

AGNIESZKA SKÓRA¹

**Review of the monograph edited
by Anna Budnik: *Białystok Volume
on Law and Culture*, University of Białystok
Publishing House, Białystok 2016**

Abstract

The work under review is devoted to the issue of *locus standi* (standing) which is of significance in any legal procedure. Ever more often, the contemporary legal science faces the challenge of the European integration and the globalisation and also mutual „flow” of legal solutions in between countries.

Keywords: standing, *locus standi*, environmental decision making

¹ Prof. nadzw. dr hab. Agnieszka Skóra – Uniwersytet Warmińsko-Mazurski, Wydział Prawa i Administracji, Katedra Postępowania Administracyjnego i Sądowoadministracyjnego; e-mail: hadrian5@wp.pl; ORCID: 0000-0003-21695326.

AGNIESZKA SKÓRA

**Recenzja monografii pod red. Anny Budnik:
Białystok Volume on Law and Culture,
Wydawnictwo Uniwersytetu w Białymstoku,
Białystok 2016**

Streszczenie

Recenzowana praca poświęcona jest instytucji *locus standi* mającej znaczenie dla każdej procedury prawnej. Współczesna nauka prawa coraz częściej staje wobec wyzwania, jakie niesie ze sobą integracja europejska oraz globalizacja i wzajemny „przepływ” rozwiązań prawnych między poszczególnymi państwami.

Słowa kluczowe: *locus standi*, prawo bycia wysłuchanym,
decyzje w postępowaniach środowiskowych

The work under review is devoted to the issue of *locus standi* (standing) which is of significance in any procedure, be it civil, criminal, or administrative. It is truly vital considering that application of that institution in procedures triggers a number of interpretation doubts, frequently of substantial weight. Therefore, the work on the reviewed study must be deemed valuable and highly needed. Ever more often, the contemporary legal science faces the challenge of the European integration and mutual “flow” of legal solutions in between countries, members of the European Union in particular. The literature sometimes suggests that inspiration might also be sought in non-European solutions, especially that following certain other spheres of life, the contemporary law is undergoing unification processes which embrace not only Europe, but the whole world. For that reason, one should perceive it positive that the study refers to Russian and American texts.

The first part of the book groups three works devoted to public participation in environmental decision making, namely articles by: Daniel D. Barnhizer, Anna Budnik, and Yasin Guzel. The phenomenon, developed in the systems of the American and e.g. German laws, is extremely interesting from the perspective of both environment protection and administrative proceedings. The next part discusses the issue of **standing** in civil procedure (Anna Piszcz, Arkadiusz Bieliński, Marta J. Skrodzka, and Natalia Racewicz). Part three offers two studies on the criminal aspects (Dariusz Kuźelewski and Anton Liutynskii). In the last part, Milda Žaliauskaitė presents the question of accessibility to justice of patients of mental institutions in Lithuania in the context of the international, European, and Lithuanian laws. Lech Jamróz describes the law of constitutional complaint in Poland, whereas Peter Vaczi presents the principles of administrative proceedings in Hungary. I fully agree with both the approach to the research area, and the proposed order of presentation.

With the abundance of the problems presented in the reviewed study it is impossible to address the content of the whole work. Nevertheless, out of the numerous details, all making up a coherent and convincing analysis of the area, it is certainly worth noting several aspects which capture particular attention.

1. Daniel D. Barnhizer analyses public participation in environmental decision making in the USA. His work captures excellently the essence of the institution and the goals it serves in the administrative law. First of all, I find the author’s comparative discussion highly valuable in research terms. I share the author’s view that: ‘public participation promotes engagement with the decision, legitimates the decision,

and provides distributed expertise that may improve the resulting decision by infusing the process with outside concerns and information that would not otherwise occur to insulated bureaucratic decision makers'. Daniel D. Barnhizer goes further to ponder the question of public participation in decision making in the Aarhus Convention. I find the arguments Daniel D. Barnhizer presents fully convincing.

2. Anna Budnik discusses participation of environmental organisations in their position of participants with rights of a party in environmental decision making in Poland. The author outlines the regulations of the Code of Administrative Procedure of 1960, and the Act of 3 October 2008 on the release of information about environment and its protection, participation of the public in the environmental protection and assessment of the environmental impact. The situation in this particular area is exceptional, since typically the creation of a uniform model of any specific legal solution (procedural in particular) proves hindered by the enormous legislative diversity, the different "needs" of the individual and public administration authorities, and different levels of social and legal awareness. Anna Budnik engages in dispute with the views already formulated in the administrative law research. She does so in an elegant and well-balanced manner, though boldly and without shying away from stating her position clearly. This approach must be deemed highly mature in research terms, and valuable in terms of cognition.

3. As I have already mentioned, scientific inspiration can also be sought for in non-European solutions considering that the contemporary law, following suit of certain other spheres of life, is undergoing globalisation. Because of the processes, reaching for legal solutions adopted and, most importantly, tested in the legal systems of other countries, not necessarily neighbouring ones, may become an accepted practice in the future. In this perspective, I find the discussion of Yasin Guzel very interesting. The unquestionable value of the article lies in its well-thought and clear structure, devoid of divagations on any topic which would only "seemingly" be related to the main issue. The author consequently subordinates his dispute in the study to the above-mentioned objectives, and this makes the study coherent, exhaustive, and consistent with the train of thought focused on the issue defined in the title.

4. Anna Piszcz touches on the vital problem of class action lawsuit in a civil process (collective redress action). The class action lawsuit was introduced in the Act on Asserting Claims in Class Proceedings, dated 17 December 2009. The Act came into force and effect 6 months after its publication, i.e. on 19 July 2010. In her considerations, the author takes into account the European Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law. What I found particularly interesting were the author's thoughts

about the actual effectiveness of consumer protection, the latter usually being the weaker party in the process.

5. Arkadiusz Bieliński raises the very important issue of electronic communication in civil and enforcement proceedings between state agencies (the courts) on one hand, and the parties and other participants to the proceedings on the other. The issue is extremely up to date and live, since the development of new technologies and common use of the Internet have led to the introduction of new solutions into the existing legal system. Doubtlessly, the Internet and means of electronic communication are revolutionising our lives and the day-to-day business of the organisations we operate in. Technical progress is one of the factors which affect the shape of public administration and courts, and the ways they operate profoundly. It enables e.g. remote communication between the participants to the proceedings via modern communication media where electronic information carriers are gaining in the role they play.

6. The article by Marta J. Skrodzka touches on a vital and live problem of the system of primary legal assistance and citizens' advice – PLACA in the Polish law. The faculties of law of the Polish universities offer it under the clinical legal education scheme. The author rightly puts PLACA in the category of access to justice. Marta J. Skrodzka's comments on the history of the phenomenon, and her view of its present shape, plus conclusions for the future are highly interesting. I fully share the author's view when she concludes that 'there is no unified and coherent system of PLACA at the moment in Poland and, furthermore, there is no effective state policy in the matter'.

7. From the perspective of my personal interests, it gave me particular pleasure to read Natalia Racewicz's thoughts on mediation. The idea of mediation has for some time now triggered interest, also in administrative proceedings. It is ever more apparent that the 'image' of courts and public administration is changing, and the judicial and administrative procedures are following suit. In the developed countries of Western Europe one comes across the observation that the area of exercising power is "shifting" towards institutions based on the assumed specific power balance between the individual on the one hand, and administration and courts on the other hand. The increased interest in non-authoritative forms of dealing with administrative issues stems from a number of causes. First of all, a note is taken of the 'contestation' of the traditional perception of public administration as entities operating in an authoritative and unilateral manner. The sources of the interest should also be seen in a crisis of administration itself and in its inefficient structures, as well as in a crisis of the administrative judiciary. A growing alienation can be observed between administrative authorities and private entities not only in the sphere of the science of law, but also in psychology and sociology. Another perceived

and equally important cause lies in the growing awareness and learning of the society. The traditional function of public administration, consisting in holding the proceedings and resolving about the legal status of the party proves insufficient, mainly wherever the administration is bound to solve various conflicts and seek compromise in matters affecting the interests of a broader group of entities.

8. Anton Liutynskii's study of the criminal procedure in Russia is noteworthy primarily because the law of the Russian Federation is unknown to the contemporary Polish science of law. The author focuses on issues of the law of evidence. The statements formulated by the author do not deviate largely from the conclusions which could be arrived at by representatives of the Polish criminal law researchers. At the same time, the work fills a major gap in this area of law.

9. I found it particularly interesting to read Peter Vaczi's comments on the principles of administrative proceedings in Hungary. The Hungarian administrative proceedings are regulated by the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services. The author also attempts to arrive at an answer to the question whether the principles can be deemed consistent with the concept of "good administration").

To sum up, and let me emphasise it with the strength of my deep conviction, I find the reviewed publication a mature and thoroughly pondered analysis of the theoretical and practical issues connected with the institution. It also testifies to excellent command of the research methodology. The work is an extremely valuable publication, and can, with full conviction, be recommended to anyone wishing to broaden his/her knowledge of the problem area.