

THE PARTICIPATION OF RESIDENTS OF A LOCAL GOVERNMENT UNIT IN THE DEBATE ON THE REPORT ON THE CONDITION OF THEIR LGU AS A MEASURE OF CITIZEN CONTROL

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Abstract. Legal measures introduced by the legislator in 2018 to self-government organizational acts established the institution of the report on the condition of a local government unit, the related debate and the institution of a vote of confidence. These regulations were intended to improve participation of residents of local government units in the process of controlling and functioning of local and regional authorities. This goal was pursued through, inter alia, ensuring that members of a self-governing community may participate in the debate on the report on the condition of their LGU. They were thus included in the process of controlling the activity of the executive authority and became active participants in the public debate. By getting involved in the debate and presenting their position, they gain a possibility of having an impact on the opinion of councillors, which is expressed in resolutions on granting the vote of confidence to the executive authority. The aim of this study is to analyse these legal measures that establish, in particular, the right of residents of a local government unit to participate in the debate on the report on the condition of their unit. On this basis, this study will try to establish to what degree the guaranteed possibility for members of a self-governing community to take part in the debate on the report allows residents to truly execute citizen control.

Keywords: citizen control; report on the condition of a commune; debate on the report; vote of confidence.

INTRODUCTION

By the Act of 11 January 2018 on amending certain acts to increase citizen participation in the process of electing, operation and reviewing certain public authorities,¹ the legislator introduced to self-government organizational acts² legal measures that established the institution of the report on

¹ Act of 11 January 2018 on amending certain acts in order to increase citizens' participation in the process of selecting, functioning and inspecting certain public authorities, Journal of Laws item 130.

² Act of 8 March 1990, the Commune Self-Government Law, Journal of Laws of 2024, item 609 as amended [hereinafter: CSGL], Article 28aa; act of 5 June 1998, the Poviats Self-Government Law,

the condition of the commune, powiat and voivodship, hereinafter referred to as report. By doing so, the legislator provided for a related control right for the decision-making and control authority and the correlated obligations for the executive authority, the effect of which involves a resolution on granting or denying the vote of confidence to the executive authority. This resolution may only be adopted after the report is submitted and then examined in a debate. The legislator guaranteed councillors and members of local and regional communities participation in this debate. By allowing residents of communes, poviats and voivodships to voice their opinions during the examination of the report, they were included in the control process. During the debate, information about the real condition of the self-governing community is presented and may be then juxtaposed with the postulated condition. On such basis and also on the basis of information obtained in the examination of the report, residents may then submit requests, postulates and demands at competent public administration bodies in their own interest and in the interest of other members of the community. Moreover, by being involved in the debate and by expressing their opinion, they may influence the views of councillors who represent those voices in their voting on the resolution on granting the vote of confidence to the executive authority.

The aim of this study is to analyse legal measures that establish to institution of the report and the related debate. It places special focus on regulations that constitute the right of residents of local government units to participate in this debate. On this basis, this study will try to establish to what degree the statutorily guaranteed possibility to take part in the debate on the report allows residents to truly execute citizen control.

1. CITIZEN CONTROL

The discussion on citizen control must first start with terminological aspects because literature refers to it also as social control and these terms are used interchangeably [Leoński 2004, 239]. At the same time, legal scholars and commentators emphasize that the terminological difference between the terms “citizen control” and “social control” is not down to significant substantive reasons. However, the term “citizen control” better reflects the idea of this control which involves allowing citizens to do checks on public administration and then to influence its functioning. Moreover, current organizational determinants, the implementation of the idea of civil society, as well as a strive for normative strengthening of the basis of participation of individuals in planning and implementing public tasks seem to justify the

Journal of Laws of 2024 item 107 [hereinafter: PSG], Article 30a; act of 5 June 1998, the Voivodship Self-Government Law, Journal of Laws of 2024, item 566 [hereinafter: VSGL], Article 34a.

need to use the term citizen control [Jagielski 2005, 47]. On the other hand, such a definition of control does not accommodate groups of persons that carry out social control, social organizations or the public opinion [ibid.].

Given that the subject matter of this study focuses on control carried out by residents of a local government unit, it needs to be explained that control performed by members of a self-governing community may, without a doubt, be called citizen control. This does not change the fact that a self-governing community comprises all residents of the local government unit, that is Polish citizens, foreigners and stateless persons alike, who together form the control entity. In order to classify this control and to use adequate terminology to specify it, it is crucial to situate the control entity against local administration structures and to determine how this control proceeds, rather than to establish the legal relationship between members of self-governing communities and the state that determines specific legal effects [Banaszak 2004, 435].

Broadly understood citizen control covers all entitlements, actual and specified by law, afforded to an individual, a group of persons or associations of persons to observe the activity of the public administration apparatus and its individual links and to express judgements, opinions and postulates intended to signal irregularities, errors or shortcomings in this activity and also to eliminate them effectively, often in a binding manner. Such an approach to control exposes its personal side by specifying the control entity [Jagielski 1999, 156-57].

It needs to be noted that legal scholars and commentators have expressed a view supporting the broadest possible catalogue of actors entitled to exercise citizen control. It covers not only individuals and their groups, but also bodies of local government units, their subsidiary bodies and social organizations as part of their organizational and social functions [Boć 2003, 422-23]. However, this view has not been accepted by some representatives of the academia who emphasize that qualifying bodies of local government units to the category of entities that carry out social control of public administration is only justified if social control is understood very broadly, relying on the social character of the control entity. It is also emphasized that these bodies themselves are subject to the same control executed by residents, their groups, specific circles or non-governmental organizations [Stahl 2011, 692-93]. Moreover, classifying bodies that have a representative nature to social control entities would strike at the essence of this control that assumes attribution of control functions to an individual acting on their own, to a group or to a social organization [Jagielski 2005, 45].

On the other hand, establishing the material side of the control is more difficult since there are no norms that expressly identify areas that are subject to this control or that exclude certain areas of administration from it [Wacinkiewicz 2007, 161]. Legal scholars and commentators emphasize that citizen control is to be control aimed at assessing all possible forms of

administrative activity and also entire series of activities. The subject of this control may involve not only examination of compliance of administrative activity with norms that from the formal point of view allow for this control to be taken up and also examination of compliance of administrative activity with task-based norms or norms specifying the substance of individuals' rights [Filipek 2001, 267]. The material scope of this control approached broadly may in practice mean difficulties in identifying it among other forms of active citizenship [Leoński 2004, 240].

Its features may be a determinant that helps to identify it out of other forms of social engagement. What is important for it is not the element of competence, but an assessment whether actions of administration are in line with social needs or whether administration satisfies citizens' needs and pursues their interests. This feature means that social control is treated as a manifestation of democratism which is to serve implementation of interest of broadest possible social circles, to sensitize the administrative apparatus to these interests and to strive for public administration bodies to serve social goals [Idem 2000, 129]. Citizens' or social perspective from which public administration is evaluated needs to be recognized not only as an attribute of social control but also as its special valour, unattainable in other types of control. This perspective allows assessment of administration from the point of view of compliance of its actions with general, not individual, needs and expectations [Jaworska-Dębska 2009, 514].

2. REPORT ON THE CONDITION OF A LOCAL GOVERNMENT UNIT

The requirement of drafting and presenting yearly reports on the condition of a local government unit introduced to self-government organizational laws established a crucial obligation for their executive authorities and additional control powers to their councillors and residents. Along the adoption of new legal measures, next to the existing institution of granting or denying budget discharge to the executive authority, the decision-making body was obliged to first adopt a resolution on granting or denying the vote of confidence to this authority based on the presented report on the condition of a given local government unit.

Pursuant to the legal measures introduced, the executive authority of a local government unit was obliged to present to the decision-making and control authority a report on the condition of a given unit, every year, before 31 May. The legislator did not specify the form of this report, neither did it identify all areas of activity of the executive authority that must be presented in the report. The legislator defined the subject of the report in very general terms, providing that it should include a summary of the

activity of the executive authority in the previous year. It then concretized it by presenting examples of information that should be included in the report. These are details on the implementation of policies, programmes and strategies, on resolutions of the commune council and on participatory budgeting. The literature points out that information included in the report should: pertain to the activities of the executive authority that serve the implementation of general and detailed goals (usually set by the decision-making body), by specified means, in specified fields of life, within the activity of a given local government unit; cover information about enforcement of resolutions of the decision-making body that concern both the year reported on and beyond; include information about the implementation of resolutions that concern only the year reported on [Witalec 2019, 11]. The legislator's formulation of an example catalogue of information included in the report makes it very likely that the details presented in it will be very diverse. Scholars signal that a pragmatic approach to executive authorities of local government units means that the reports will emphasize actions that are approved of while those that are unfavourable for these authorities will be left out [Dolnicki 2020a]. It needs to be emphasized that the legislator allowed the decision-making and control authority to specify by way of a resolution detailed requirements for the report which will restrict to a certain degree the freedom of the executive authority in the selection of information made public in the report.

When it comes to procedural aspects of the institution of the report on the condition of a local government unit, it needs to be pointed out that presentation of the report and its examination proceeds in consideration of the order and conditions determined by statutes. The legislator formulated a requirement for the report to be examined by the decision-making and control authority in a session at which this authority adopts a resolution on granting or denying the budget discharge to the executive authority. The report is first examined and then debated on. The debate is attended by councillors, while residents may take part in it provided they meet normatively set requirements. The next stage of proceedings at a session of a decision-making and control authority, directly after the closing of the debate on the report, is voting on granting the vote of confidence to the executive authority. The competence of the decision-making and control activity to examine the report and to adopt a resolution on granting or denying the vote of confidence cannot be implemented freely. There is a requirement that certain procedures specified by law must be observed and that the results of the debate on the report must be taken into consideration.³ Also, all information obtained from the report and from the debate should become

³ Judgement of the Voivodship Administrative Court of 9 March 2021, ref. no. II SA/Bk 855/20, Lex no. 3149219.

a legal basis for councillors to formulate an evaluation of the executive authority, which is to be expressed by a resolution on the vote of confidence.⁴

Where a commune council fails to pass a resolution that grants the executive authority the vote of confidence, it equals to passing a resolution on denying the vote of confidence to the commune head (mayor, president of the city). Where the executive authority is denied the vote of confidence for two consecutive years, the commune council may pass a resolution on holding a referendum on dismissing the commune head. In a poviát or a voivodship self-government, where the poviát council or the voivodship assembly deny the vote of confidence to the board, this is equal to submitting a request to dismiss the board.

3. RESIDENTS OF A LOCAL GOVERNMENT UNIT AS PARTICIPANTS IN THE DEBATE ON THE REPORT ON THE CONDITION OF THIS LGU

The legislator instituted councillors and residents of a local government unit as participants of the debate on the report on the condition of this local government unit. The former have the right to vote that is not time-barred. The way the legislator worded this provision allows a conclusion that active participation of councillors in the debate, expressed by their voicing their opinions, is their obligation. This obligation may be also derived from the provisions of self-government organizational acts that specify the function of councillors in the decision-making and control authority and that oblige the voters' representatives to participate in the works of the council or voivodship assembly, commissions and other self-government institutions to which they were elected or designated.⁵ Despite the councillors' obligation to participate in the debate, there are circumstances in which this duty will not be fulfilled. Failing to perform this obligation is not legally sanctioned. Given the above, should no councillors speak during the debate on the report, this must not be read as a violation of a statutory procedure. Therefore, a resolution of the council or the assembly on granting the vote of confidence cannot be declared unlawful for this reason.⁶

The second group of participants in the debate are residents of the local government unit reported on. A resident of a commune, poviát or

⁴ Judgement of the Voivodship Administrative Court of 25 October 2021, ref. no. II SA/Op 492/21, Lex no. 3274080.

⁵ Article 24(1) CSGL, Article 21(2) PSGL, Article 23(3) VSGL

⁶ Judgement of the Supreme Administrative Court of 7 July 2013, ref. no. I OSK/ 600/20, Lex no 3064738; judgement of the Supreme Administrative Court of 19 March 2014, ref. no. II SA/Po 619/21, Lex no 3321003.

voivodship means a natural person who has a place of residence in the territory of a given local government unit [Szewc 2012, 34]. The term “resident” is closely correlated with the term “place of residence/domicile”, which was given a legal meaning in Article 25 of the Civil Code.⁷ Pursuant to this article, the domicile [place of residence] of a natural person is the place where that person stays with the intention of residing permanently. The place of residence is determined by elements such as: actual staying in a given location (external element, called objective) and the intention of staying there permanently (internal element, called subjective). Therefore, a place of residence is determined by “convergence of the state of actual staying somewhere with the intention of such staying there” [Popiołek 1995, 83]. It needs to be mentioned that the legislator thus laid down categorically in Article 28 CC that a person may only have one place of residence. Consequently, one cannot be a resident of two or more communes. However, this does not rule out belonging to other self-governing communities: local (powiat) or regional (voivodship) [Augustyniak 2012,17-18].

The exercise by residents of a local government unit of their right to participate in the debate on the report on the condition of this unit together with the possibility of them voicing their opinions depends on meeting statutory conditions. First, they need to file with the chairperson of the decision-making and control authority a written request supported with signatures. The number of signatures depends on the number of residents of the commune. In a commune with up to 20,000 residents, the required number of signatures is 20, in a commune with more than 20,000 residents – at least 50. In a powiat, the written request must be supported with signatures of at least 150 persons if the powiat has up to 100,000 residents and with 300 signatures if the powiat has more than 100,000 residents. In turn, at the level of the voivodship self-government, the number of necessary signatures that support a request for active participation of a resident in the debate is as follows: in a voivodship with up to 2,000,000 residents – 500 signatures and in a voivodship with more than 2,000,000 residents – at least 1,000. It seems that obtaining the required number of signatures supporting a resident’s request for participating in the debate might prove difficult to implement, especially in a powiat or voivodship. This difficulty, in turn, may prove a factor that weakens the activity of members of self-governing communities. The legal measure adopted may be, on top of that, a source of doubts about the person who gives the support. There is a question whether this should be a member of the same self-governing community to which the resident asking for support for their request belongs or whether it might also be a person temporarily staying in the territory of a given local government unit, for

⁷ Act of 23 April 1964, the Civil Code, Journal of Laws of 2024, item 1061 [hereinafter: CC].

example a beneficiary enjoying services in a health care resort commune. It needs to be believed that due to the residents' interest in matters of self-governing communities and possibly them needing to be involved in them, this should be a resident of the same commune, powiat or voivodship. However, the legislator did not decide on this unequivocally like it was done, for example, when regulating the institution of a citizens' resolution-giving initiative, where it directly established residents of a local government unit as those bringing the initiative. Thus, another question springs to mind, about personal details that a supporter should disclose and about how to verify them. Legal scholars and commentators are right to ask whether persons who support a resident's request may give their support to one candidate only or to an unlimited number of residents who wish to take part in the debate. Since there are no normative limitations here, it seems that this support may be given to more than one candidate [Dolnicki 2020b, 26].

A member of a self-governing community interested in taking part in the debate must file their request with the head of the decision-making and control authority no later than on the day proceeding the date for which the session has been convened and on which the report on the condition of a given local government unit is to be presented. It is rightly believed in the literature that the legislator did not regulate the form of a possible refusal of the chairperson of the council or assembly to accept a request from the resident. Neither was the procedure in the event of refusal to accept such a request or its dismissal established. Assuming that refusal to accept a request for taking part in the debate on the report were to be done in writing, the person concerned could have the chance to appeal against such a decision. They could do so by filing a complaint to the administrative court, as allowed by Article 3(2)(4) of the Law on the procedure before administrative courts [Bokiej-Karciaz and Karciaz 2019, 72-73]. On the other hand, in the event of the chairperson of the council or the assembly's "tacit" dismissal of the request, the person interested in taking part in the debate would be able to file a complaint with the governor pursuant to Article 229(1) of the Code of Administrative Procedure.⁸

Pursuant to the will of the legislator, the number of residents who are allowed to take part in the debate is 15, unless the decision-making and control authority decide to increase this number. It needs to be believed that the legislator intended to set the maximum, not the very specific, number of residents allowed to take part in the debate. This number may increase by a resolution passed by the council or the assembly that specifies the number of residents of a given local government unit entitled to voice their opinions

⁸ Act of 14 June 1960, the Code of Administrative Procedure, Journal of Laws of 2024, item 572.

during the debate on the report. It needs to be noticed that the decision-making and control authority was not authorised to limit this number. Therefore, it is worth considering whether this resolution should be passed every year before the debate and take into account the interest in active participation in it or whether it suffices if it is passed just once. The first variant ensures greater flexibility to the decision-making and control authority and thus, from the point of view of possibility of members of a self-governing community to exercise their right, is more favourable. However, it needs to be flagged up that legal writers express a view that also allows the possibility to establish the number of residents of a given local government unit entitled to take part in the debate in the statute [Bokiej-Karciarz and Karciarz 2019, 65].

In cases where specification of the number of debate participants is not treated as a matter that should be regulated in the statute and concretization of it is done in a separate resolution, the time of passing a given resolution is essential. For organizational reasons, it is desirable that the knowledge about the interest in participation in the debate and its predicted extent be available adequately in advance. On the one hand, this would allow suitable preparation of the session of the decision-making body during which the debate is to be held, and on the other this would allow residents to assess their chances of participation in the debate and to prepare the substance of their presentation. It needs to be emphasized that residents are given their turn by the chairman of the council or the assembly to voice their opinion during the debate in the order in which he has received their requests.

The time for speaking during the debate should, as a matter of fact, not be limited since participation of members of self-governing communities in it is a form of exercising their control rights. However, the legislator did not reserve it directly but did it by regulating the time allocated for councillors' speaking. Therefore, it might be assumed that if the law-maker's intention had been to remove time limitations on presentations of residents of local government units, it would have been expressed somehow. Moreover, the Supreme Administrative Court held in one of its judgements that the absence of time limitations for councillors' presentations during the debate is an exceptional solution. It stated that apart from this case, there is nothing prohibiting the commune council from introducing in its statute time limitations for presentations of persons who take part in the sessions of the commune council.⁹ Therefore, treating such absence of limitations as a special solution is an argument against an extending interpretation. Therefore, some thought might be given to guaranteeing residents of local government units analogical conditions for participating in the debate as those afforded to councillors.

⁹ Judgement of the Supreme Administrative Court of 24 November 2022, ref. no. III OSK 5593/21, Lex no. 3573801.

Access to information is a crucial factor affecting the conditions and quality of the control apart from presentations granted to participants of the debate on the condition of a commune, powiat or voivodship. The subject of the debate is the report on the condition of a specific local government unit, whereby access to information included in the report determines reliable and substantive preparation to the presentations given during a session. The latter, in turn, may affect the opinions of councillors who take part in the voting on granting the vote of confidence to the executive authority. Therefore, it is reasonable for participants of the debate to be ensured earlier access to the content of the report by its publication in the Public Information Bulletin, on the office's website or by making it available to be read in the time allowing preparation for the debate. At that, it cannot be ruled out that the information residents obtain in this way will be used to submit requests, postulates or demands to competent public administration authorities, where such submission is in the interest of recipients of the administration's activity.

4. THE REAL DIMENSION OF PARTICIPATION OF RESIDENTS OF A LOCAL GOVERNMENT UNIT IN A DEBATE ON THE REPORT ON ITS CONDITION

The subject matter of the report on the condition of a commune, powiat or voivodship, the debate on the report and participation of councillors and residents of local government units is a subject of research and analysis carried out by various foundations and associations. Published findings that include results of a few editions of research demonstrate that the degree to which members of self-governing communities are interested in participating in the debate and in voicing their opinions there is far from expected. A study conducted at the level of a basic local government unit that concerned the institution of the report on the condition of the commune for 2020 analysed 100 communes where the total of 70 residents took part in debates. In 80 communes no residents decided to speak [Sześciło and Wilk, 2021]. In turn, in research carried out in poviats that concerned participation in debates on reports on the condition of the powiat for 2021 and 2022, no residents took part in the debate in thirty randomly selected LGUs. An analogical result was yielded by research that covered 16 units of self-governments of voivodships, that again focused on residents' participation in debates on the report on the condition of their LGUs [Starzewski 2003].

Poor interest in taking part in the debate on the report or no interest at all is down to many reasons. One of the most crucial ones involves the requirement for the interested resident to obtain support for their request to be allowed in the debate. It is pointed out that in smaller communes persons who intend to submit their requests have difficulty in obtaining the required

number of signatures because residents refuse to give them support for fear of potential repressions from representatives of the commune authorities.¹⁰ On the other hand, there have been situations in which residents who did not collect the required number of signatures were still allowed in the debate.¹¹ However, it is quite clear that due to expressly specified conditions for participation in the debate, chairpersons of decision-making and control authorities of communes, poviats or voivodships will eliminate such situations treating them as violations of provisions of the act, which may be considered a basis to question the legality of the resolution on granting the vote of confidence to the executive authority passed following the debate.

The second crucial factor that contributes to poor activity of residents during a debate on the report on the condition of a given local government unit is insufficient informing of members of a self-governing community about the planned debate and insufficient encouragement to do take part in it. The information about the debate is most often published on the website of the commune office (powiat office, marshal's office) and in the Public Information Bulletin. Other forms of propagating discussions on the condition of a local government unit are used much less frequently. They include: information in the office's social media, notifications on notice boards dedicated to public announcements or advertising in local mass media. In some communes no actions to encourage active participation in the debate have been taken up.

CONCLUSION

The regulations introduced to organizational acts that establish the institution of the report on the condition of a local government unit, the related debate and the institution of the vote of confidence were to facilitate increased participation of members of self-governing communities in the process of controlling and operation of local and regional authorities. By guaranteeing residents of local government units participation in debate on reports on the condition of these LGUs, the legislator intended to include them in the process of exercising control over the activity of the executive authority and make them active participants in the relevant discussion. Based on the analysis of the introduced legal measures and on the examination of research on the actual use of these new control measures carried out by non-governmental organizations, it may be concluded that the legislator's

¹⁰ See <https://samorzad.pap.pl/kategoria/aktualnosci/rpo-do-mswia-w-debatach-nad-raportem-o-stanie-gminy-nie-biora-udzialu> [accessed: 15.07.2024].

¹¹ See https://backend.sprawdzamyjakjest.pl/media/annotations/mission/report_file/Jak_powstaja_raporty_o_stanie_gminy-raport_z_badania.pdf [accessed: 15.07.2024].

intention has been implemented only partially. This is down to normative reasons and to practices established in individual local government units.

The first group of reasons must include the requirement of obtaining a specific number of signatures that support the resident's request to take part in the debate. This solution does not allow for taking into account the specific characteristics of a given local government unit and in effect may significantly weaken the activity of members of a self-governing community in the discussion or even eliminate it altogether. Therefore, one should consider the possibility of transferring the competence to regulate the question of the number of signatures supporting a resident's request to take part in the debate to a local (regional) law-maker. No set time limit for presentations is the next factor that belongs to the same group of reasons that may affect the engagement of LGU residents in the debate on the report. This may mean that the persons presiding the session, the chairpersons of the decision-making and control authority, will limit this time to the minimum. Therefore, this calls for a legal measure that would unequivocally lay down that there are no time limits for residents' presentations or, for organizational considerations, that would introduce the same time limits for all participants in the debate, including councillors.

The process of preparing the report on the condition of a local government unit precedes participation of members of this LGU in the debate on this document. It would be desirable if a practice that allows residents to participate in this process were to be developed. It would allow them to offer their findings or comments. By becoming participants in the report, they would be naturally interested in its final version and in being allowed to express their opinions on the information included in it.

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