way the procedure is launched, for obligatory and optional consultations. This division finds its justification in self-government systemic laws. The work also includes a set of cases in which the Polish legislator provides for the obligation to conduct social consultations. In addition, research has confirmed that the characteristic feature of social consultations is their implementation by

means of various methods, and the forms of operation are closely related to the content of activities and tasks that the administration should fulfill in the performance of state functions. In the summary of the chapter, it was emphasized that the most desirable form of social participation, allowing for its full implementation, are genuine social consultations that result from a certain political culture, good custom and the will of the authorities to conduct them, and not only those that the legislator has established as obligatory, resulted from the law.

The content of the fifth chapter is devoted to the analysis of cooperation between public administration and the non-governmental organizations sector as important partners in the performance of public tasks and the implementation of local development policy. Next, the essence, legal conditions, the premises for undertaking activities by non-governmental sector organizations in the sphere of public tasks, functions and the role that these organizations play in public life are presented. In this chapter, particular attention was paid to the principles and forms of cooperation of non-governmental organizations with public administration. This cooperation may concern both law-making acts and the application of law. In the further part of the chapter, issues related to the performance of public tasks are discussed. It was emphasized that the sense of the existence of public administration in a state of law is the implementation of public tasks whose purpose is to satisfy the collective needs of citizens and their individual needs resulting from intercourse in society. Participation of citizens in shaping legal relations is of great importance here, as it allows for more precise adjustment of the state to citizens. The considerations confirmed that the efficient operation of the non-governmental organizations sector is an institutionalized form of civil society and is an expression of civic group activity in a democratic state of law. It was also found that it is closely related both to the activity of such entities in social life and to the involvement of individuals in the development of these organizations. In the summary of the chapter, it was pointed out that in stable countries with democratic traditions, participation in the public life of society through non-governmental organizations becomes a specific model of civic attitude.

In the last, sixth chapter, the subject of research was numerous forms of civic activity, and they were discussed in reference to the institutions of social consultations. Based on the current legal status of the regulations governing the direct exercise of power in Poland, the institutions of the participatory budget, petitions, referendum, legislative and legislative initiative, public hearings and the most important differences between them were presented. Detailed analysis of all forms of direct democracy is beyond the scope of this work.

At the end of the dissertation, previous considerations and proposals for changes in Polish legislation were summarized.

The dissertation uses a variety of source material, including rich national literature and foreign language literature. The sources of law supplemented with the jurisprudence of constitutional and administrative courts were used as the basis of the analysis. Some issues relating to civil law which are beyond the subject of the research have been omitted. The work involved the dogmatic and legal method and, to a limited extent, the legal and comparative method. Also, works in the field of sociology were used to deepen the analysis of the functioning of legal regulations in real operation.

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Anna Gross