

Monika Augustyniak

PhD, Andrzej Frycz Modrzewski Krakow University

Consultative bodies in the commune government in Poland and French Republic – a comparative perspective. Selected issues¹

Introduction

A particular form of participation of inhabitants in the management of the local community is their involvement in collegial bodies of a consultative nature. In the French legal order such participation is normalized by the provisions of the act General Code of Local Communities (referred to as the CGCT²). Note that the consultative administration is one of specific features of the French administration. We are dealing with a multitude of forms in the designation of councils, committees and commissions to be consulted by authorities and controlling bodies of the state administration. Due to the specific nature of French legal solutions (consultative administration) in the commune government, including the multitude of commissions and committees³ where the inhabitants of local communities participate, the article compares the considered issues by presenting the French patterns of consultative participation corresponding to Polish legal solutions, if any, in that scope, basing on the criterion of functionality. The comparative perspective is aimed at presenting the consultative administration at the commune level

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² Code général des collectivités territoriales (the General Code of Local Communities, CGCT) – source: <https://www.legifrance.gouv.fr>.

³ See: M.-H. Bacqué, H. Rey, Y. Sintommer, *La démocratie participative, un nouveau paradigme de l'action publique?*, [in:] *Gestion de proximité et démocratie participative. Une perspective comparative*, eds. M.-H. Bacqué, H. Rey, Y. Sintommer, Paris 2005, p. 16.

in both legal orders and at putting forward the postulate *de lege ferenda* in reference to the Polish legal regulations in this respect.

Consultative bodies of an obligatory nature in French and Polish commune government

The obligation in the French legal order to set up the Consultative Commission for Local Public Services (**Commission consultative des services publics locaux – referred to as CCSPL**) applies, among others, to communes with more than 10,000 inhabitants. The Commission is established for the public services as a whole, which are subcontracted to an external entity or performed by a financially independent commune establishments (see Article L. 1413-1 CGCT). It allows participation, in the capacity of providing advice and opinions, for inhabitants and users of the services through local associations (e.g. associations of tenants)⁴. The commission is chaired by the executive body of the commune, and it is composed of members of the controlling body, on the basis of proportional representation, representatives of local associations, appointed by the commune council⁵. At the request of the chairperson and with regard to the agenda of the meeting, the commission may invite for participation in its works all persons whose presence it deems necessary. Each year, this commission considers a report which must be submitted by the entities which perform public service obligations (see Article L. 1411-3 CGCT). This applies to reports on the prices and quality of drinking water, sewage, exports or processing of municipal waste, balance sheets pertaining to the operation of financially independent commune establishments (*régie*), report from the partner to the partnership agreement⁶. The controlling body seeks opinion of the commission in the matters pertaining all projects in the scope of the transfer of the public service obligation, setting up a financially independent commune establishment (*régie*) and all partnership projects. The commission chairperson is obliged, by 1 July of each year, to present to the controlling body the status of the works performed by the commission. Most commission members may ask for entering proposals concerning the improvement of local public services to the agenda of the commune council meeting.

⁴ See more information on this subject: Public Report of the Council of State, 2011, *Consulter autrement, participer effectivement*, Documentation française, Paris 2011.

⁵ See: M. Verpeaux, Ch. Rimbault, F. Waserman, *Les collectivités territoriales et la décentralisation*, Paris 2016, p. 85.

⁶ See Article L. 1414-14 CGCT.

Those commissions focus on constant improvement of public services in order to ensure transparency in the management of such services⁷. This applies to the quality of service, their prices, as well as to passenger comfort.

In the Polish legal order, in the commune government it is possible to set up permanent or temporary commissions⁸ dealing with the issues of public services in a given commune (e.g. a commission for infrastructure and transport), but there are no mandatory regulations in the Act in this respect. Those bodies however, if set up in the commune council, have an optional character and their establishment is within the competences of the controlling body. Still, it should be noted that in the Polish legal order only the commune councillors may participate in such a commission. It is unacceptable to admit inhabitants of a given commune to the commission. Representatives of the public services users (representatives of specific associations acting for the benefit of users) may appear only as invited guests or experts appointed to provide a specific opinion in order to improve the organization and operation of the given public service. They may also submit proposals to the commission or to the commune bodies as regards any possible improvement of the conditions for the use of public services. Such commissions operate as internal bodies of the controlling body of the commune and are regulated and are regulated under the statute of the commune or via separate resolutions. This does not preclude the possibility for the monocratic executive body of the commune to set up teams, commissions or committees within the scope of the presented issues.

In accordance with L. 2143-3 CGCT, the **Commune Commission for facilitating accessibility (commission communale pour l'accessibilité – referred to as la CCA)** is set up in communes with at least 5000 inhabitants. This commission is mandatory in public entities of cooperation among communes (EPCI) with at least 5000 inhabitants dealing with transport and spatial planning. Note that in the case of less than 5000 inhabitants this commission is optional. The communes not subject to this obligation may also set up their own inter-commune commission for the performance of tasks envisaged for the commune commission within the powers conferred by the

⁷ See: M. Thoumelou, *Collectivités territoriales, Quel avenir?*, Paris 2016, p. 131 et seq.

⁸ Commissions, as bodies set up in order to perform specific tasks delegated by the council, should streamline the operations of controlling bodies, being their emanation. Administrative judiciary further specifies the legal framework for the operations of commissions, indicating their important role in the *pro foro interno* activities of the commune council – M. Augustyniak, *Komisje organów stanowiących jednostki samorządu terytorialnego w świetle orzecznictwa sądów administracyjnych*, [in:] *X lat funkcjonowania dwuinstancyjnego sądownictwa administracyjnego w Polsce – unsioki de lege lata i de lege ferenda*, eds. J. Czerw, A. Żywicka, Lublin 2014, p. 9 et seq.

commune. Depending on the type of the commission, it is chaired, as appropriate, by a mayor, EPCI chairperson or one of the mayors of the interested communes. Since the Act No. 2014-1090 of 26 September 2014 entered into force, the commission takes care not only of people with disabilities (regardless of the type of disability), but also of the elderly. The commission is composed of representatives of the community or EPCI and representatives of associations, bodies, economic operators and interested users. The commission meets several times in a year, depending on the local needs. The commission does not have the status of the commune council commission.

The objective of those commissions is to provide opinions regarding the accessibility of architectural environment, public space, roads and transport. These commissions deal with projects and documents concerning the accessibility of spatial infrastructure. They prepare an annual report to be submitted to the commune council and other entities as specified by the provisions of law⁹.

In the Polish legal order there is no such commission established under the provisions of law. It is possible to set up a permanent or temporary commission dealing with problems of people with disabilities at the area of a specific commune, if the controlling body expresses its will to do so. In practice, permanent commissions for spatial planning often also deal with the issues related to liquidation of architectural barriers for persons with disabilities, also taking into account also the problems of elderly people. The legislator decided, in Article 44b of the Act of 27 August 1997 on the vocational rehabilitation and social cohesion and employment of people with disabilities¹⁰, that by the poviats governors [Polish: *starosta*] poviats social councils for persons with disabilities would be set up and vested with the competencies to provide opinions and advice. The scope of their activities includes primarily providing opinions for draft resolutions and programs adopted by the poviats council with regard to their consequences for people with disabilities, inspiring projects for social and vocational integration of people with disabilities and for support in exercising their rights. Such councils also provide opinions for projects of poviats programs of activities for people with disabilities. What is more, they also assess the implementation of appropriate programs. The council is established for a period of four years. In accordance with Article 44c par. 2 of the u.r.z.s., “poviats councils shall consist of 5 persons appointed from among the representatives – operating at the area of a specific poviats

⁹ See: P.J. Quillien, *Tout savoir sur les collectivités territoriales*, Paris 2017, p. 116.

¹⁰ See the Act of 27 August 1997 on the vocational rehabilitation and social cohesion and employment of people with disabilities (i.e. Journal of Laws of 2016, Item 2046 as amended) – hereinafter referred to as u.r.z.s.

– of non-governmental organizations, foundations and representatives of local government units (poviats and communes)”¹¹. Members of poviat councils are appointed and dismissed by the starosta from among the candidates proposed by the organizations and bodies referred to above. Those bodies constitute a wide forum of debate relating to the problems of people with disabilities at the area of communes and towns with poviat rights as well.

In accordance with Article L. 2511-24 CGCT, in every district (arrondissement) of Paris, Lyon and Marseille **the District Committee for Initiatives and Consultation (comité d’initiative et de consultation d’arrondissement – hereinafter referred to as the CICA)** will be established. It brings together the representatives of local associations or members of the national federations. The legislator indicates that this applies to the aforementioned entities which operate within the area of a district and request accession to the CICA. The District Council (conseil d’arrondissement) transfers to the CICA all information necessary for the preparation of the debates organised at least quarterly within the framework of the district council together with the representatives of associations represented at the CICA¹². The committee has solely the competencies for providing opinions¹³.

In the Polish legal order there is no such body established under the provisions of law. Such a structure is even absent in the districts of Warsaw, which have a similar organization to the districts (arrondissement) established in major metropolitan areas, i.e. in Paris, Lyon and Marseille. Within the commune council, permanent or temporary commissions are established, and these are of a consultative nature for the matters related to auxiliary units of the commune. Such commissions may have the form of a public dialogue commission, commission for participatory budget, commission dealing with the issues of auxiliary units in a specific commune. It is also possible to establish – within the structure of the commune through a decree of an executive body – other opinion-providing and consultative bodies which deal with the with the issues of auxiliary units in the commune, e.g. cooperative conven-

¹¹ See: *Act on the vocational rehabilitation and social cohesion and employment of people with disabilities. Komentarz*, ed. M. Włodarczyk, Warsaw 2015, p. 808. See the decree No. 3618/2015 of the Mayor of the City of Krakow of 29 December 2015 on the establishment of the Poviat Social Council for People with Disabilities by the President of the City of Krakow. Source: <http://www.bip.krakow.pl> [accessed on: 5.06. 2017].

¹² See: J. Ferstenbert, F. Priet, P. Quilichini, *Droit des collectivités territoriales*, Paris 2016, p. 284.

¹³ See also Articles 25 and 26 of the Internal Rules of the District Council (arrondissement No. 5 in Paris, adopted with a resolution No. 05.14.087 of 15 September 2014 (source: <http://www.mairie05.paris.fr>, accessed on: 1.06.2017), which govern the deliberations of the CICA in the District No. 5 in Paris, which indicate, among others, that the Mayor of Paris and his deputies may participate in the meetings.

tion of district chairpeople¹⁴. However, it needs to be indicated that in the Polish legal order it is not possible to establish – under the provisions of law and statutes – a consultative and motions commission for the matters included in the operations of the commune auxiliary units in a specific commune or a town with poviats rights, where the members would be inhabitants of the given local community as internal bodies of the commune council.

Consultative bodies of an optional nature in French and Polish commune government

In the French local government it is possible to establish a specific commission functioning within the structure of the commune council. **Mission d'information et d'évaluation (Mission for Assessment and Information – hereinafter referred to as the MIE)** is a quasi-commission established under Article L. 2121-22-1 CGCT by way of a resolution of the controlling body. It may be set up in communes with over 50,000 inhabitants, upon a motion of 1/6 of the commune council members¹⁵. The same councillor may put forward a motion for the establishment of a specific commission only once in a year. It serves for gathering information on the matters of interest for the commune or to assess the public services operating within the area of the specific community¹⁶. Principles pertaining to the rules and mode of functioning, personal composition and time for which it is established (which may not exceed 6 months from the date of a resolution on its establishment) are governed by the internal regulations of the commune council. The regulations also indicate the conditions pertaining to the commission's reports of its activities it must present to the commune councillors. The commission is an optional, internal quasi-body of the council. It consists of councillors¹⁷ who represent all political groups (in Paris, there are 15 members of this commission), however, its legal status is different than in the case of other commissions of the council. It is not a commission dealing with substantive

¹⁴ In Krakow, a Consultative Team referred to as the Convention of the District Councils Chairpeople was established by the Mayor of the City of Krakow by way of the decree No. 935/08 of 14 May 2008. The purpose of the Convention's operations was to present proposals in the matters relating to the functioning of the Districts' bodies and to provide opinions, upon request of the commune bodies, on the matters related to the functioning of the Districts' bodies and to other local problems. Source: ww.bip.krakow.pl/zarządzenie [accessed on: 10.06.2017].

¹⁵ See: J.B. Auby, J.-F. Auby, R. Noguellou, *Droit des collectivités locales*, Paris 2015, p. 143.

¹⁶ See: P. Emar, [in:] *Évaluation et démocratie participative*, J.C. Boual, P. Brachet, Paris 2004, p. 55 et seq.

¹⁷ See: B. Faure, *Droit des collectivités territoriales*, Paris 2014, p. 191.

matters. It provides a specific bridge between councillors and inhabitants of a given community within the scope of information and evaluation of public policies. However, inhabitants do not participate in its work, but the commission may carry out consultations with them in a particular matter. This commission is functioning in line with the pattern set by the commissions of analyses and evaluation (committees of inquiry) established at the parliamentary level¹⁸.

In the Polish legal order there is no equivalent for information and evaluation regulated under the provisions of law. It is possible to set up an optional commission with similar competencies in the scope of analysis and evaluation of the issues relating to the implementation of public services, e.g. by way of an order to an audit commission (or a team functioning within its framework) for the performance of an audit in the scope defined by the council. The audit report is presented at the meeting of the commission, and afterwards on the session of the controlling body. It also contains informative elements which serve for the improvement of the living conditions in a local community. In this context, certain similarities may be found to the Mission for Information and Assessment.

In accordance with Article L. 2143-2 CGCT, the commune council may establish consultative committees (**comités consultatifs**) for any matter relating to the commune's interests. In practice, such committees deal with different issues (e.g. with sport, culture, employment, etc.)¹⁹. Such committees may be consulted by the Mayor in all matters connected with public services and local facilities and objects related to the purpose of their establishment. In turn, the committees submit to the Mayor any proposals relating to any problem in the scope of the functioning of the commune, including those connected with the purposes for which the committees were established²⁰. The committees are composed of persons appointed by the controlling body (for the period not exceeding the term of the commune authorities, i.e. 6 years) because of their representativeness or competencies (in particular representatives of local associations). They are headed by one of the members of the controlling body appointed by the Mayor. The councillor and inhabitants of the given community may also participate in the works of the extra-commune consultative commissions (extra-municipales)²¹. Proposals of extra-commune commissions are discussed by the councillors of commune

¹⁸ See: M. Verpaux, *Des lois Defferre à la loi NOTRe., Les grandes étapes de la décentralisation, Cahiers français, Collectivités territoriales*, Paris 2016, p. 4.

¹⁹ See: M. Thoumelou, *op. cit.*, p. 131.

²⁰ See: J.B. Auby, J.-F. Auby, R. Noguellou, *op. cit.*, p. 151 et seq.

²¹ See: J. Ferstenbert, F. Priet, P. Quilichini, *op. cit.*, p. 283.

commissions before they may be brought up at the session of the commune council²².

Consultative (advisory) committees – as they bring together the councillor(s) and the inhabitants of the commune – may be regarded as a certain variety of an external commission, unique in that it carries out consultations with the specific categories of inhabitants, who are prevented by the provisions of the Electoral Code from having their own representation in the resolution-making body, e.g. immigrants, adolescent inhabitants of the commune. The *ratio legis* for the establishment of such committees is to learn the opinions and suggestions for all inhabitants. Those structures do not have the quality of the commune body, nor of the internal body of the internal body of the commune council.

Consultative committees cooperate with the resolution-making body on a limited basis, in order not to affect the competencies of the bodies within the basis local community constituted by the commune. It should be noted that only the commune council is authorized, under the provisions of law, to regulate all matters related to the cooperation with the said committees²³.

The provision specified in Article L. 2143-2 CGCT provides the legal basis for advisory committees, which includes obligatory regulations relating to the organization and functioning of the committees. These include the standards pertaining to the period for which such committees are established, and which may not be longer than the term of the commune council, and also to the chairmanship of the committee (the committee must be chaired by the member of the commune council appointed by the Mayor). The commune council, however, has the freedom to establish the committee and to determine the principles pertaining to its composition (within the limits indicated by law, i.e. with regard to the inhabitants, especially local associations)²⁴, and it indicates the area to be covered (the whole or part of the commune's area). These are the elements that the legislator leaves the decision of the controlling body of the specific community.

The competencies of the advisory committees are of an opinion-providing nature, and therefore they constitute a plane where some minorities may express their views or where particular interests may be defended. They do not have their own powers. The committees are dependent on the initiative of the Mayor, who may request them to provide opinion on any issue or

²² For more information on the possibilities and forms of the operation of commissions at the district level see: M. Koebel, *Le pouvoir local ou la démocratie improbable*, Broissieux 2006, p. 77 et seq.

²³ See: Article L. 2121-29 CGCT.

²⁴ See: M. Verpeaux, L. Janicot, *Droit des collectivités territoriales*, 3^e édition, Paris 2015, p. 291.

project within the scope of public services or the commune infrastructure, or any other matter included in the scope of the activities of the associations represented by the members of the committee. The committees, on the other hand, may present to the Mayor any proposals relating to any problem connected with the interests of the commune in relation to which they have been established. In any case they may only issue non-binding opinions.

In the Polish legal order, *ex lege* consultative committees in this particular form were been provided for in the provisions of the Act of 8 March 1990 on commune government²⁵, as they were in the French CGCT. The Act on commune government allows to establish a consultative and advisory commission to refer to any matter vital for the commune, and it may have the form of a temporary or a permanent commission. Such commissions, however, do not have the status of an internal body of the council²⁶ and are subject to the commune council. These assemblies are composed of councillors, as a body established to support the council. Their duty is to submit the working plan and reports (which places the commissions as internal bodies of the council functioning solely *pro foro interno*). These commissions do not have the regulatory powers, as those competencies has been reserved, as a general rule, for the commune council. It should be mentioned that participation of external entities in those commissions is limited, because they may not be members of that body, although they are allowed to participate in their meetings.

It is worth emphasizing that a certain kind of advisory function in the local government administration (of inhabitants participation) is provided by the commune commission for solving alcohol problems, which does not belong to the internal bodies of the commune council. Its legal status is regulated under the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism²⁷ and under other legal regulations (on the statutory and sub-statutory level – a resolution of the commune council and the decree of the “wójt” [rural commune mayor]). Under Article 4¹ par. 3 of the u.w.t.p.a, the executive body of the commune has the obligation to appoint a commune commission for solving alcohol problems. The purpose of this of this commission is, in particular, initiating measures related to the prevention and solving of alcohol problems and to social integration of persons addicted

²⁵ See the Act of 8 March 1990 on commune government (consolidated text: Journal of Laws of 2016, Item 446, as amended).

²⁶ For the information on the legal status of the commission – see: A. Szewc, *Komisje samorządowych organów stanowiących w latach 1990–2010*, “Legal Brochures of the College of Economy and Administration in Bytom” 2010, No. 1, p. 66 et seq. See also the judgement of the Supreme Administrative Court of 15 November 2005 (II OSK 235/05, LEX No. 196688).

²⁷ See the Act of 26 October 1982 on upbringing in sobriety and counteracting alcoholism (i.e. Journal of Laws of 2016, Item 487, as amended) – hereinafter referred to as u.w.t.p.a.

to alcohol²⁸. The commission takes actions in order to decide whether a specific person addicted to alcohol should be subject to compulsory treatment at the detox treatment facility. The commission has consultative and controlling competencies²⁹. It also performs other tasks under separate provisions of law (e.g. arising out of Article 9d of the Act of 29 July 2005 on combating household violence)³⁰.

The commission is established and disbanded by the executive body of the commune by way of a decree which indicates its composition and the scope of its activities. The composition of commission should be specialised³¹, and therefore its members should only persons trained in prevention and solving alcohol problems.

It should be noted that in the capital city of Warsaw there are district teams for the implementation of the program of prevention and solving of alcohol problems for the capital city of Warsaw, which are established by the Mayor of the capital city of Warsaw at the request of district authorities. They implement the tasks arising from the Program of Prevention and Solving Alcohol Problems. Moreover, they perform other activities requested by the Commission for Solving Alcohol Problems³².

The collegial bodies established with the participation of the social factor in the commune, which are an instrument of social policy in the local community include also interdisciplinary teams for combating household violence, established under Article 9a of the Act of 29 July 2005 on combating household violence³³. This provision stipulates that the commune should take measures to combat domestic violence, in particular as part of the works performed by the interdisciplinary team appointed by the executive body in the commune. The interdisciplinary team may also include other entities as

²⁸ See the judgement of the Voivodeship Administrative Court in Warsaw of 27 March 2015 (II SAB/Wa 954/14, LEX No. 1814937).

²⁹ For more information on other tasks performed by the commune commission for solving alcohol problems – see A. Gronkiewicz, A. Ziółkowska, *Komisje, zespoły, rady jako forma partycypacji obywateli w życiu w samorządzie terytorialnym*, [in:] *Partycypacja społeczna w samorządzie terytorialnym*, ed. B. Dolnicki, Warsaw 2014, p. 288 et seq.

³⁰ See the Act of 29 July 2005 on combating household violence (i.e. Journal of Laws of 2015, Item 1390, as amended). See: W. Maciejko, [in:] D. Lebowa, W. Maciejko, *Gminna komisja rozwiązywania problemów alkoholowych*, Warsaw 2011, p. 94 et seq.

³¹ For more information in this respect see: I. Skrzydło-Niżnik, [in:] I. Skrzydło-Niżnik, G. Zalas, *Ustawa o wychowaniu w trzeźwości i przeciwdziałaniu alkoholizmowi. Komentarz. Doktryna. Orzecznictwo*, Krakow 2002, p. 72 et seq. See the judgement of the Voivodeship Administrative Court in Warsaw of 5 May 2016 (II SA/Wa 1395/15, orzeczenia.nsa.gov.pl).

³² See source: <http://ud-wlochy.waw.pl/p> [accessed on: 15.06.2017].

³³ See the Act of 29 July 2005 on combating household violence (i.e. Journal of Laws of 2015, Item 1390 as amended), hereinafter referred to as u.p.p.r.

indicated by law or their representatives, actively combating domestic violence. The competencies of the controlling body in the commune include the specification, by way of a resolution, of the mode and procedure for appointing and dismissing members of the interdisciplinary team and of detailed conditions of its operation. However, the Act does not authorize the commune council to determine the catalogue of entities which make up the interdisciplinary team³⁴. It also has no competencies to determine the number of members of such a team³⁵. These teams are established in the commune and in the districts of Warsaw. Such teams operate as external bodies and not as internal bodies of the commune councils, which is determined by their legal nature. They are not an auxiliary body to “wójt” [rural commune mayor] (“burmistrz” [mayor], “prezydent” [mayor in towns with more than 100,000 inhabitants or other municipalities that traditionally use the title]). This is an entity separate from the commune bodies, which, however, operates on the basis of the structure of the commune and performs the tasks imposed by law³⁶, taking into consideration representatives of the entities indicated by law who are the voice of inhabitants of the commune as regards the issues pertaining to the social policy in the commune.

What also should be mentioned is the possibility to establish, at the level of the commune, of the Communal Council for Public Benefit Activities, operating under Article 41e of the Act of 24 April 2003 on public benefit activities and the voluntary service³⁷. The competencies to establish this consultative body rest with the executive body in the commune. This body is established, upon joint request, at least 5 non-governmental organizations or the bodies referred to in Article 3 par. 3, which operate at the area of the commune, within 2 months from the date of the receipt of the said request. Such councils are consultative bodies which provide opinions, and they do not belong directly to the internal structure of the commune bodies. The Communal Council for Public Benefit Activities is established for the period of three years. The tasks of the Council include in particular providing opin-

³⁴ See the judgement of the Voivodeship Administrative Court in Wrocław of 21 March 2012 (IV SA/Wr 743/11, LEX No. 1139685).

³⁵ See the judgement of the Voivodeship Administrative Court in Gliwice of 25 March 2015 (IV SA/Gl 762/14 LEX No. 1665546): “There are no grounds to decide that the composition may be determined by way of »appointing and dismissing members of the team« as referred to in Article 9a par. 15 of the Act of 2005 on combating household violence. Such interpretation, which extends the meaning of this provision, is unacceptable”.

³⁶ See: A. Ważny, [in:] A. Kiełtyka, A. Ważny, *Ustawa o przeciwdziałaniu przemocy w rodzinie. Komentarz*, Warsaw 2012, p. 88.

³⁷ See the Act of 24 April 2003 on public benefit activities and the voluntary service (i.e. Journal of laws of 2016, No. 1817, as amended) – hereinafter referred to as the u.d.p.p.w.

ions, as applicable, for the development strategy projects of communes and other draft resolutions and acts of local law relating to the area of public tasks, as referred to in the said Act, and for cooperation with non-governmental organizations and entities mentioned in Article 3 par. 3 of the u.d.p.p.w. (including programs of cooperation with non-governmental organizations and entities mentioned in Article 3 par. 3 of the u.d.p.p.w., and providing opinions in the matters relating to the operation of non-governmental organizations mentioned in Article 3 par. 3 of the u.d.p.p.w.

The commune council determines, by way of resolution, the procedure for appointing the members, as well as the organization and procedures of operation of the Communal Council for Public Benefit Activities. At this point it should take into account the need to ensure representativeness and the need to ensure its proper functioning.

Conclusions

The reforms of French administration made after 1982 reinforced the participation of inhabitants in the decision-making processes by their participation in a variety of consultative bodies and commissions. The multitude of those forms is a proof that in the French society there is a strong need for an active involvement in the management of public space in a commune. The participation of inhabitants and their organizations in the management of the local community through their involvement in collegial bodies of a consultative nature has a real impact on the shape of the system and tasks of the commune, and therefore the proper structure of consultative bodies affects the efficiency of management of the local community.

In the Polish legal order, the Act on commune government does not regulate, as a general rule, the functioning – within the internal bodies of the commune – of committees, commissions and consultative bodies with the participation of inhabitants (as members of a specific assembly), as in the French Republic, leaving a certain legislative deficiency in this respect. This constitutes a certain postulate *de lege ferenda*. However, it must be noted that within the local government structures there are certain normative equivalents of consultative forms, and the commune inhabitants or their representatives actively participate in their work. Most of those bodies are established under Acts of material administrative law or on the basis of subordinate legislation (often in the form of local laws). However, these bodies are located outside the internal structure of the commune's bodies, which determines their weaker legal position. Those bodies are involved in the process of broadly understood consultation, but have less influence on the decisions taken by local

authorities due to more narrow consultative competencies they received from the Polish legislator. An example may be the obligatory Consultative Commission for Local Public Services functioning in France, which is established in a commune and allows the users of public services to speak and participate actively in the decision-making process within the framework of the management of local public services. This Commission may become a model for Polish legal solutions in the area of the development of consultative bodies as obligatory structures within a commune, which, however, requires legislative changes in this respect. A certain functional equivalent of this commission are permanent or temporary commissions, which are established as internal bodies of the commune council and deal with the issues related to public services in a specific local community (e.g. a commission for infrastructure and transport).

Under the provisions of the CGCT, in the French local government it is possible to establish the Mission for Assessment and Information. This commission is not a commission dealing with substantive matters of the controlling body in the commune, but a specific bridge between councillors and inhabitants of a given community within the scope of information and evaluation of public policies. However, inhabitants do not participate in its work, but the commission may carry out consultations with them in every matter within its scope of operations. It must be noted that in the Polish legal order there is no equivalent of the commission for information and evaluation regulated under the provisions of law, although it is possible to set up an optional commission with similar competencies or to entrust specific powers for the analysis and evaluation of certain issues related to the performance of public services.

In the French legal order, under the provisions of the CGCT, in large communes the Commune Commission for facilitating accessibility (commission communale pour l'accessibilité) is established, and it is composed of representatives of the community and representatives of associations and other entities. The commission does not have the status of the commune council commission. Its objective is to provide opinions regarding the accessibility of architectural environment, public space, roads and transport in order to facilitate broadly understood accessibility of the public space for people with disabilities and elderly people. In the Polish legal order there is no such commission *ex lege*. It is possible to set up a permanent or temporary commission dealing with problems of people with disabilities or elderly people at the area of a specific commune, if the controlling body of this local government unit expresses its will to do so. In practice, permanent commissions for spatial planning often also deal with the issues related to liquidation of architectural

barriers for persons with disabilities, also taking into account also the problems of elderly people. It seems advisable to introduce in larger communes, as in French legal solutions, an obligatory council commission, which would deal, *expressis verbis*, with the issues related to the integration of elderly people and people with disabilities (including the provision of increased opportunities for them to access public areas).

The French legislator in the provisions of the CGCT also envisaged the possibility to establish consultative committees in a commune in relation to every issue pertaining to the commune's interests. Such committees may be consulted by the Mayor in all matters connected with public services and local facilities and objects related to the purpose of their establishment. Due to the fact that they bring together the councillor and the inhabitants of the commune, consultative (advisory) committees may be regarded as a certain variety of an external commission, unique in that it carries out consultations with the specific categories of inhabitants, regardless of whether they have the right to vote. The conclusion *de lege ferenda* is the establishment, just like in the French legal solutions, of similar consultative committees in Polish local governments which would be vested with the possibility to defend particular interests of their members on the plane of the local community.

The Polish legislator has not provided for, under the Act on commune government, the possibility to establish consultative committees. It is possible to set up a consultative and advisory committee, however, the inhabitants may not participate in its work, as it has the status of an internal body of the council. A certain kind of advisory function in the local government administration (with participation of inhabitants) is provided by the commune commission for solving alcohol problems or by district teams for the implementation of the program of prevention and solving of alcohol problems. The commission is not a body of the commune, but a certain kind of an external commission (following the pattern of French solutions), although the commune council determines its composition and scope of activities, with the participation of the social component.

Another important form of consultation in the French Republic is the District Committee for Initiatives and Consultation, which is obligatorily established in each district (*arrondissement*) of Paris, Lyon and Marseille. The committee includes the representatives of local associations or members of national federations. This body has competences to provide opinions. In the Polish legal order there is no such instrument. Within the commune council, permanent or temporary commissions are established, and these are of a consultative nature for the matters related to auxiliary units of the com-

mune. However, there are no commune inhabitants in the composition of this commission. It is worth to note that a certain equivalent of consultative committees are the district commissions of social dialogue on the local level (e.g. in the districts of the capital city of Warsaw), which are assemblies providing initiative and advice. They are the primary partner in the development of solutions in the individual districts of the capital city of Warsaw. Therefore, it is postulated to extend, under legislative provisions, the obligation to establish the Committee for Initiatives and Consultation in all auxiliary units in the Polish legal order. However, this proposal would require the introduction of appropriate changes under the law. Nevertheless, this is an interesting legal solution.

To sum up, it should be concluded that the French consultative administration at the level of the commune provides an interesting model which is worth transferring to the Polish regulatory framework, as appropriate.

Streszczenie
Ciała konsultacyjne w samorządzie gminnym w Polsce
i w Republice Francuskiej – perspektywa porównawcza.
Wybrane zagadnienia

Z uwagi na specyfikę francuskich rozwiązań prawnych (administrację konsultacyjną) w samorządzie gminnym, w tym mnogość komisji i komitetów, w których uczestniczą mieszkańcy wspólnot lokalnych, w artykule dokonano porównania przedmiotowej problematyki badawczej od przedstawienia francuskich wzorców partycypacji konsultacyjnej korespondujących z ewentualnymi polskimi rozwiązaniami prawnymi w tym zakresie, w oparciu o kryterium funkcjonalne. Perspektywa porównawcza ma na celu zapoznanie się z administracją konsultacyjną na szczeblu gminy w obu porządkach prawnych oraz wysunięcie postulatów *de lege ferenda* odnośnie polskich regulacji prawnych w tym zakresie.

Słowa kluczowe: ciała konsultacyjne; administracja konsultacyjna; komitety konsultacyjne

Abstract
Consultative bodies in the commune government in Poland
and French Republic – a comparative perspective. Selected issues

“Consultative bodies in the commune government in Poland and French Republic – a comparative perspective. Selected issues”

Due to the specific nature of French legal solutions (consultative administration) in the commune government, including the multitude of commissions and committees where the inhabitants of local communities participate, the article compares the considered

issues by presenting the French patterns of consultative participation corresponding to Polish legal solutions, if any, in that scope, basing on the criterion of functionality. The comparative perspective is aimed at presenting the consultative administration at the commune level in both legal orders and at putting forward the postulate *de lege ferenda* in reference to the Polish legal regulations in this respect.

Key words: consultative bodies; consultative administration; consultative committees