

The Impact of The Pattern Resulting from The European Charter of Local Self-Government On the Institution of Public Consultation in Poland

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Abstract

The purpose of this article is to indicate the impact of the pattern resulting from the provisions of the European Charter of Local Self-Government on the institution of public consultation in Poland. This form of public participation, optional as to its results, has been present in Polish legal culture for many years, while the author found it necessary to examine the above pattern with Polish legal provisions on public consultation. The paper uses the dogmatic-legal method, which consists in analyzing the existing normative material in the research area in question. The research proved that the model shown in the European Charter of Local Self-Government has not been fully implemented in the Polish legal order and the institution of public consultation in Poland is not used in the way it follows from the cited pattern.

Keywords: public consultation, local self-government, European Charter of Local Self-Government

Introduction

Public consultations, as a non-binding form of public participation in local government units, have been present in public discourse for many years. Those are the backbone of participatory democracy in our local homelands, and the way they are used is constant and unchanging.

Due to public consultations, residents can give their opinions or comments on an important topic for the local community, realizing, in a way, the mission of taking joint responsibility for these issues. This paper will address the impact of the pattern resulting from the provisions of the European Charter of Local Self-Government¹ on public consultation in Poland – in particular, on its model, types and practice of application. The following questions need to be asked: do the current Polish regulations governing the issue of public consultation fulfill the above-mentioned pattern in the field of consultation of local communities - and has the Polish legislator not narrowed, with regard to the provisions of the EKSL, the subject circle of public consultation? The study will use the dogmatic-legal method, which consists of an analysis of the existing legislation on public consultation and the views of the doctrine.

European Charter of Local Self-Government

The EKSL has influenced the formation of local government in Council of Europe member states. It is pointed out that on its basis a certain pattern of values characterizing the essence of local self-government - in which the process of "consultation" also has its important place. The preamble to the EKSL points out that at the local level the law can be implemented most directly - and that the existence of local communities equipped with real powers creates the conditions for effective governance in the manner closest to the citizens. In addition, as it is accepted in the literature, one of the advantages of the EKSL is compliance with regulations related to the public interest in the implementation of local government tasks. Article 5 of the EKSL requires prior consultation with the affected community for any change in the boundaries of local communities - possibly by referendum, if the law allows it. This is the only provision of the EKSL that explicitly indicates the form of the consultation - the referendum procedure is referred to here. From the point of view of the essence of the consultation process, the more important regulation is the one set forth in

Article 4(6) of the EKSL, namely: local communities should be consulted insofar as possible, at the appropriate time and in the appropriate manner, in the development of plans and decision-making on all matters directly affecting them.

This characterization of the "consultation" process means that:

- consultations should take place as often as possible - so that citizens have the opportunity to have their say on all matters that directly affect them;
- consultations should take place at the appropriate time and in the appropriate mode to allow full participation.

Consultation, according to the pattern derived from the EKSL, should be a phenomenon that runs parallel to the decisions taken by local government bodies - and the best option should be to first start the process of consulting specific plans or draft decisions, and after obtaining an adequate social response - take binding decisions. According to the Polish Constitutional Court, the EKSL "therefore imposes an obligation to conduct consultations in such a way that the position of the communities concerned is reflected as fully as possible.". Citizens should feel that public consultations are not merely facade - and that their opinions should be taken into account when the power unit makes the final decision. The ultimate goal of consultation - in addition to obtaining certain opinions of residents - should be to build trust in public authorities and involve citizens in the decision-making process in local government units.

Public consultations in Poland - the impact of the pattern resulting from the EKSL

Moving on to Polish law, the institution of public consultation has been regulated in local government act of laws at each level of local government functioning. The Polish legislator has provided for the possibility of carrying out public consultations in two variants: in cases indicated in laws and in other matters important for a given local government unit (so-called optional consultations). In the case of the first¹ their carrying out is required in connection with the validity of other provisions of the statutory matter - so the issuance of a particular act or decision depends on the fulfillment of the premise of organizing formal public consultation. In this case, the scope of cases to be consulted is imposed on citizens "from above," without their direct intervention in the subject matter of the process. The intention of consultation is therefore (primarily) to fulfill the statutory disposition.

However, in the case of so-called optional consultations, we are dealing with a model in which the premise for triggering them is the question of determining whether the subject of the consultation is a "matter of importance to the local government unit in question." The question is whether this attribute of "importance" is to be of key importance for the entity carrying out public consultations (i.e., the executive body of a given local government unit) or for residents, while realizing their need to consult on a particular issue. In literature it is admitted that the criterion of "validity" is not based on objective considerations, but (in the absence of statutory regulations to the contrary) is subject to evaluation within the limits of the discretion of the body with the authority to order public consultations on an optional basis - therefore, it is not possible to speak of the possibility of holding public consultations on all matters directly affecting citizens, but only on those that are deemed worthy of triggering the entire consultation procedure.

At this point, it is noteworthy to mention the statistics of selected Polish cities with public consultation processes. In Szczecin, 18 public consultations have taken place since 2020, two of which were in the form of optional consultations. In Olsztyn, 8 public consultations were to be held in 2021, of which only two were to be optional. In Opole, 4 public consultations were planned for 2023, of which only one was optional. The above data show that public consultations on important issues for the local government unit do not take place regularly and there are relatively few of them - so it can be assumed that the model indicated in the EKSL concerning the use of the form of consultation in all matters directly related to residents in the Polish reality is not applicable.

Summary

In conclusion, it should be remembered that the purpose of public consultations should be to activate the local community in influencing decisions made in its environment - as well as to properly form a sense of responsibility for public affairs. If an attempt is made to activate citizens by carrying out mandatory consultations - often in an area in which the citizens are not interested - and this process is not carried out in everyday and current issues for a given local government unit, it cannot be approved that the assumptions of the pattern resulting from the EKSL have been fulfilled in terms of the institution of public consultation in Poland. For this to happen, it is necessary to bring about a situation in which public consultation in local government units is a tool of real and practiced participation, and not just a tool for fulfilling statutory obligations. The recognition by the Polish legislator that the subject of public consultations may be matters considered important for a given local government unit should be contemplated as a narrowing of the subject of consultations carried out in relation to the pattern resulting from the EKSL.

¹

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¹ European Charter of Local-Self Government hereinafter called "EKSL".