

# THE BROADCASTING OF LOCAL AUTHORITY DECISION-MAKING BODIES' MEETINGS

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**Abstract.** This paper is an attempt at showing the broadcasting of local community council meetings contributes to enhancing citizens' participation in the administration of local community affairs. The same goal guided the legislator, too, whose Act Amending Certain Laws to Enhance Citizens' Participation in the Process of Election, Operation, and Supervision of Certain Public Bodies dated 11 January 2018 introduced the duty of broadcasting and recording with recording equipment of the image and sound of the meetings of local authority decision-making bodies. First of all, the realisation of constitutional transparency needs to be emphasised, as reflected in local government legislation, *inter alia*, and incorporated in the access to meetings of the bodies and their committees and to documents, as well as the broadcasting of meetings. The study will apply the methods proper to legal sciences.

**Keywords:** principle of transparency; access to information; public participation; local community council meetings; broadcasting of meetings

## INTRODUCTION

Specialist literature lists claims to participation in governance among political subjective rights [Habermas 2005, 149].<sup>1</sup> The status of legal forms of public participation are enhanced in current legislative practice by their regulation with statutes. Some guarantees of civic involvement in public affairs is not a new or an unknown institution. These regulations have often been governed by the statutes of local government units. Such a boost to their statutory rank offers opportunities for and occasionally even enforces civic participation in public affairs. Given the present level of civil society's development, a public administration based solely on hierarchical

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<sup>1</sup> Local government legislation, see: the Local Government Act of 8 March 1990, Journal of Laws of 2021, item 1372 as amended [hereinafter: the LGA]; the County Government Act of 5 June 1998, Journal of Laws of 2020, item 920 as amended [hereinafter: the CGA]; the Regional Government Act of 5 June 1998, Journal of Laws of 2020, item 1668 as amended [hereinafter: the RGA].

administrative legal relations seems insufficient and hardly effective [Sura 2015, 9-15]. Therefore, solutions need to be sought to encourage citizens' involvement in public affairs and allow for public supervision.

The construct of public participation needs to be discussed to begin with. It is an object of multiple scientific disciplines, including legal sciences (law and administrative theory) [Szlachetko, 2016; Kalisiak-Mędelska 2015, Ostaszewski 2013; Mączyński and Stec 2012]. I. Lipowicz points out the participation means the involvement in the administration's decision-making processes of the potential addressees of its actions [Lipowicz 1991, 122]. It consists, therefore, in all citizens holding rights and freedoms that assure everyone's part in governance. This participation may become a direct or indirect part in governance [Niżnik-Dobosz 2014, 21]. B. Jaworska-Dębska distinguishes two mechanisms in this respect. The first involves bringing the administration closer to society by ensuring a broadly-defined transparency of its operation, which encompasses intended and current actions and their results (including local laws). The other mechanism is about bringing the public closer to the administration through diverse forms of public participation [Jaworska-Dębska 2020, 49-64]. Public participation as a legal construct of co-administration may become a response to all the problems of civic involvement in public management [Śwital 2019, 108].

M. Stefaniuk is right to note the postulate of building a participative model of public administration is the starting point for any discussions of public participation as a form of governance [Stefaniuk 2009, 408]. The model is founded on a shared making of resolutions in public affairs, with a (human) person and society playing a key role. Such postulates are realised as the principle of transparency of public life, with the access to public information and information about persons in public positions, to the meetings of decision-making bodies and their committees, as well as the duty of broadcasting their meetings as the legal forms of public participation that provide for a part in public life and resolutions of local government bodies.

## 1. ACCESS TO PUBLIC INFORMATION AS A REALISATION OF THE PRINCIPLE OF TRANSPARENCY

Janusz Łętowski was among the first administrative law theorists to use the term 'transparency' in Polish literature, meaning access to information, files, and documents held by authorities [Górzyńska 1999a, 116]. The principle of transparency of public authorities' actions is currently a foundation of the contemporary democratic rule of law [Idem 1999b, 25-26]. This transparency is part of all the legal mechanisms that foster the public supervision of public authorities [Opaliński 2019, 35-43]. A transparent, open, and clear operation of public authorities is no longer treated as a declaration,

but an obligation which is increasingly enforced by citizens [Fleszer 2010, 33]. Transparency as the operating principle of public authorities, including the administration, is seen as a model in a democratic state. It evolves as public life transforms [Piskorz-Ryń 2015, 34]. The freedom of obtaining and transferring information is significant to an aware civil society.

The right to public information is a dimension of transparency, which is constitutional in the Polish legal system. In accordance with Article 61(1) sentence 1 of the Polish Constitution, “the citizen shall have the right to gain information about the activities of public authorities and persons in public positions.” The right also comprises the information about business and professional self-government, other individuals and organisations insofar as they carry out the duties of public authorities and administer local or State Treasury property. As P. Wróblewska points, the right of access to public information is phrased generally (though not vaguely) in the Polish constitutional law as a matter of principle. Hence the issue needed to be regulated in a lower-rank act [Wróblewska 2016, 66-74]. Article 61 of the Polish Constitution implies the catalogue of entities bound to inform the public about their operations is long and open-ended. The right to information may be realised in a variety of forms. The Constitution merely gives examples of the access to documents and meetings of collegiate, universally elected public authorities (the meetings of the two chambers of Parliament and of decision-making bodies of local communities) or the right to record sound and image [Kędzior 2018, 40-54].

The right of access to public information is specified in the Access to Public Information Act of 6 September 2001.<sup>2</sup> The law sets out the subjective and objective scope of the right of access to public information, the procedures of its supply (ex officio, as requested, and access to the meetings of universally elected, collegiate state authorities), and the extent of court supervision over the actions of entities bound to provide it [Szustakiewicz 2021, 151-52]. By virtue of Article 1(1) of the APIA, any information about public affairs is public information under the Act and shall be supplied as provided for by the Act. This legal definition is the object of multiple court decisions. Public information should be seen as any message generated by broadly defined public authorities and other entities discharging public duties and the administration of local or State Treasury property. Any information not generated but relating to these entities is public information, too.<sup>3</sup> In line with the Supreme Administrative Court judgment of 29 January 2021, the concept of public information also relates to any facts relevant

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<sup>2</sup> Access to Public Information Act of 6 September 2001, Journal of Laws of 2020, item 2176 as amended [hereinafter: the APIA].

<sup>3</sup> Supreme Administrative Court judgment of 18 September 2014, ref. no. I OSK 45/14, Lex no. 1664475.

to public affairs and public activities, and any determinations in this respect should be made with reference to a particular case.<sup>4</sup> The public affairs mentioned by the legal definition under Article 1(1) of the APIA are the activities of public authorities (local authorities, individuals, and organisations) in discharge of public duties and the management of public property, i.e., local or State Treasury property.<sup>5</sup>

The right of access to public information is constructed as a public subjective right. The duty of supplying citizens with public information by the entities designated in the Act corresponds to this right.<sup>6</sup> The right is realised with the local government laws; thus, Article 11b of the LGA stipulates the transparency of local community bodies comprises in particular citizens' right to information, access to the meetings of local councils and their committees, as well as access to the documentation of the discharge of public duties, including the minutes of local council and committee meetings; the regulations are incorporated in Article 8 of the CGA and Article 15 of the RGA. The access to meetings is realised with the duty of broadcasting local council or assembly meetings, introduced by the 2018 Act. These provisions serve the realisation of the right to gain information about the operation of public authorities (Article 61(1) of the Polish Constitution), an equivalent to the constitutional right of access to the meetings of universally elected, collegiate public bodies, where the sound or image can be recorded (Article 61(2) of the Polish Constitution). At the time of the epidemic, meanwhile, Article 15<sup>zzx</sup> of the Special Solutions in Connection with the Prevention, Counteracting and Countering COVID-19, Other Infectious Diseases, and the Resultant Crisis Situations Act of 2 March 2020 introduced a special regulation applicable to the states of epidemic hazard or epidemic. It allows the bodies of local government and collegiate executive bodies of local authorities (as well as local government associations, metropolitan associations, regional accounting chambers, and local government appeal courts) to hold meetings and sessions and to pass resolutions by means of remote communications or correspondence (remote sessions).<sup>7</sup>

Aside from these regulations, voting on resolutions is open as well. As the Lublin Administrator notes in a decision, the introduction of this rule

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<sup>4</sup> Supreme Administrative Court judgment of 29 January 2021, ref. no. III OSK 2468/21, Lex no. 3242629.

<sup>5</sup> Regional Administrative Court in Gdansk judgment of 29 May 2013, ref. no. II SA/Gd 183/13, Lex no. 1321102.

<sup>6</sup> Regional Administrative Court in Warsaw judgment of 13 March 2014, ref. no. II SAB/Wa 6/14, Lex no. 1468055.

<sup>7</sup> Special Solutions in Connection with the Prevention, Counteracting and Countering COVID-19, Other Infectious Diseases, and the Resultant Crisis Situations Act, Journal of Laws of 2021, item 2095 as amended.

as the bottom line is primarily a realisation of the constitutional principle of the citizens' right to information about the activities of public authorities and persons in public positions. Any departures from open voting on resolutions are only permitted by force of law.<sup>8</sup> The transparency also applies to financial administration. It should be noted legal regulations concerning the transparency of local authorities' operation should also be incorporated in the statutes of local government units, that is, the acts determining their systemic order.

## 2. THE DUTY OF BROADCASTING MEETINGS OF DECISION-MAKING BODIES

The Act Amending Certain Other Acts to Enhance Citizens' Participation in the Process of Electing, Functioning, and Supervision of Certain Public Authorities of 11 January 2018<sup>9</sup> introduced the duty of broadcasting and recording, with sound and image recording equipment, the meetings of decision-making bodies of local government organisations. Its Article 20(1b) stipulates local council meetings should be broadcast and recorded with sound and image recording equipment. The meeting records are made available in the Public Information Bulletin, at a local community website, and in other customary ways. The relevant provisions are contained in Article 15(1a) of the CGA and Article 21(1a) of the RGA. The legislation imposes the duty of broadcasting (recording) of the meetings of local government organisations, yet without extending it to their internal authorities, namely, committees [Rulka 2018, 18-21].

P. Kłucińska, D. Sześciło and B. Wilk point out "the recording of council (assembly) meetings is not a new idea. Some authorities are already preparing and publishing meeting records in their Public Information Bulletin sites (or their own websites). These materials are also posted by local citizens, journalists and councillors, taking advantage of the right of access to and recording of the meetings of council (assembly) bodies as guaranteed by Article 61 Section 2 of the Polish Constitution RP and the statutes" [Kłucińska, Sześciło, and Wilk 2018, 31-44]. These actions are an expression of involving citizenry in the public affairs of local authorities and improving public awareness.

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<sup>8</sup> Lublin Administrator's supervising decision of 6 July 2016, NK-I.4131.207.2016.AHor, NZS 2016, No. 4, item 66.

<sup>9</sup> Act Amending Certain Other Acts to Enhance Citizens' Participation in the Process of Electing, Functioning, and Supervision of Certain Public Authorities of 11 January 2018, Journal of Laws item 130 as amended.

Such regulations are intended to boost civic participation in the process of supervision and operation of local authorities.<sup>10</sup> Like B. Jaworska-Dębska notes, enhancing the transparency of operation and access to the meetings of local decision-making bodies is an indubitable instrument of improving residents' awareness of the mechanisms and effectiveness of local authorities and supporting public supervision by local populations [Jaworska-Dębska 2019, 599]. The online broadcasting and records available on the internet may expand the range of those following the activities of local (county, regional) authorities [Kłucińska, Sześciło, and Wilk 2018, 31-34]. This is a public participation institution, as it provides local residents with more access to public information and council meetings, the option of following its meetings on an ongoing basis and of exercising public supervision.

J. Korczak is correct in noting “the participation [in council and committee meetings] does not necessarily involve physical presence at the location, since the commonly available, state-of-the-art communications allow for the participation through, for instance, broadcasting. It also includes the possibility of using information processed as records that can be replayed at a later date, not simultaneously with the real time of meetings. The degree of the processing may vary from a full account to one limited (in time or subject matter), where the reliability of recording and results of the processing are guaranteed” [Korczak 2014, 82]. This view is upheld by the Regional Administrative Court in Rzeszów by stating audio-video or ICT materials must form a full and faithful record of a meeting which is prepared in such a way as to fulfill the disposition of Article 19 of the APIA. The fullness of a record means it cannot contain gaps (interruptions) or any other defects (e.g., distortions or reduced volume) that prevent an authorised individual from learning about the contents of a collegiate body's meeting.<sup>11</sup> The Access to Public Information Act allows, if audio-video or ICT materials recording a meeting in full are compiled and made available, for neglecting the duty of compiling the minutes or stenographic records of a council or committee meeting (Article 19 of the APIA). In the event, the duty continues to apply to committee meetings after the introduction of obligatory recording and broadcasting of council meetings [Pawłowski and Macuga 2018, 238].

Records posted in the Public Information Bulletin, at a website or published in another customary way must reflect the progress of a council or assembly meeting and be of an adequate technical quality to provide

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<sup>10</sup> Form No. 2001 MPs' draft Act Amending Certain Other Acts to Enhance Citizens' Participation in the Process of Electing, Functioning, and Supervision of Certain Public Authorities, <https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?No.=2001> [accessed: 01.02.2022].

<sup>11</sup> Regional Administrative Court in Rzeszów judgment of 22 November 2019, ref. no. II SAB/Rz 102/19, Lex no. 2752879.

for an undisturbed access to a meeting. A record of a council meeting is undoubtedly a material representing the progress of a meeting and council's actions and thus evidence of a collegiate body's activities.<sup>12</sup> The regulation fails to specify technical requirements of the conditions of recording and broadcasting of a meeting. The standardisation of this requirement would produce a comparable quality of broadcasting yet would involve additional costs for local authorities. The information recorded during a meeting is publicly available as well, cannot be removed or censored. According to a Supreme Administrative Court judgment, a record of a council meeting reflects its progress and the council's actions and thus is evidence of a collegiate body's activities. In the circumstances, the materials and documents generated during a collegiate public body's meeting, including records made with audio-video equipment, constitute information of public affairs.<sup>13</sup> As W. Baranowska-Zajac notes, doubts connected to these regulations also involve the question whether they mean direct meeting broadcasts in the so-called real time or only the recording of sound and image of a meeting and supplying the same to an electronic internet database and the Bulletin [Baranowska-Zajac 2020, 249-50]. It should be pointed out in this connection the legislator intended the online broadcasting in real time, so that every citizen could be able to take part in a council or assembly meeting.

With reference to meetings at the time of the COVID-19 pandemic, it should be stressed the broadcasting and recording of council meetings, necessary before the epidemic while local communities had held direct meetings (Article 20(1b) of the LGA), are insufficient to maintain the principle of transparency. Had remote meetings been possible only by force of statutory regulations prior to the institution of Article 15zzx(1) of the 2020 Special Solutions in Connection with the Prevention, Counteracting and Countering COVID-19, Other Infectious Diseases, and the Resultant Crisis Situations Act, a legislative interference would have been redundant, at least in this respect. Since the statutory limitation of the transparency principle applies only to the time of epidemic hazard or epidemic, the statutory limitation of transparency cannot be extended to extraordinary states in all or part of the state or to risks to life or health of councillors or risks to considerable property, since that would go against Article 15zzx(1) of the said COVID-19 Act and Article 11b(2) of the LGA.<sup>14</sup> This regulation is only introduced for the time council meetings cannot be held as provided

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<sup>12</sup> Regional Administrative Court in Opole judgment of 3 December 2009, ref. no. II SA/Op 333/09, Lex no. 554925.

<sup>13</sup> Supreme Administrative Court judgment of 17 June 2015, ref. no. I OSK 1564/14, Lex no. 2089729.

<sup>14</sup> Supreme Administrative Court judgment of 14 October 2021, ref. no. III OSK 3979/21, Lex no. 3289386.

for in constitutional laws, while the provisions of the COVID Act are a temporary solution which can ensure the continuity of decision-making bodies. This solution authorises a local community unable to finance the equipment to utilise the equipment for the registration of electoral activities.

## CONCLUSION

The broadcasting of local government body meetings is a form of realising the principle of transparency, expressed with the right of access to public information. This is owing to the legally guaranteed access to public information that citizens gain information about all public affairs, which are of paramount importance for them. The participation in the management process is founded on citizens' access to public information and their involvement in supervising actions taken by the administration. As assumed, the broadcasting contributes to expanding citizens' participation in the process of supervising and operation of local community bodies. Like the paper points out, the technical aspects concerning equipment and conditions of meetings need to be more specific in order to standardise the fitting of recording equipment on the meeting premises so that all those present are within reach. The availability of adequate sound systems and high-quality and resolution cameras presenting the image is important as well. The dissemination of information via the Public Information Bulletin, website or in other customary ways is commendable.

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