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Theoretical and practical aspects of the implementation of the right to petition in Poland

ABSTRACT

In democratic countries, the petition has its fixed meaning as a means by which the individual or a group of people addresses a public authority. It may contain elements of criticism of the phenomena discussed in it, proposals for changes, reforms, information aimed to cause the addressee to take actions desirable from the point of view of the entity referring to it or such that are in the interest of third parties or the public. The essence of the right to petition is therefore the right of the individual to address public authorities in their own and public matters, both individually and collectively. In this way, it contributes to the development of a civil society through the socialization of the decision-making process, and serves the protection of the rights and freedoms of the individual. The aim of this study is to discuss the theoretical and practical aspects accompanying the implementation of such widely defined right to petition in Poland.

KEYWORDS: *the right to petition in Poland, the socialization of the decision-making process, the protection of the rights and freedoms in Poland, human rights.*

Introduction

In democratic countries, the petition has its fixed meaning as a means by which an individual or a group of people addresses to a public authority.

It may contain elements of criticism of the phenomena discussed in it, proposals for changes or reforms, information to cause the petition addressee to take actions desirable from the point of view of the petitioner entity, or else to take actions in the interest of the third party or in the public interest (Piotrowski, 2008, p. 26). The introduction of the petition into national legal systems would therefore contribute to the development of the civil society, and through the socialization of the decision-making process, would also serve to protect the rights and freedoms of an individual (Rytel-Warzocha, 2012, p. 4).

In the Polish constitutional law, however, significant differences may be discerned in the way the institution of the petition is comprehended. Some authors define a petition as an institution which differs from commonly understood complaints and proposals (including their subject matter, purpose and addressees), while others tend to adopt a broad understanding of a petition, distinguishing only collective petitions (petitions *sensu stricto*) and individual complaints and proposals (petitions *sensu largo*) (Sokolewicz, 2005, p. 4; Banaszak, 2009, p. 2009; Winczorek, 2000, p. 86).

Putting forward one generally accepted definition of the term *petition* is rather impossible. Therefore, it would seem reasonable to assume that the right to petition is "a general concept and a very broad one in terms of its content which may include such measures as a complaint, an application, a proposal, a request or a demand" (Wójcicka, 2015, p. 18–19). The essence of the right to petition is therefore the right of an individual to address to public authorities in his or her own interest, as well as in public matters, both individually and collectively. The aim of this study is to discuss the theoretical and practical aspects accompanying the implementation of so widely defined right to petition in Poland.

The constitutional standard of the right to petition in Poland

The Constitution of the Republic of Poland of 2 April 1997 lists the right to petition among other political rights. The legislator thus associates it with

the empowerment of all the citizens in a democratic state with the rule of law, the empowerment being expressed in the right of the Nation for the direct exercise of power (Article 4(2) of the Constitution), in the right to propose draft laws (Article 118 of the Constitution), as well as in the right to participate in a referendum (Articles 125 and 235 (6) and Article 170 of the Constitution). The right to petition is linked directly to the principle of a social dialogue being the basis for public rights in the state, referred to in the introduction to the Constitution of the Republic of Poland.

In accordance with the provisions of Article 63 of the Constitution of the Republic of Poland "Everyone has the right to submit petitions, to give proposals and lodge complaints in the public interest, in his or her own interest or in the interest of another person with their consent, to public authorities and to social organizations and institutions in view of the tasks they perform in the field of public administration. The procedure for handling petitions, proposals and complaints shall be specified by the Act." The right to petition established as a public subjective right is therefore vested not only in citizens, but in "everyone". Thus, while the right to petition belongs to the category of political rights, it has not been reserved exclusively to Polish citizens (Florczak-Wątor, 2016). Hence, there are also no obstacles for legal entities or organizational units without legal personality, as well as groups of natural persons to submit petitions, lodge complaints and give proposals.

The addressee of the petition, and therefore the entity obliged to handle it, may be a public authority and a social organization or institution in view of the tasks entrusted to them in the field of public administration. As far as the first category of petitions is concerned, the notion of public authorities is understood to mean all the bodies including the legislative, executive and judiciary, as well as national central and local authorities. As for the other two categories of addressees, i.e. social organizations and institutions, it should be noted that the constitutional provisions of other countries do not provide for the possibility of petitions being addressed to such organizations or institutions. In this respect, Polish constitutional regulations are of specific nature and should be given particular attention. The addressee of

the petition, however, may only be an organization and a social institution which is entrusted to perform tasks in the field of public administration, and provided the performance of such tasks only is the subject of the petition (Florczak-Wątor, 2013, p. 30–33).

Determining the subject of the petition is important from the point of view of its feasibility. However, the subject scope of the right to petition has not been specified under the current constitutional regulation. It can only be inferred from the wording of Article 63 that this type of address, as well as complaints and proposals, may be intended in the collective and individual interest and may be addressed to public authorities or social organizations and institutions in view of the tasks they are entrusted with to perform in the field of public administration (Szmyt, 2017a, p. 457–458). Defining the interest which is to be protected by the right to petition along with indicating potential addressees of petitions allow indirectly to determine the subject scope of petitions. It is indicated in the legal doctrine that petitions should concern "the activities of public authorities in general, especially the social perception of these activities, as well as regardless of the legal forms in which such activities are performed, and irrespective of how these entities are organized and set within the mechanism of exercising authority" (Cf. Sokolewicz, 2005, p. 8). Another indication to determine the subject of the petition might be also the fact that the right to petition has been classified by the legislator as a political right, and therefore one of the objectives of its implementation is to actively influence the exercise of public authority.

The right to petition is, however, not absolute and is subject to restrictions under the conditions arising from the constitutional provisions which contain the so-called general (overall) restriction clauses. Among the aforementioned provisions, the most relevant one is Article 31(3) from which it follows that some restrictions on the right to petition are admissible in the Act and only if it is necessary in a democratic state for the security or public order of the state, or for the protection of the environment, health and public morals, or for the protection of the rights and freedoms of other people. However, these restrictions cannot interfere with the essence of the right to petition.

The statutory understanding of the right to petition in the Polish legal order

The right to petition, despite its authorization arising from Article 63 of the Constitution of the Republic of Poland, no statutory development has taken place for many years. Pursuant to the Act of December 29, 1998 amending certain Acts in connection with the implementation of the state system reform, the concept of a petition was only introduced to Article 221 of the Code of Administrative Procedure. At the same time, the legislator in this provision announced that "The right to petition, to lodge complaints and give proposals, guaranteed for anyone by the Constitution of the Republic of Poland, shall be implemented, as specified in this section."

However, those provisions referred only to complaints and proposals, ignoring petitions completely, while Article 221 of the Code of Administrative Procedure was the only provision in which this very concept of the petition was brought up. Petitions were also not mentioned in the ordinance of the Council of Ministers of 8 January 2002 on the organization of handling and processing complaints and proposals. It seems that from the very beginning the legislator was aware of the fact that in the Code the statutory regulations of the procedure for dealing with petitions were merely tokenistic. Just a few months after the entry into force of the amendment, which was "to adapt" the statutory regulation to the constitutional requirements, the Sejm (the Polish Parliament) received the draft law on the amendment of the Act, i.e. the Code of Administrative Procedure, which provided for the joint regulation of the procedure for assessing proposals, complaints and petitions. The first reading of the draft law took place on 3 December 1999, however, on 23 November 2000 it was finally withdrawn. Ten years later, the draft law on petitions was prepared in the Senate. Thus, a completely new concept of regulating the procedure of petition assessing appeared to be done in a separate Act and in a manner independent of the regulations of the procedure for complaints and proposals processing included in the Code. However, the work on this legislative draft was not finalized due to the principle of discontinuation. Therefore, pursuant to the amendment of 1 January 2009, the provisions regarding the procedure for dealing with petitions (Articles 90a-90g) were

added to the Rules of Procedure of the Senate. The most important powers under the new procedure were conferred on the Human Rights, Rule of Law and Petitions Committee. The fact of regulating the procedure for dealing with petitions in the Rules of Procedure of the Senate, instead of in the Act (as required by Article 63), raised the question of whether such a solution is constitutional or not. The collision of the principle of the statutory autonomy of the Senate and the exclusivity principle of the Act in this particular case, however, did not lead to the conflict of these two principles.

The situation changed after the adoption of the Act on Petitions of 11 July 2014 which entered into force on 6 September 2015. The Act governs the rules for the submission and handling of petitions, as well as the manner in which the authorities deal with matters related to petitions, that is demands in particular, for changing the law, making decisions or other actions in a petitioner's case, public life or values that require special protection for the common good, all falling within the scope of tasks and competences of the addressee of the petition (Article 2 (3)). Pursuant to the provisions of the aforementioned Act, petitions may be submitted by a natural person, a legal person, an organizational unit that is not a legal person, or a group of the aforementioned entities (hereinafter referred to as a "petitioner entity"), to a public authority, as well as to an organization or a social institution in view of their tasks performed in the field of public administration.

Basing on the regulations contained in the Code of Administrative Procedure, the legislator decided, however, that the content of the demand, rather than its external form, determines whether the letter is a petition or not (Article 3). A petition may be submitted in writing or by means of electronic communication. The petition tendered in writing must be signed by the petitioner entity, and if the entity submitting it is not a natural person, or if the petition is submitted by a group of entities, the letter should be signed by the entity representing the petitioner (Article 4(4)). Pursuant to the provisions of Article 4(5), in a situation when a petition is submitted by means of electronic communication, it may be provided with a secure electronic signature verified by means of a valid qualified certificate, and it should contain the email address of the petitioner entity.

The petition cannot be processed any further if it does not meet certain formal requirements. Under the Article 4(2), a petition should include the particulars of a petitioner, the indication of a place of residence or a seat of the petitioner and their correspondence address, the particulars of a petition addressee and the indication of the subject of the petition.

The petition may be submitted in the interest of the public or of the petitioner entity or of the third party with his or her consent. In the latter case, the petition must also include the first name and surname or the name, the place of residence or registered office, as well as the correspondence address or e-mail address of that party. The consent of the third party, in writing or by means of electronic communication, shall be attached to the petition. In case of any doubts concerning the existence or the scope of the aforementioned consent, the petition addressee may, within 30 days from the day of submitting the petition, address to the petitioner, in whose interest the petition is submitted so as to confirm the consent within 14 days, with the information that in case of the absence of such a confirmation, the petition shall not be handled.

The petition may also include the consent to disclose on the website of the entity dealing with the petition or on the website of the office hosting such an entity, all the personal data of the petitioner entity or of the entity in whose interest the petition is to be submitted. This provision is important inasmuch as pursuant to the provisions of Article 8, the information containing the digital representation (a scan) of the petition and the date of its submission shall be immediately placed on the website of the entity dealing with the petition or of the office hosting such an entity. In case of the consent has been expressed, the given name and surname of the petitioner or the name of petitioner entity in whose interest the petition is submitted are also included on the website. The information on the course of the proceedings, in particular regarding the opinions being consulted, the expected date and the manner of handling the petition, shall be immediately updated on the website.

In view of the provisions of the Act being discussed, all the formal deficiencies in petitions can be divided into irremovable and removable ones (Wójcicka, 2015, p. 308). The former category includes deficiencies in the

petitioner's particulars (anonymous petitions), failing to indicate the place of residence or the seat of the petitioner and the correspondence address. In these cases, as a rule, the legislator decided to leave such petitions unprocessed. However, removable deficiencies are the result of the situations when the petition fails to indicate: 1) the petition addressee, 2) the subject of the petition, 3) the given name and surname of the petitioner or the name, place of residence or registered office, correspondence address or e-mail address of the third party in whose interest the petition was submitted, 4) the consent of the third party to submit the petition in his or her interest as it was not attached. At that point the entity competent to handle the petition shall summon the petitioner entity, within 30 days from the date of the submission of the petition, to provide any missing information or to clarify the content of the petition. Calling for the formal deficiencies noted to be remedied, the authority has an obligation to indicate clearly and unequivocally what deficiencies the petitioner is supposed to remedy, as well as to give the 14-day deadline for the petitioner to complete all the missing information, and state clearly for the petitioner to understand that the petition, the content of which will not be clarified or information not updated, shall not be processed (Article 7).

The necessity to recognize the organizational and regulatory autonomy of the Sejm and the Senate meant that exercising the right to petition before these bodies should be subject to a special regime (Szmyt, 2017b, p.263). In view of Article 9(1), a petition submitted to the Sejm or the Senate shall be handled by these bodies unless another internal authority competent in this regard is indicated in the Rules of Procedure of the Senate or the Sejm. A special regime was also provided for petitions addressed to bodies constituting local government units. Pursuant to the provisions of the aforementioned Act, a petition submitted to a body constituting a local government unit, is to be handled by that unit.

Pursuant to the provisions of Article 6(1), the petition addressee who is not competent to handle the petition shall hand it over immediately, but not later than within 30 days from the date of its submission, to the body competent to process the petition, notifying at the same time the petitioner

entity about this very action. If a petition concerns several issues subject to the assessment by various bodies, the petition addressee shall process it within the scope of their jurisdiction and then shall hand it over without delay, however not later than within 30 days from the date of the submission of the petition, to other competent bodies, notifying at the same time the petitioner entity about this very action.

According to Article 10 of the Act, a petition should be processed without undue delay, but not later than within 3 months from the date of its submission. In case of submitting a petition to a body which is not competent to deal with it, or in case of the occurrence of removable formal deficiencies, the deadline for processing such a petition shall be counted from the day the petition is received by the competent body, or from the date when the missing information has been updated or the content of the petition has been clarified. However, if there should occur any circumstances beyond the control of the petition addressee that prevent the petition from being processed, this period of time shall be extended, but not longer than up to three months from the expiry of the first deadline.

Bearing in mind the efficiency, economy and economics of the proceedings on a statutory basis, the rules of examining the so-called multiple petitions have also been regulated. This solution aims to "prevent the same cases form being processed repeatedly due to multiple submissions of petitions that do not contain any new information" (Cf. Wójcicka, 2015, p 309-310). If within one month from the day when the competent entity received the petition, further petitions regarding the same matter are submitted, the petition addressee may decide to process all of them as one case (a multiple petition). In this case, on the website of the entity competent to process the petition or on the website of the office hosting this entity, a waiting period shall be specified, no longer than 2 months from the day of the announcement, for further similar petitions. If the petition being a part of a multiple petition contains any removable formal deficiencies, the entity competent to handle the petition shall put on its website a request for the petitioner so as to provide all the missing information or to clarify the content of the petition within 14 days. If the formal deficiencies should not be remedied, the petition

being a part of a multiple petition shall be left unprocessed. The petition addressee shall announce the manner of processing a multiple petition on his or her website or on the website of the office hosting it.

The proceedings of the petition handling are closed with the notification of the petitioner entity about the way the petition has been dealt with, as well as with the justification in writing or being sent by means of electronic communication. Therefore, the proceedings are single-instance only, and the petitioner dissatisfied with the method of handling the petition, is not entitled to any further appeal. Pursuant to the provisions of the Act, the entity competent to deal with the petition may leave it unprocessed if the petition is submitted in the case which was the subject of a petition already examined by this entity, and if the petition does not include any new facts or evidence yet unknown to the entity competent to handle the petition. In this case, the entity competent shall immediately inform the petitioner about leaving the petition unprocessed as well as about the previous way of dealing with the petition.

The legislator imposed an annual obligation on the entity competent to process the petition, as well as on the Sejm, the Senate and the authority constituting a local government unit, to publish by 30 June, on their websites or the websites of the offices hosting them, the summary information on the petitions processed during the previous year. This information includes, in particular, all the data on the number, the subject matter and the manner of handling the aforementioned petitions.

The Act on Petitions is not a comprehensive normative act and does not regulate all the procedural issues related to its subject matter. In the scope not regulated in the Act on Petitions, a reference to the provisions of the Code of Administrative Procedure is provided for.

The right to petition in the activities of the Senate and the Sejm of the Republic of Poland

In practice, petitions addressed to the parliament are of particular importance. Their subject is usually of proposals for adopting specific legislative solutions. Thus, it is necessary to distinguish petitions, on the

one hand, from addresses in the form of a civic legislative initiative and, on the other hand, from lobbying activities for specific legislative solutions (Florczak-Wątor, 2016). In contrast to the civic legislative initiative, petitions and proposals are of a non-formal character and include a postulate to introduce specific solutions but without specifying their final shape. These kind of addresses may therefore be an impulse for their addressee to take a legislative action, but they are not a legal measure that initiates a specific legislative procedure. Contrariwise, as far as lobbying is concerned, it is not possible to separate it precisely from the right to address the Sejm or the Senat so as to present petitions, complaints and proposals, all the more so because lobbying, unlike the civic legislative initiatives, does not have its own separate constitutional basis. Hence, it is impossible to disagree that petitions containing postulates of adopting specific legislative solutions, represent a specific form of lobbying.

Since the entry into force of the Act on Petitions (i.e. from 6 September 2015), in 2015 the Human Rights, the Rule of Law and Petitions Committee handled a total number of 13 petitions (9 in the 8th term and 4 in the 9th term of the Senate), including 8 collective, 4 individual and 1 multiple petition. On the basis of the petitions handled, the Committee prepared only 4 draft laws (The summary information on petitions addressed to the Senate and handled by the Human Rights, the Rule of Law and Petitions Committee in 2015). In contrast, in 2016 the Senate Marshal sent 69 petitions to the Human Rights, the Rule of Law and Petitions Committee, including 45 individual, 18 collective and 6 multiple petitions. In addition, the Committee continued working on 5 petitions addressed to it in 2015. The Human Rights, the Rule of Law and Petitions Committee prepared 9 draft laws on the basis of the postulates of 10 petitions. Furthermore, it was agreed to continue the works on 5 petitions, and as far as the other petitions were concerned, it was decided to end the works or not to take any action at all (The summary information on petitions addressed to the Senate and handled by the Human Rights, the Rule of Law and Petitions Committee in 2016). From the moment of the entry into force of the Act until the end of 2015, 40 petitions were submitted to the Sejm, 26 of which were sent by the Marshal of the Sejm to be handled

by the Petitions Commission. On the basis of the petitions processed, the Commission decided to bring in a draft law in only one case. From 1 January to 31 December 2016, 134 petitions were submitted to the Sejm, 125 of which were sent by the Marshal of the Sejm to be handled by the Petitions Commission. However, only in 8 cases it was agreed to prepare draft laws, and in 28 cases it was decided to send desiderata to the Council of Ministers and its members (The summary information on petitions addressed to the Sejm and handled by the Petitions Committee in 2016).

Among the petitions having been submitted to the Senate and the Sejm so far, the vast majority was submitted by natural persons (approximately 65%). The entities that have submitted the remaining petitions were associations, foundations, local government units, professional associations, trade unions and business entities.

It appears from the Senate annual reports in particular that the vast majority of letters sent to the Senate Chancellery could not be handled as petitions mainly because they did not contain legislative proposals and their authors described their own individual cases before the judicial authorities or before various local self-government bodies, or they engaged in polemic or else expressed their dissatisfaction with the judgements and decisions made. For instance, it should be pointed out that in 2015, among 1,471 letters that were received by the Senate, 381 were entitled "a petition" or contained proposals of changes in law. As a result of a careful analysis of these letters, only 13 were allowed a petition handling procedure (The summary information on petitions addressed to the Senate and handled by the Human Rights, the Rule of Law and Petitions Committee in 2015). The basic criterion taken into account when deciding on the nature of the letter and deciding whether it was a petition, was first and foremost the fact that it contained legislative proposals (for changing a law or adopting a law). It seems that it is a *sine qua non* condition of the Senate's recognition of the petition. The petition should not be linked to a specific individual case of the author before the judicial authorities or various local self-government bodies. What is more, the petition subject cannot concern any polemic or be an expression of dissatisfaction with the judgements and decisions already

made. The petition subject cannot also cover opinions, remarks or criticism concerning the application and adherence to the law.

The petitioners have most often requested changes of the law regarding veterans and victims of oppression, pensions, the situation of disabled people, the electoral law and financing of political parties, finances and taxes. A small part of the petitions has referred to the matters concerning construction law and road traffic regulations, Customs Service, passing special resolutions, tenants' rights, rights to property, labour law, pharmaceutical law, the ban on alcohol sales at petrol stations, changes to some law regulations on nature conservation, the introduction of legislation grounds of lodging pleadings with a secure electronic signature in juridical and administrative proceedings or the introduction of the ban on the use of the *in vitro* procedure.

Summary

The first experiences related to the entry into force of new solutions regarding the submission and processing of petitions are not optimistic. Nevertheless, it can be hoped that by expanding the "favorable institutional environment" (Cf. Zięba-Załucka, 2010, p. 21), the institution of the petition will contribute in the near future to strengthening the idea of civil society. It should be considered as a field for new activities in the name of social interests and the development of democracy, which will eventually lead to the marginalization of the phenomenon of "

the withdrawal" of the society from official regulatory and institutional structures. However, the entry into force of new solutions must be supported by an information and promotion campaign which will make all the citizens aware of the tools they have at their disposal to directly influence the decision-making processes, both at the country and local level.

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