

# CITIZENS INFLUENCING LOCAL PUBLIC ADMINISTRATION

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## Abstract

The right to associate and participate in the execution of power is one of the fundamental rights of an individual in local government. The local level is the level where this right may be executed in the most direct way. There are two ways of local communities' participation in the execution of power distinguished by the Polish legislator. The residents in each local authority reach decisions in a general voting (during elections and referenda) or through elected bodies.

## Key words

Local elections, referendum, direct democracy, consultations with residents.

The right to associate and participate in the execution of power is one of the fundamental rights of an individual in local government. The European Charter of Local Self-Government underlines the fact that citizens' right to regulate and administer public affairs is one of democratic rules common to all member states of the Council of Europe. The local level is the level where this right may be executed in the most direct way. "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population"<sup>1</sup>. This right is executed by councils and associations that consist of elected members, as well as citizens' associations, referenda and any other form of citizens' direct participation, provided that an act of law allows such resolution.

There are two ways of local communities' participation in the execution of power distinguished by the Polish legislator. The residents in each local authority reach decisions in a general voting (during elections and referenda) or through elected bodies<sup>2</sup>.

Local elections play an important role in the life of the community. They legitimize authorities, simultaneously becoming a tool for execution of political responsibility. Local authorities are the core of constitutional, local government guarantees. Participation in local government elections is the most common form of citizens' participation in exercising power, although the scope of this participation depends on adopted, institutional solutions<sup>3</sup>. In Poland, according to the Constitution<sup>4</sup>, elections for local government constitutive organs are universal, equal, direct and shall be conducted by a secret ballot. The rules and the running of elections are precisely regulated through the Electoral Law on Commune Councils, Powiat

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<sup>1</sup> European Charter of Local Self-Government, adopted in Strasbourg on 15 October 1985 (Dz. U. 1994 No 124, item 607, Art.3)

<sup>2</sup> The Act on Local Government of 8 March 1990 Dz.U. 2001, No 142, item 1591 with subsequent alterations, Art. 11

<sup>3</sup> J. Lemańska, *Ordynacja wyborcza do rad gmin- realizacja prawa jednostki do udziału w sprawowaniu władzy [w:] Funkcjonowanie samorządu terytorialnego-doświadczenia i perspektywy.*, (edit.) S. Dolata, p. 132

<sup>4</sup> The Constitution of the Republic of Poland, Art. 169 (2)

Councils and Voivodeship Regional Assemblies and in the Act on Direct Elections of Village –Mayor, Mayor and the President of a City.

Suffrage, that is the civil right to vote, is vested in the hands of every Polish citizen, who has attained the age of 18 years on the day of the elections at the latest, and permanently resides in the area covered by the Council. A right to vote in local elections is also obtained by citizens of the European Union who are not Polish citizens. The admittance of the European Union's citizens to participate in local government elections was connected with the introduction of the citizenship concept in The Maastricht Treaty. Accordingly, each person that is a citizen of a member state who lives in a different member state has a right to vote and is eligible, subject to the same conditions as the citizens of that country.

Persons that were deprived of public rights by a judgement in force, deprived of election rights by a judgement of the Tribunal of State, or incapacitated by a judgement in force, do not possess the right to vote.

The eligibility right (the right of being eligible) is vested in the hands of a person having a right to vote, except for persons sentenced for an indictable offence, as well as persons who were subject to a judgement in force that conditionally suspends criminal proceedings in a case of an indictable offence. A citizen of the European Union deprived of the right to vote in a member state which he/she is a citizen of, is deprived of that right [in Poland] too.

The important stage, at which execution of residents' rights to participate in establishing powers takes place, is standing in local elections. Citizens, if at least five in number, possessing a right to vote, may form an election committee; after they have collected at least twenty eligible voters' signatures supporting the committee formation, they may submit their candidates and launch an electoral campaign.

The participation in local government elections, despite continuing low turnout, is definitely the most common way in which a member of a particular community may influence the management of public affairs. It is the elected politicians and leaders who are to resolve problems of the community, take care of raising residents' standard of living and influence the development of the local area or the region.

Residents may, however, decide on many important local issues by direct means too. The Act on Local Government stipulates the following institutions of direct democracy:

- referendum<sup>5</sup>

- consultations with residents

- village gatherings, and in the cities, if the residential district statute provides so, general meetings of residents of a local constituency.

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<sup>5</sup> Also in Art. 170 of The Constitution of the Republic of Poland - Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election.

The Constitution of the Republic of Poland of 2 April 1997 in Art. 170 stipulated that “members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election”. The Constitution does not regulate a subject of local referendum. The rules and the conduct of a referendum are specified in the Local Referendum Act of 15 September 2000 (Dz. U. 2007 No. 112 item 766). The act distinguishes two kinds of referenda: facultative and obligatory. The obligatory character of a referendum concerns local taxation of residents (local referendum) for public purposes – which fall within the domain of tasks and competence of local community councils<sup>6</sup>, and dismissal of a local government unit’s legislative body before a term of office is served (these are decided on only in a referendum conducted by a residents’ motion). Moreover, the dismissal of a local executive body, by referendum, is allowed by the Act on Direct Elections of Village -Mayor, Mayor and the President of a City of 22 May 2002.<sup>7</sup>

Facultative referendum is a referendum, in which the issues (which fall within the domain of tasks and competence of the unit’s bodies) concerning local governance within the community are decided on. The Constitutional Tribunal, in its judgment of 26 February 2003, stated unambiguously that residents should have the possibility to decide, in a referendum, on all important issues facing a community, not just those issues which fall within the competence of the unit’s authorities<sup>8</sup>.

A referendum may take place on the initiative of a legislative body (local community councils, poviats councils and voivodeship regional assemblies) or on a motion by 10% of a community’s or poviat’s eligible voters or 5% of voivodeship’s eligible voters. A referendum concerning the dismissal of a legislative organ is conducted by a residents’ motion. 15 citizens may initiate poviat and voivodeship referenda and five citizens may initiate a community referendum as well as the local structures of political parties and social organizations. In the case when a referendum takes place on an initiator’s motion, this motion is examined by a legislative body, but in the case of referendum over a legislative body’s dismissal, the motion is examined by the voivodeship election commissioner<sup>9</sup>.

The community council itself or community residents make take an initiative to conduct referendum. Such a motion can be submitted by at least 1/10 of eligible voters, i.e. the residents of the community vested with the right to vote. A referendum is considered binding if 30% of legal voters have participated<sup>10</sup>.

year	1992	1993	1994	1995	1996	1997	1999	2000	2001	2002
not binding	23	22	5	33	26	30	10	94	63	3

<sup>6</sup> Art. 7 of The Act on Local Referendum of 15 September 2000

<sup>7</sup> Art. 26 (1) of the Act on Direct Elections of Village - Mayor, Mayor and the President of a City of 22 May 2002, Dz. U. 2002 No. 113, item 984 with subsequent alterations

<sup>8</sup> J. Kroner, Szerzej niż się wydawało, „Rzeczpospolita” of 27 February 2003, No. 49.

<sup>9</sup> Z. Leoński, Ustrój i zadania samorządu terytorialnego w: Samorząd w Polsce. Istota, Formy, Zadania, edit. S. Wykretowicz,

<sup>10</sup> Art. 55 of The Act on Local Referendum of 15 September 2000

binding	-	3	-	1	5	3	4	14	7	-
total	23	25	5	34	31	33	14	108	70	3
turnout (%)	13,8	14,9	17,8	14,2	17,2	20,7	25,9	18,9	17,8	12,1

A. Piasecki, Referenda w III RP, Warszawa 2005, p. 89.

A referendum on community council's dismissal is most often applied. From 1992 to 2005, 400 referenda were conducted, 90% of which concerned the dismissal of bodies (council, and since 2002 also village-mayor, mayor and the president of city).

TERM OF OFFICE	REFERENDA	EFFECTIVE REFERENDA
1990 – 1994	48	3
1994 – 1998	104	9
1998 – 2002	193	25
2002 – 2006	93	12

M. Łapuć A. Czarkowska, Doświadczenia w stosowaniu demokracji bezpośredniej ze szczególnym uwzględnieniem referendum na przykładzie samorządów terytorialnych w Szwajcarii i w Polsce w: Sprawność działania administracji samorządowej, Rzeszów 2006, p. 76.

Referenda on local taxes were popular in the early 90s, but these gradually disappeared and nowadays only occasionally take place.

Facultative referenda rarely take place due to imprecise statutory regulations and sometimes due to their contradictory interpretation<sup>11</sup>.

The notion of 'consultations' should be understood as an opinion of a sovereign collective body on a given matter expressed by voting. Unlike referenda, the results of consultations are not binding; they have merely political meaning.

Consultations may be obligatory or facultative. According to the Act on Local Government<sup>12</sup>, facultative consultations with community residents are arranged in the cases defined by law and in other important community issues. The rules and course of consultations are defined in community council's resolutions. The statute does not stipulate which matters are of "essential importance", the community itself is to decide. Obligatory consultations concern:

-formation, conjunction, division and liquidation of a local council as well as determination of their borders,

-granting a community or a locality with city rights and determination of its borders,

<sup>11</sup> A. K. Piasecki, Demokracja bezpośrednia w Polsce po 1989, „Przegląd Sejmowy” 2006 r., No 1, pp. 19-20.

<sup>12</sup> The Local Government Act of 8 March 1990 Dz.U. 2001, No 142, item 1591 with subsequent alterations.

-determination and change of community names as well as change of their authorities' official residence.

Before the Council of Ministers issues a regulation in this matter, a minister competent in public administration matters is obliged to consult concerned community councils, provided the councils have conducted consultations with the residents.

The community council may form auxiliary units such as sołectwa, districts, residential districts and others. However, the community council's resolution on the formation or the determination of organization and operational scope of such an auxiliary unit, should also be preceded by consultation with the residents. Consultations may also be conducted on the residents' own initiative. Obligatory local consultations are also required by other acts, e.g. The Act on Official Names of Localities and Physiographic Objects of 29 August 2003<sup>13</sup>.

The Act on Local Government does not regulate the rules and conducting of consultations. These issues are determined in the council's resolution, which means that solutions adopted in particular communities are not uniform. Most often it is one legal act in which the community council comprehensively stipulates the rules and the conduct of consultations with residents. However, it may happen that these rules are specified every time consultations are arranged. The council also decides on the form in which they are conducted, i.e. whether they take the form of a question asked by residents, a survey, or by means of mass media. The analysis of councils' resolutions proved that in most of the community councils, obligatory consultations are arranged by the village-mayor, mayor, or president of a city, whereas facultative consultations are administered by a council. The council may pass such a resolution on its own initiative. An initiative may also be taken by other entities: local authority support services, non-governmental organizations operating in the community's area, and in some cities even by the residents themselves, which is another accepted solution.<sup>14</sup>

The transfer of responsibility to community councils for the carrying-out of resident consultations should be regarded as a positive step, as it enables those solutions that take local circumstances into consideration. Nevertheless, many commentators have pointed out the need to regulate statutory rules for consultation. As M. Rachwał remarks, these issues are crucial for the functioning of the local government community, and the addition of at least elementary rules (e.g. to the Act on Local Referendum<sup>15</sup>) should be considered.

The effects that referendum and consultations bring constitute the main difference between these two institutions. The council is obliged, by referendum, to undertake activities to solve a case, whereas consultations are just an opinion. It is confirmed by the Supreme Administrative Court's Judgment in Warsaw of 1 January 2001 (II SA 2817/00) "in order to perform the solution (with binding effect) taken in a case by residents by means of a community referendum, the case must fall within the domain of the community council's tasks and competence. Making a contrary assumption would have led to the infringement of local authorities' competence resulting in the invalidation of an act itself and invalidation of a referendum's results. As for consultations, an opinion (wishes, expectations) of the residents,

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<sup>13</sup> Dz. U. 2003 No. 166, item 1612;

<sup>14</sup> M. Rachwał, *Konsultacje z mieszkańcami gminy jako instytucja demokracji bezpośredniej* [w:] *Przywódstwo lokalne a kształtowanie demokracji partycypacyjnej*, edit. S. Michałowski, K. Kuć-Czajkowska, Lublin 2008, p. 333,

<sup>15</sup> *Ibid.*

on how the case (which falls within other authority's competence) should be solved, is manifested in consultations".

The essence of every local government is the fact that its residents themselves possess the greatest power therein.<sup>16</sup> The fact that direct forms of decision making by residents are mentioned in the first instance by the Local Government Act (in contrast to the European Charter of Local Self-Government) and representative democracy is put in second place is worth mentioning. This could be treated as the Polish legislator's willingness to underline the particular importance of citizens' participation in the functioning of a basic unit of local government.<sup>17</sup>

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- The Constitution of the Republic of Poland

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<sup>16</sup> S. Sagan, *Prawo konstytucyjne Rzeczypospolitej Polskiej*, Warszawa 2003, p.179

<sup>17</sup> M. Rachwał, *Konsultacje z mieszkańcami gminy...*, op. cit., p.328

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