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# On the Institution of Public Hearing – An Analysis from the Theoretical Point of View and the Perspective of the State’s Political Practice (Fifth to Ninth Term of the Sejm of the Republic of Poland)<sup>3</sup>

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## Abstract

The purpose of the study is to evaluate the public hearings’ role in law-making. The study addresses the problem of whether the institution of public hearing is an instrument that has a real impact on the law-making process. The discussion that follows takes into consideration, on the one hand, the theoretical issues concerning the institution of public hearings and, on the other hand, the Polish state’s political practice of using public hearings (based on statistical data on the application of this institution covering the fifth to ninth term of the Sejm of the Republic of Poland). The state’s political practice dating to this period shows that Sejm committees were abstemious in using this instrument. Since the regulation’s entry into force on this institution covers the period from the fifth to the end of the ninth term of the Sejm, only 34 public hearings covering 46 bills out of 5855 bills have been organised. It provides the basis for the conclusions and propositions *de lege ferenda*.

**Keywords:** public hearing, social dialogue, act, law-making process.

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## Introduction to the subject

This article attempts to determine whether the institution of public hearings is an instrument that impacts the law-making process. In addition to theoretical considerations, the study considers statistical data on this institution's use in the fifth to ninth term of the Sejm of the Republic of Poland.

The discussion had to start with presenting the ratio for the institution of public hearings. The issue has been analysed before to some extent. For the findings of this study, it should be emphasised that the institution of public hearing aims to provide arguments (opinions of various stakeholders) regarding a particular issue and to balance the interests of the stakeholders involved. Hence, it is also known as public consultations or the right to petition in matters of public interest. It does not mean, however, that a public hearing – as A. Szmyt rightly pointed out – is an institution of an exchange of opinions of equal parties, a discourse that would necessarily result in the need to explain one's motivations to the interested party, and public consultations surely are such an institution. A public hearing is a type of institutionalised manner of consulting a specific body, a way to get information,<sup>4</sup> and serves to represent and promote certain interests and demands. Therefore, it is a method of influencing the decisions of public authorities.<sup>5</sup> The idea is that both public consultations and public hearings are important elements of social dialogue.<sup>6</sup> A hearing is open to the public, recorded, and can be attended by all interested parties. The Polish Sejm website contains transcripts of Sejm committee sessions, which makes the law-making process more transparent.

Although the 1997 Constitution of the Republic of Poland<sup>7</sup> does not explicitly refer to a public hearing, it is assumed that this institution serves the implementation of many constitutional norms, including, in particular, the principle of cooperation between the public powers, social dialogue, the principle of the common

<sup>4</sup> A. Szmyt, *Model postępowania ustawodawczego u progu VI kadencji Sejmu*, [in:] W. Odrowąż-Sypniewski (ed.), *Prawo parlamentarne. Seminarium dla nowo wybranych posłów VI kadencja*, Warszawa 2007, p. 53.

<sup>5</sup> G. Makowski, J. Zbieranek, *Lobbing w Polsce – żywy problem, martwe prawo*, Institute of Public Affairs, "Analizy i Opinie" 2007, 79(12).

<sup>6</sup> M. Wróblewska, *Formy współpracy i dialogu partnerów społecznych – analiza projektów ustaw dotyczących instytucji pracy zdalnej*, [in:] J. Glumińska-Pawlic, B. Przywora (eds.), *Społeczny wymiar gospodarki rynkowej*, 2023, p. 294.

<sup>7</sup> Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of the Republic of Poland No. 78, item 483 as amended).

good, the principle of a democratic state of law, or the principle of the supremacy of the nation. This institution is implemented formally, primarily within the legislative or executive branches of government.<sup>8</sup> The issues of public hearings are regulated in the act of 7 July 2005 on lobbying in the legislative process<sup>9</sup> (hereinafter: “the Act on Lobbying Activity”) and in the Sejm of the Republic of Poland’s resolution of 30 July 1992 – Standing Orders of the Sejm of the Republic of Poland (hereinafter: “Sejm Standing Orders”).<sup>10</sup>

According to Article 8 of the Law on Lobbying Activity,<sup>11</sup> after a bill has been submitted to the Sejm, a public hearing dealing with this bill may be held following the rules outlined in the Sejm Standing Orders (Section 1). An entity that has declared an interest in working on the bill may, under the terms defined in the Sejm Standing Orders, participate in a public hearing on this bill (Section 2). The rules for holding a public hearing were clarified for the first time through the Sejm’s resolution of 24 February 2006 on amending the Standing Orders of the Sejm of the Republic of Poland<sup>12</sup> – in chapter 1a of the Sejm Standing Orders. Article 70a Section 1 of the Sejm Standing Orders provides for the possibility of holding a public hearing with respect to a bill. The wording of this provision makes it clear that the legislator has made the institution in question optional, which largely determines how it is used. The resolution to conduct it is adopted by the committee to which the bill has been submitted for review and consideration (Article 70a Section 2 of the Sejm Standing Orders).<sup>13</sup> It is adopted at the written request submitted to the committee by a deputy (Article 70a Section 3 of the Sejm Standing Orders). A resolution to hold a public hearing may be adopted after the completion of the first reading of a bill and before the commencement of its detailed consideration (Article 70a Section 4 of the Sejm Standing Orders).

What matters here is the norms concerning the granting of the possibility to participate in a public hearing on a bill to entities that notify the Sejm, after the

<sup>8</sup> See also: P. Kuczma, *Funkcje lobbingu*, “Państwo i Prawo” 2012, 8, p. 73; B. Przywora, *O osobliwościach wysłuchania publicznego – refleksje na tle orzecznictwa Trybunału Konstytucyjnego*, [in:] A. Domańska (ed.), *Zagadnienia prawa konstytucyjnego. Księga jubileuszowa dedykowana Profesorowi Krzysztofowi Skotnickiemu w siedemdziesiątą rocznicę urodzin*, Tom 1, Łódź 2023, [https://wydawnictwo.uni.lodz.pl/wp-content/uploads/2024/06/Domanska\\_Zagadnienia-prawa\\_tom-1.pdf](https://wydawnictwo.uni.lodz.pl/wp-content/uploads/2024/06/Domanska_Zagadnienia-prawa_tom-1.pdf)

<sup>9</sup> Journal of Laws of the Republic of Poland of 2017, item 248.

<sup>10</sup> Monitor Polski of 2022, item 990, as amended.

<sup>11</sup> See also: S. Spurek, *Komentarz do art. 8*, [in:] *Działalność lobbingowa w procesie stanowienia prawa. Komentarz*, Warszawa 2015; P. Radziejewicz, *W sprawie możliwości ograniczenia zakresu zastosowania art. 8 ustawy o działalności lobbingowej w procesie stanowienia prawa przez Regulamin Sejmu*, “Zeszyty Prawnicze BAS” 2006, 1, pp. 44–46; A. Szmyt, *Zakres art. 8 ustawy o działalności lobbingowej z 2005 r.*, “Zeszyty Prawnicze” 2006, 1, pp. 41–42.

<sup>12</sup> Monitor Polski of 2006, item 194.

<sup>13</sup> See also in the literature on the subject e.g.: K.M. Ujazdowski, *Efektywność rządu albo kryzys legislacji*, “Politeja – Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego”, 2012, 19, p. 275.

bill has been promulgated in print (under the procedure outlined in Article 35 Section 1) at least 10 days before the day of the scheduled public hearing, of their interest in the course of work on the bill (Article 70b Section 1 of the Sejm Standing Orders). This right is also granted to entities that have expressed their interest in the course of work on the bill under the procedure provided for in the Act on Lobbying Activity (Article 70b Section 2 of the Sejm Standing Orders). The request is formally submitted to the Marshal of the Sejm, which is then made available in the Information System of the Sejm – excluding the address in the case of natural persons (Article 70c Sections 1 and 2 of the Sejm Standing Orders). Importantly, it is permissible to limit the number of entities participating in a public hearing (Article 70d Section 1 of the Sejm Standing Orders). It is due to technical or venue-related reasons. The entity authorised to decide on such limitations is the committee's presidium, which may impose limitations based on a reasonable criterion – uniformly with respect to all entities (this applies in particular to the order of requests). The information on entities admitted to participate in the public hearing is made available in the Information System of the Sejm at least 2 days before the day of the public hearing (Article 70d Section 2 of the Sejm Standing Orders). Yet, if it becomes impossible to hold a public hearing due to technical or venue-related reasons, the committee presidium may change the date or place of the public hearing, stating the reasons for the change and indicating a new date – or cancel the public hearing, providing the reasons as well (Article 70e Section 1 of the Sejm Standing Orders).

What deserves particular consideration here is the critical positions on the regulations outlined in chapter 1a of the Sejm Standing Orders. The regulations on Articles 70a Sections 2 and 4, 70d Section 1, and 70e of the Sejm Standing Orders seem to raise the most significant objections. Regarding the regulation of Article 70e of the Sejm Standing Orders, it should be noted that the Constitutional Tribunal has also analysed it.<sup>14</sup> The objections concern adopting resolutions on public hearings by the relevant parliamentary committees.<sup>15</sup> It is argued that the Sejm should make the decision on the public hearing of a bill *in gremio* or – alternatively – by the Marshal of the Sejm as the managing authority of the Sejm.<sup>16</sup> One of the rationales for the Sejm committees not to pass these resolutions is the significance of the procedure. Another rationale is that resolutions should be made arbitrarily, which can be made possible by the Sejm. Any bill (initiated by both the government and any

<sup>14</sup> Also hereinafter referred to as the CT or the Tribunal.

<sup>15</sup> I. Wróblewska, *Wysłuchanie publiczne w Polsce. Analiza rozwiązań normatywnych w tle praktyki ich stosowania*, "Przegląd Sejmowy" 2012, 3, p. 100; M. Borski, *Wysłuchanie publiczne – ważna, chociaż niedoceniana instytucja demokracji partycypacyjnej*, "Roczniki Administracji i Prawa" 2016, 16(1), p. 35.

<sup>16</sup> M. Borski, *Wysłuchanie publiczne...*, p. 35.

other entities through a legislative initiative<sup>17</sup>) can be subjected to a public hearing; in practice, public hearings deal most often with bills that tend to be highly significant or/and controversial.<sup>18</sup> Therefore, decisions on public hearings should be made by the Sejm or by the Marshal of the Sejm.

There are also reservations regarding the regulation of the timing of public hearings. According to Article 70a Section 4 of the Sejm Standing Orders, a resolution to hold a public hearing may be adopted after the first reading of a bill and before the commencement of its detailed consideration. I. Wróblewska,<sup>19</sup> who claims that the need to obtain public opinion with regard to a bill may also arise at a later stage of working on it, and the legislator should have the opportunity to use this institution, seems to be particularly right. In our view, this argument could be taken even further, and the proposed solution could be extended so that the parties interested in a public hearing are allowed to use this institution later when the bill differs from the one submitted after the first reading. Hence, it makes sense to extend the timing of the public hearing to make it possible to hold it as early as the drafting stage on the part of the entity taking the legislative initiative.<sup>20</sup> The introduction of another element of dialogue, in addition to public consultation and evaluation,<sup>21</sup> at the government stage – the institution of the Social Dialogue Council,<sup>22</sup> allows the body to consult more widely with stakeholders.

Regulations on limiting the number of participants under Article 70d Section 1 of the Sejm Standing Orders and the matter of cancelling a public hearing under Article 70e Section 1 item 2 of the Sejm Standing Orders – where the rationale are technical or venue-related reasons – are also questionable.<sup>23</sup> These provisions are said to be vague and too general. Objections mainly concern the lack of regulation

<sup>17</sup> Cf. e.g.: S. Patyra, *Wysłuchanie publiczne, jako środek partycypacji społecznej w sejmowym postępowaniu ustawodawczym*, [in:] W. Skrzydło, W. Szapował, K. Eckhardt, P. Steciuk (eds.), *Konstytucyjne podstawy budowania i rozwoju społeczeństwa obywatelskiego w Polsce i na Ukrainie – Dobre praktyki*, Przemysł 2013, p. 235, <http://www.wspia.eu/dzialalnosc-naukowa/polsko-ukrainski-klub-konstytucjonalistow/publikacje-do-pobrania/4626.prawonasznych-s-siad-w-redaktor-cyklu-publikacji-jerzy-posluszny-pdf.html> (dostęp: 13.12.2023), and A. Szmyt, *Tryb stanowienia ustaw – szanse i zagrożenia*, [in:] M. Granat (ed.), *Zagadnienia prawa parlamentarnego*, Warszawa 2007, p. 132, as well as: M.M. Wiszowaty, *Działalność lobbingsowa w procesie stanowienia prawa. Act of 7 July 2005 with a commentary*, Warszawa 2010, no. 2010, item 145.

<sup>18</sup> M. Borski, *Wysłuchanie publiczne...*, p. 35.

<sup>19</sup> I. Wróblewska, *Wysłuchanie publiczne w Polsce...*, p. 99.

<sup>20</sup> This suggestion was also made by M. Borski *Wysłuchanie publiczne...*, p. 35, proposing to expand the timing of the public hearing to include the possibility of holding it as early as the stage of drafting on the part of the entity making use of the legislative initiative.

<sup>21</sup> Council of Ministers resolution no. 190 of 29 October 2013. Rules of procedure of the Council of Ministers (Monitor Polski of 2022, item 348).

<sup>22</sup> Act of 24 July 2015 on the Social Dialogue Council and other institution of social dialogue (Journal of Laws of the Republic of Poland of 2018, item 2232, as amended).

<sup>23</sup> I. Wróblewska, *Wysłuchanie publiczne w Polsce...*, p. 102.

indicating the date by which either cancellation or change of the date and place of the public hearing can occur. The lack of such regulation makes the nature of the institution of public hearing highly discretionary.

There are doubts regarding the interpretation and understanding of “technical or venue-related reasons” and the phrase “limit the number of entities participating in a public hearing.” The problem is that legal regulations that raise doubts about their interpretation (i.e., unclear) may violate the principle of definiteness<sup>24</sup> expressed under Article 2 of the Constitution of the Republic of Poland. In one of its rulings, CT<sup>25</sup> stated that the “definiteness of the law” applies broadly, meaning that existing provisions should be precise and the law should be clear and understandable to the largest possible number of its subjects. The requirement to keep legal regulations definite is a system-wide directive imposing an obligation on the initiator of a bill to optimise it in the law-making process.

In addition to the regulations indicated in chapter 1a of the Sejm Standing Orders, the added Article 198j Section 1, which came into force on March 26, 2020, amending the Standing Orders of the Sejm of the Republic of Poland of 30 July 1998, seems to be particularly relevant in this context.<sup>26</sup> This provision offers a legal basis to use a remote form for a public hearing, but only in special circumstances – i.e. in the event of the announcement of a state of emergency, a state of natural disaster, a state of war, or a state of epidemic emergency, or a state of epidemic within the meaning of the act of 5 December 2008 on the prevention and control of infections and infectious diseases in humans.<sup>27</sup> Then, a committee or sub-committee session may be conducted using electronic means of remote communication. We should bear in mind that the participation of various actors in public life is affected by the proper functioning of a democratic state. The literature dealing with the subject (e.g., M. Lorencka and I. Bokszczanin) points out that many contemporary studies prove the existence of a correlation between the proper functioning of the democratic system and the involvement of informed citizens in public life.<sup>28</sup>

In addition, it should additionally be stressed that although the rules for holding a public hearing concerning a bill provide for a possibility to participate in the public hearing, they do not specify the procedure for interested parties to submit

<sup>24</sup> M. Wróblewska *Zasady prawidłowej legislacji w orzecznictwie Trybunału Konstytucyjnego pod rządami Konstytucji z 1997 r.*, [in:] J. Szymanek (ed.), *25 lat stosowania Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2023, pp. 113–131.

<sup>25</sup> CT judgement of 13.03.2010, K 08/08, OTK A 2010, no. 48, item 287.

<sup>26</sup> Monitor Polski, item 327.

<sup>27</sup> Journal of Laws of the Republic of Poland of 2022, item 1657, as amended.

<sup>28</sup> M. Lorencka, I. Bokszczanin, *Wystuchania publiczne w Polsce legitymizujący wymiar partycypacji obywateli w procesie ustawodawczym*, “Przegląd Prawa Konstytucyjnego” 2023, 2, p. 143.

a request (motion) for a public hearing concerning a given bill to deputies – including the prerequisites for a deputy’s decision to refer a request (motion) for a public hearing to the relevant parliamentary committee – nor the manner of submitting it to said deputies. The lack of such regulations makes it unclear how deputies receive requests (motions) for public hearings from interested parties, and in what cases deputies make decisions to refer them to a relevant parliamentary committee, leading to a lack of transparency in the law-making process.

## The role of the institution of public hearing in the judicial decisions of the Constitutional Tribunal

In addition to the views of legal academics, scholars, and commentators, the matter of public hearings has also been reflected in the decisions of the CT. The CT judgement of 3 November 2006 is of particular importance here.<sup>29</sup> The case involved doubts regarding the interpretation of Article 70e of the Sejm Standing Orders in the context of the correctness of the Committee for Local Self-Government and Regional Policy’s cancellation of the hearing on the bill amending the act of 16 July 1998 on elections to commune councils, district councils, and provincial councils and the act of 20 June 2002 on the direct election of governors and mayors. The impossibility of meeting the deadlines set for working on the bill was given as the rationale for cancelling the hearing. The circumstances of the resolution passed by the Committee for Local Self-Government and Regional Policy on August 23, 2006 to cancel the holding of the public hearing had a political context, as “deputies representing the parliamentary majority were seeking to quickly pass of the act, while deputies representing the parliamentary minority were against the act.”<sup>30</sup> The statement of reasons to the 23 August 2006 resolution of the Committee for Local Self-Government and Regional Policy to cancel the holding of the public hearing indicated that a public hearing on the date indicated in the resolution would significantly affect the delay of the Committee’s work.

The Constitutional Tribunal found that there had been a violation of the Sejm Standing Orders, as the reason was not “venue-related”, especially since 14 entities had expressed interest in participating in the hearing, nor “technical” in the strict sense of the word. The CT stated that “the institution of public hearing (...) itself does not constitute an element of the constitutional order, but stems only from a provision of the Standing Orders of the Sejm (...), adopted after the current

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<sup>29</sup> CT judgement of 3.11.2006, K 31/06, OTK A 2006, No. 10, item 147.

<sup>30</sup> *Ibidem*.

Constitution came into force.” The CT referred to the judgement of 23 March 2006 (ref. no. K 4/06<sup>31</sup>), in which it argued that not every breach of the rules of procedure at the stage of legislative proceedings should be considered an act of violation of the Constitution, but only such breaches leading to a violation of the elements of the legislative process stemming from the constitutional norms, or situations where the outcomes or such breaches prevent deputies from exercising their rights and obligations (both when working as committees and in plenary sessions). Hence, the CT claims that a public hearing should be considered a way for the Sejm bodies to become acquainted with non-binding opinions.

The opinions dissenting from the K 31/06 judgement are especially interesting in this context. According to CT Judge E. Łętowska, a “public hearing having its normative genesis in the Standing Orders of the Sejm means only that it is impossible to claim that it is constitutionally necessary to use this particular instrument in a given case. In the present case, however, it is constitutionally inappropriate for other participatory instruments not being introduced in place of the public hearing that was cancelled.” A noteworthy aspect here is that the view that the institution of public hearing (which is one of the elements of cooperation and social dialogue in the legal system) is treated on a par with other elements of cooperation and dialogue (e.g. public consultations, opinions, the institution of the Social Dialogue Council). The important thing is that the drafters of a bill carefully use the elements of cooperation and dialogue provided for in the legal system, through which they will collect information that can contribute to establishing good, solid regulations. Therefore, the institution of public hearing – or any other element of cooperation and social dialogue – should not be used solely for political purposes.

CT judge M. Safjan (dissenting opinion to the judgement in question) shared the CT’s standpoint in general, but stated, in turn, that “one cannot overlook the fact that the establishment of procedures in the Standing Orders of the Sejm is founded not only in the explicit constitutional regulations concerning, for example, the individual stages of the legislative process or determining the relationship of the Sejm with other supreme constitutional bodies, but also in those fundamental norms of the Constitution that express unequivocally the axiology of a democratic state of law, its principles and values, and which, for this very reason, should always be considered in the work of the parliament. Public hearings are among those statutory institutions designed to manifest certain components, elements of direct democracy within the framework of parliamentary procedures. (...). It is impossible not to notice that the institution of public hearing remains in line with constitutional ideas.” In general, it seems highly reasonable to agree with this position, emphasising that

<sup>31</sup> CT judgement of 22.02.2006, K 4/06, OTK ZU 2A 2006, item 24.



the institution of public hearing is only one of the possible elements of public participation in the law-making process. Other solutions also aim to ensure the implementation of the principle of cooperation between the public powers and social dialogue. In one of its rulings,<sup>32</sup> the Tribunal stated that the cooperation between public powers and social dialogue “does not mean the impossibility of resolving a matter that is the subject of debate or dispute. It is the solution to the problem that is both the goal of engaging in a dialogue and the cooperation of public powers.” According to the CT: “The statutory solutions for dialogue and cooperation should therefore create a rationale for balancing democratism and efficiency. However, the decision-making mechanism cannot be designed in such a way that, in a situation of conflict, it gives an advantage to only one of the parties or that the Council of Ministers is deprived of the ability to fulfil the duty imposed thereon under Article 146 of the Constitution to manage the state’s domestic policy.”

## The institution of public hearing in political practice (analysis of the fifth to ninth term of the Sejm)

It is important to consider the political (parliamentary) practice of applying this institution<sup>33</sup> for a more exhaustive evaluation of public hearings. The data obtained shows<sup>34</sup> that, in total, since the entry into force of the act of 7 July 2005 on lobbying in the legislative process,<sup>35</sup> covering the period from the fifth to the end of the ninth term of the Sejm, out of 5855 bills that were assigned a printed matter number, only 34 public hearings were held, dealing exactly with 46 bills. It needs to be stressed that the number of requests for public hearings differs from the number of bills subject to public hearings, and there was a total of 149 such requests submitted. Percentage-wise, given the number of all bills (which were assigned a printed matter number from the fifth to the end of the ninth term of the Sejm), only 1% of them were subject to public hearings, and 2% of them were subject to a request for a public hearing.<sup>36</sup> It should be noted that out of 149 requests for public hearings, Sejm committees rejected 105, and 7 of them were left without consideration.<sup>37</sup>

<sup>32</sup> Judgement of 8 April 2009, K 37/06 OTK ZU, No. 4A/09, item 47.

<sup>33</sup> The study of the source materials, involved visiting the Sejm’s websites and making use of the publication (in the time frame of 2006–2011) of P. Dobrowolski, *Debata publicznego wysłuchania w Polsce. Główne wnioski. Propozycje kierunku rozwoju*, [www.sejm.gov.pl](http://www.sejm.gov.pl) (access: 19.01.2024).

<sup>34</sup> Data from the website [www.sejm.gov.pl](http://www.sejm.gov.pl) (access: 19.01.2024).

<sup>35</sup> Journal of Laws of the Republic of Poland of 2017, item 248.

<sup>36</sup> [www.sejm.gov.pl](http://www.sejm.gov.pl) (access: 19.01.2024).

<sup>37</sup> The data come from the Sejm committees’ reports analysed from the fifth to ninth term of the Sejm (until 30 May 2023), published at [www.sejm.gov.pl](http://www.sejm.gov.pl) (access: 19.01.2024).

In three cases (the fifth term of the Sejm and the ninth term of the Sejm), despite the adoption of resolutions<sup>38</sup> on public hearings (cases: a deputies' bill on amending the act of 16 July 1998 on elections to commune councils, district councils, and provincial councils and the act of 20 June 2002 on the direct election of governors and mayors (printed matter no. 818), the government bill on amending the law on the national cybersecurity system and some other laws (printed matter no. 2457), and the government bill on protecting minors from accessing inappropriate content on the Internet (printed matter no. 3282), the public hearings were cancelled. In the case of two government bills (ninth term of the Sejm), the reason for cancelling the public hearing was the withdrawal of the bills from the parliamentary agenda. In the case of the deputies' bill (fifth term of the Sejm), a resolution was passed to cancel the public hearing.<sup>39</sup>

When analysing the individual terms of the Sejm, it must be pointed out that in the fifth term of the Sejm, there were 11 requests for public hearings (with 6 public hearings being held and 4 requests being rejected). In addition, in the Sejm terms, despite adopting a resolution for a public hearing, the hearing was eventually cancelled. In the sixth term of the Sejm, there were 28 requests for public hearings, with 12 public hearings being actually held and 16 requests being rejected. In the seventh term of the Sejm, there were 30 requests for public hearings, of which 10 public hearings were held and 20 requests were rejected. In the eighth term of the Sejm, there were 39 such requests, resulting in 3 public hearings being held, 23 requests being rejected, and 3 requests being left without consideration. Finally, in the ninth term of the Sejm, the number of requests for public hearings was 41, of which 3 public hearings were held, 32 requests were rejected, 4 requests were left non-considered, and in 2 cases, despite the adoption of resolutions to hold public hearings, bills were withdrawn from parliamentary work.

The reason for leaving requests without consideration was that, in most cases, the Sejm rejected the bill to be processed further; in one case, the submitted request did not meet the formal requirements.

The data cited above make it reasonable to conclude that the institution of public hearing is treated incidentally, and the number of public hearings held has been decreasing since the seventh term of the Sejm. It should also be noted that

<sup>38</sup> The Committee for Local Self-Government and Regional Policy's resolution of 17 August 2006 on holding a public hearing, the Committee for Digitisation, Innovation and Technology's and the Committee for National Defence's resolution of 11 July 2023 on holding a public hearing, and the Committee for Digitisation, Innovation and Technology's resolution of 6 July 2023 on holding a public hearing [https://www.sejm.gov.pl/sejm9.nsf/page.xsp/inf\\_wys\\_pub](https://www.sejm.gov.pl/sejm9.nsf/page.xsp/inf_wys_pub) (access: 3.01.2024).

<sup>39</sup> The Committee for Local Self-Government and Regional Policy's resolution of 23 August 2006 on the cancellation of a public hearing [https://orka.sejm.gov.pl/opinie5.nsf/nazwa/818\\_uwysodw/\\$file/818\\_uwysodw.pdf](https://orka.sejm.gov.pl/opinie5.nsf/nazwa/818_uwysodw/$file/818_uwysodw.pdf) (access: 20.05.2023).

the data indicated refer to the number of public hearing requests submitted to Sejm committees by deputies. Due to the lack of transparency at the level of the deputy and the party interested in a public hearing, there are no data on the number of requests (motions) for a public hearing submitted by interested parties to deputies.

An analysis of the bills referred for public hearing shows that the scope of the subject matters of these bills varied widely. The proposers of these bills were:

- 1) the government (20 bills),
- 2) deputies (15 bills), Sejm committees (1 bill),
- 3) the President of the Republic of Poland (7 bills),
- 4) the Senate (2 bills),
- 5) citizens (1 bill).

What is noteworthy here is that in the case of the 20 government bills for which public hearings were held, none of these bills was considered under the urgent procedure,<sup>40</sup> and all these bills at the government stage were subject to consultations referred to the Council of Ministers' resolution no. 190 of 29 October 2013 – Rules of Procedure of the Council of Ministers.<sup>41</sup>

The subject of 34 public hearings was 46 bills. However, not all of the bills that were the subject of public hearings were promulgated in the Journal of Laws of the Republic of Poland. A total of 19 acts were promulgated in the Journal of Laws. They concerned acts proposed by the following entities:

- 1) the government (13 acts),
- 2) deputies (5 acts),
- 3) the President of the Republic of Poland (5 acts),
- 4) a Sejm committee (1 act).

For instance, in the case of the deputies' and senators' bills dealing with cooperative law (printed matters no. 515, 816, 819, 864, 980, 1005, 1065, 1353), for which

<sup>40</sup> See more: A. Gwiżdż, *Pilny projekt ustawy*, [in:] J. Trzeciński (ed.), *Postępowanie ustawodawcze w polskim prawie konstytucyjnym*, Warszawa 1994; S. Patyra, *Tryb pilny w teorii i praktyce procesu ustawodawczego pod rządami Konstytucji z 1997*; A. Szmyt, *Jeszcze w sprawie trybu pilnego*, [in:] L. Garlicki, A. Szmyt (eds.), *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, Warszawa 2003, p. 280; S. Patyra, *Tryb pilny w teorii i praktyce procesu ustawodawczego, pod rządami Konstytucji z 1997 r.*, "Przegląd Prawa Konstytucyjnego" 2011; M. Borski, B. Przywora, *Postępowanie z projektem pilnym jako przykład szczególnego trybu ustawodawczego w polskim porządku prawnym – próba oceny z perspektywy praktyki parlamentarnej*, "Przegląd Sejmowy" 2016, 4; M. Wróblewska, *Pilny projekt ustawy w Polsce – założenia konstytucyjnoprawne a praktyka ustrojowa*, doctoral dissertation – typescript, Faculty of Law and Economics of Jan Długosz University in Częstochowa, Częstochowa 2023.

<sup>41</sup> Monitor Polski of 2022, item 348.

the number of subjects interested in participating in the public hearing was the highest, no bill was passed by the Sejm. In its seventh term, the Sejm did not pass a resolution to have a public hearing to deal with the civic bill to amend the Act on Nature Protection (printed matter no. 23) either.

Interest in participating in the public hearing was varied. The majority of entities during the V to IX term of the Sejm were in the VII term of the Sejm and concerned deputies' and senators' bills addressing cooperative law (printed matters no. 515, 816, 819, 864, 980, 1005, 1065, 1353), totaling 1346 entities.

A slightly smaller number of entities interested in participating in public hearings was reported in the sixth and fifth terms of the Sejm; the biggest interest concerned two government bills. In the sixth term of the Sejm, in the case of the government's bill on medical activity (printed matter no. 3489), the number of entities interested in participating in the public hearing was 1184. On the other hand, in the fifth term of the Sejm, in the case of the government bill on the principles of free acquisition of shares from the Treasury by eligible employees in the process of consolidation of companies operating in the electric power sector, the principles of changing the shares held and amending the Act on Personal Income Tax (printed matter no. 1750), the number of entities interested in participating in the public hearing was 1173.

Due to the number of entities interested in participating in the public hearing for these bills, the public hearing venue was changed to a place outside the Sejm building. In the case of deputies' and senators' bills dealing with cooperative law (printed matters no. 515, 816, 819, 864, 980, 1005, 1065, 1353), an additional restriction was imposed by way of an announcement<sup>42</sup> of the possibility for only one representative of each participating entity to speak at the public hearing.

The smallest number of subjects interested in participating in public hearings was reported in the eighth term of the Sejm. The interest focused on the bill proposed by the President of the Republic of Poland on amending the law on pensions from the Social Insurance Fund and certain other acts (printed matter no. 62).

The public hearings organised during the fifth to ninth term of the Sejm involved 33 hearings being held in stationary form (in 30 cases, the public hearings were held inside the building of the Sejm of the Republic of Poland, and in 3 cases – outside the Sejm), and 1 hearing making use of electronic means of communication for remote participation. Article 198j Section 1 of the Sejm Standing Orders<sup>43</sup> was the legal basis for allowing the remote form of the public hearing.

<sup>42</sup> 20 June 2013 announcement of the Special Committee to consider bills on cooperative law (reference number: NPS-0140-4-2013).

<sup>43</sup> Monitor Polski, item 327.

What deserves particular attention here is also the remote public hearing on the deputies' bill on special arrangements to ensure the possibility of conducting business activity during the COVID-19 epidemic (printed matter no. 1846). The rationale for holding the public hearing remotely was the state of the COVID-19 epidemic.

## Final remarks

The institution of public hearing in the law-making process appears to be significant in both the views of legal scholars, academics, and commentators and the decisions issued by the Constitutional Tribunal. The literature dealing with the subject emphasises that a public hearing is a type of consultation or a way to seek opinions.<sup>44</sup> On the other hand, it also represents and promotes certain interests and influences the authorities' decisions.<sup>45</sup> In keeping with these standpoints, attention has also been paid to the role of the institution of public hearing in the Constitution of the Republic of Poland. M. Safjan<sup>46</sup> appears right in claiming that its purpose is to manifest specific components, elements of direct democracy within the framework of parliamentary procedures and that it "remains in line with constitutional ideas." It concerns mainly the principle of cooperation between the public powers, social dialogue, the principle of the common good (referred to in the preamble), the principle of a democratic state of law (Art. 1), and the principle of the supremacy of the nation (Art. 4 Section 1) laid down in the Constitution of the Republic of Poland.

The regulation of the institution of public hearings in the Act on Lobbying Activity has been criticised in the literature.<sup>47</sup> Some legal scholars, academics, and commentators believe that identifying the two institutions is an abuse, demonstrating the legislator's misunderstanding of their essence and confusion of concepts. The institution of public hearings should not be regulated in the Act on Lobbying Activities but in an act with social dialogue as its subject matter.<sup>48</sup> This position is

<sup>44</sup> A. Szmyt, *Model postępowania ustawodawczego u progu VI kadencji Sejmu*, [in:] W. Odrowąż-Sypniewski (ed.), *Prawo parlamentarne. Seminarium dla nowo wybranych posłów VI kadencja*, Warszawa 2007, p. 53.

<sup>45</sup> G. Makowski, J. Zbieranek, op. cit.

<sup>46</sup> In a dissenting opinion to the CT's judgement of 3 November 2006.

<sup>47</sup> See: M. Wiszowaty, *Ustawa o działalności lobbingsowej w procesie stanowienia prawa*, "Przegląd Sejmowy" 2006, 5, p. 60; G. Makowski, *Instytucja wysłuchania publicznego w Polsce jako mechanizm partycypacji obywateli w procesie stanowienia prawa*, [in:] M. Rymśza (ed.), *Organizacje pozarządowe. Dialog obywatelski. Polityka państwa*, Warszawa 2007, p. 167; M. Borski, *O potrzebie reformy polskiego systemu stanowienia prawa*, [in:] "Przegląd Prawa Konstytucyjnego" 2016, 4, p. 237; I. Wróblewska, op. cit., p. 95.

<sup>48</sup> See: M. Wiszowaty, *Ustawa o działalności lobbingsowej...*, p. 167 et seq.

supported by the fact that a public hearing, which is a means of social dialogue and a manifestation of the constitutional right to petition, is not a tool for lobbying.<sup>49</sup>

The state's political practice adopted for this institution during the fifth to ninth term of the Sejm shows that Sejm committees were abstemious in using this instrument. Only 34 public hearings have been held to deal with the proposed bills since the entry into force of the Act on Lobbying Activity. The way in which Sejm committees use the institution of public hearing, which is one of the elements of social dialogue, is far from satisfactory.

This instrument was used more frequently to deal with government bills, although all these bills were subject to public consultation at the government's bill drafting stage. Also, government bills subject to public hearings were passed by the Sejm and promulgated in the Journal of Laws more frequently than bills proposed by other entities with legislative initiative.

In order to make greater use of the institution of public hearings and encourage broader participation of subjects in the law-making process – as well as to increase the transparency of this process, the following regulations could be incorporated into the Sejm Standing Orders.

The first idea concerns facilitating access for stakeholders to participate in public hearings. The recommended solution is that a provision be added to the Sejm Standing Orders to allow a public hearing in remote form in any case, not just in special circumstances defined in Article 198j Section 1 of the Sejm Standing Orders.

It seems that the effects of the adoption of such a regulation would benefit the law-making process overall. On the one hand, they will allow a broader group of stakeholders to participate in the process, and on the other hand, lawmakers will receive more information regarding a given bill. In addition, holding a public hearing remotely seems likely to reduce costs for both parties to the proceedings and accelerate the work on the bill.

The second idea is to increase awareness of the possibility of participation of actors in public life and the level of transparency in the law-making process. The recommended solution is to extend the Sejm Standing Orders by including a set of regulations on the procedure for submitting requests (motions) for a public hearing on a given bill to deputies by interested parties – including a determination of the prerequisites for the deputies to decide whether or not to refer the request (motion) for a public hearing to the relevant Sejm committee and of the manner of submitting said requests to deputies.

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<sup>49</sup> M. Borski, *O potrzebie reformy...*, p. 237.

These regulations could be supplemented by an electronic register of requests (motions) addressed on an official form to deputies by those interested in holding a public hearing and their regulation in the Sejm Standing Orders.

We believe that adopting the proposed solutions would also benefit the law-making process by increasing its legitimacy and making it more transparent. However, for the proposed solutions to bring real advantages to the law-making process, it is crucial, first and foremost, that decision-makers use the instruments at their disposal to enable the public to participate in the law-making process.

## Bibliography

### Literature

- Borski M., *O potrzebie reformy polskiego systemu stanowienia prawa*, "Przegląd Prawa Konstytucyjnego", 2016, 4.
- Borski M., *Wysłuchanie publiczne – ważna, chociaż niedoceniana instytucja demokracji partycypacyjnej*, "Roczniki Administracji i Prawa" 2016, 16(1).
- Borski M., Przywora B., *Postępowanie z projektem pilnym jako przykład szczególnego trybu ustawodawczego w polskim porządku prawnym – próba oceny z perspektywy praktyki parlamentarnej*, "Przegląd Sejmowy" 2016, 4.
- Dobrowolski P., *Debata publicznego wysłuchania w Polsce. Główne wnioski. Propozycje kierunku rozwoju*, Warszawa 2018.
- Gwiżdż A., *Pilny projekt ustawy*, [in:] J. Trzcíński (ed.), *Postępowanie ustawodawcze w polskim prawie konstytucyjnym*, Warszawa 1994.
- Kuczma P., *Funkcje lobbingu*, "Państwo i Prawo", 2012, 8.
- Lorencka M., Bokszczanin I., *Wysłuchania publiczne w Polsce legitymizujący wymiar partycypacji obywateli w procesie ustawodawczym*, "Przegląd Prawa Konstytucyjnego" 2023, 2.
- Makowski G., *Instytucja wysłuchania publicznego w Polsce jako mechanizm partycypacji obywateli w procesie stanowienia prawa*, [in:] M. Rymsza (ed.), *Organizacje pozarządowe. Dialog obywatelski. Polityka państwa*, Warszawa 2007.
- Makowski G., Zbieranek J., *Lobbing w Polsce – żywy problem, martwe prawo*, Institute of Public Affairs, "Analizy i Opinie" 2007, 79(12).
- Patyra S., *Wysłuchanie publiczne, jako środek partycypacji społecznej w sejmowym postępowaniu ustawodawczym*, [in:] W. Skrzydło, W. Szapował, K. Eckhardt, P. Steciuk (eds.), *Konstytucyjne podstawy budowania i rozwoju społeczeństwa obywatelskiego w Polsce i na Ukrainie – Dobre praktyki*, Przemyśl 2013, <http://www.wspia.eu/dzialalnosc-naukowa/polsko-ukrainski-klub-konstytucjonalistow/publikacje-do-pobrania/4626,prawonaszychs-siad-w-redaktor-cykladu-publikacji-jerzy-posluszny-pdf.html> (dostęp: 13.12.2023).
- Patyra S., *Tryb pilny w teorii i praktyce procesu ustawodawczego, pod rządami Konstytucji z 1997*, "Przegląd Prawa Konstytucyjnego" 2011.

- Przywora B., *O osobliwościach wysłuchania publicznego – refleksje na tle orzecznictwa Trybunału Konstytucyjnego. Księga Jubileuszowa dedykowana Profesorowi Krzysztofowi Skotnickiemu*, [in:] A. Domańska (ed.), *Zagadnienia prawa konstytucyjnego. Księga jubileuszowa dedykowana Profesorowi Krzysztofowi Skotnickiemu w siedemdziesiątą rocznicę urodzin*, Tom 1, Łódź 2023,  
[https://wydawnictwo.uni.lodz.pl/wp-content/uploads/2024/06/Domanska\\_Zagadnienia-prawa\\_tom-1.pdf](https://wydawnictwo.uni.lodz.pl/wp-content/uploads/2024/06/Domanska_Zagadnienia-prawa_tom-1.pdf)
- Radzewicz P., *W sprawie możliwości ograniczenia zakresu zastosowania art. 8 ustawy o działalności lobbingsowej w procesie stanowienia prawa przez Regulamin Sejmu*, „Zeszyty Prawnicze BAS” 2006, 1.
- Spurek S., *Komentarz do art. 8*, [in:] *Działalność lobbingsowa w procesie stanowienia prawa. Komentarz*, Warszawa 2015.
- Szmyt A., *Model postępowania ustawodawczego u progu VI kadencji Sejmu*, [in:] W. Odrowąż-Sypniewski (ed.), *Prawo parlamentarne. Seminarium dla nowo wybranych posłów VI kadencji*, Warszawa 2007.
- Szmyt A., *Tryb stanowienia ustaw – szanse i zagrożenia*, [in:] M. Granat (ed.), *Zagadnienia prawa parlamentarnego*, Warszawa 2007.
- Szmyt A., *Zakres art. 8 ustawy o działalności lobbingsowej z 2005 r.*, „Zeszyty Prawnicze” 2006, 1.
- Szmyt A., *Jeszcze w sprawie trybu pilnego*, L. Garlicki, A. Szmyt (eds.), [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, Warszawa 2003.
- Ujazdowski K.M., *Efektywność rządu albo kryzys legislacji*, „Politeja – Pismo Wydziału Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego” 2012, 19.
- Wiszowaty M., *Działalność lobbingsowa w procesie stanowienia prawa. Ustawa z dnia 7 lipca 2005 r. z komentarzem*, Warszawa 2010.
- Wiszowaty M., *Ustawa o działalności lobbingsowej w procesie stanowienia prawa*, „Przegląd Sejmowy” 2006, 5.
- Wróblewska I., *Wysłuchanie publiczne w Polsce. Analiza rozwiązań normatywnych w tle praktyki ich stosowania*, „Przegląd Sejmowy” 2012, 3.
- Wróblewska M., *Formy współpracy i dialogu partnerów społecznych – analiza projektów ustaw dotyczących instytucji pracy zdalnej*, [in:] J. Glumińska-Pawlic, B. Przywora (eds.), *Społeczny wymiar gospodarki rynkowej*, Warszawa 2023.
- Wróblewska M., *Pilny projekt ustawy w Polsce – założenia konstytucyjnoprawne a praktyka ustrojowa*, doctoral dissertation – typescript, Faculty of Law and Economics of Jan Długosz University in Częstochowa, Częstochowa 2023.
- Wróblewska M., *Zasady prawidłowej legislacji w orzecznictwie Trybunału Konstytucyjnego pod rządami Konstytucji z 1997 r.*, [in:] J. Szymanek (ed.), *25 lat stosowania Konstytucji Rzeczypospolitej Polskiej*, Warszawa 2023.

## Judicial Decisions

- CT judgement of 3 November 2006, K 31/06, OTK A 2006, No. 10, item 147.
- CT judgement of 30 April 2009, K 37/06, OTK ZU, No. 4A/09, item 47.
- CT judgement of 13 March 2010, K 08/08, OTK A 2010, No. 48, item 287.
- CT judgement of 22 February 2006, K 4/06, OTK ZU 2A 2006, item 24.