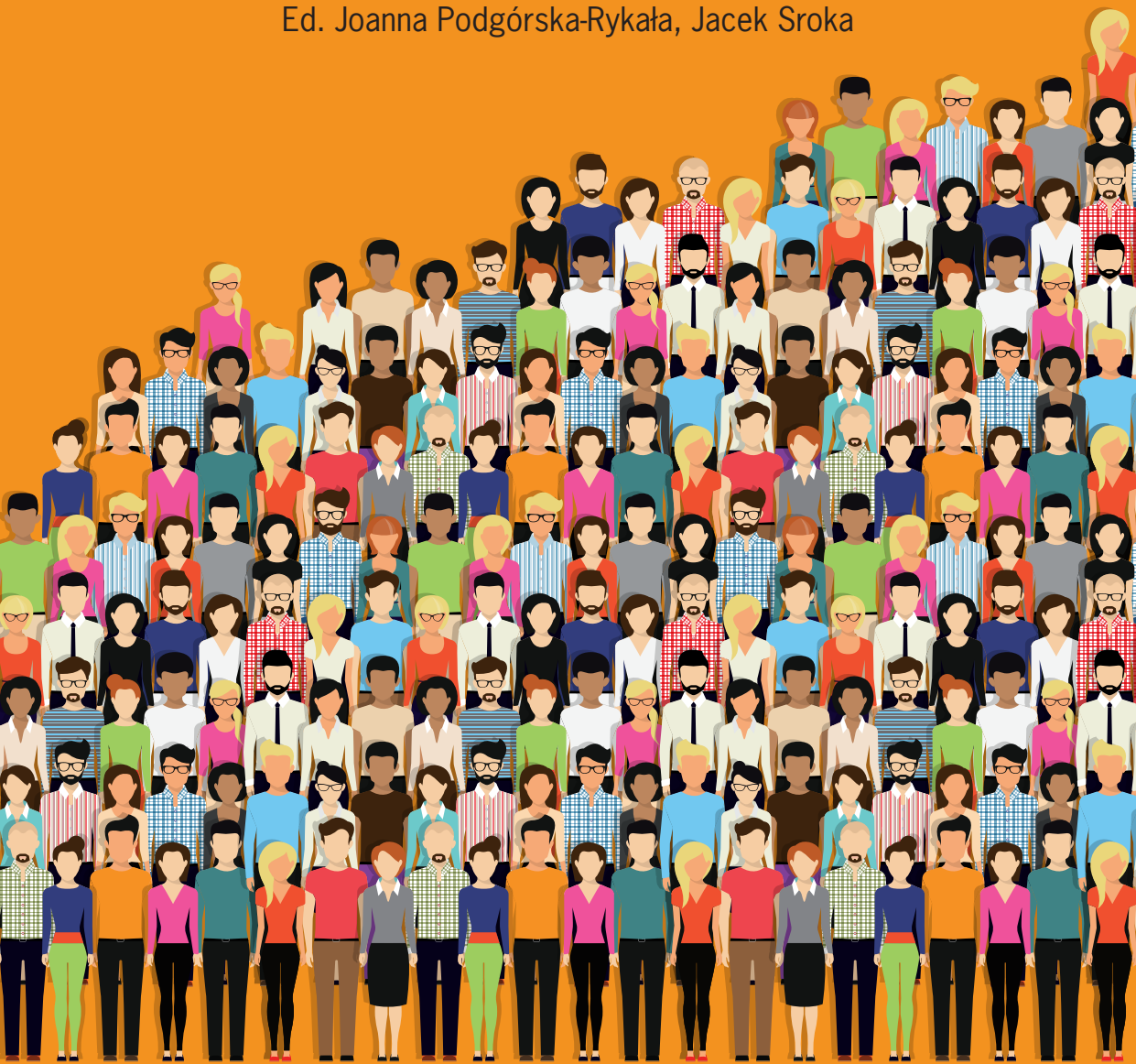


# DELIBERATION

IN THE PUBLIC POLICIES PLANNING PROCESS:

Experiences and Future Challenges

Ed. Joanna Podgórska-Rykała, Jacek Sroka



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# Introduction

Over the last decades much has been written about the role of deliberation in public life, and much is still being written. This does not mean that the idea of deliberation is no longer a flickering mirage, and the deliberative recommendations and the results of practices can be fully satisfied. In the literature on deliberation, as well as in the sphere of deliberative practices, there are examples more and less valuable.

In the less valuable studies and practices, more often along the beaten track in thinking, dialogue and action are followed, and the orientation to deliberation arises to a lesser extent from the willingness to conceptually and practically bring the idea of “people’s rule”, and to a greater extent from fashion trends. Publications and practices that break the canons and are far from the current fashion trends are much rarer. The majority of texts about deliberation and deliberative practical projects, which are not particularly groundbreaking, but hopefully are also not very imitative, may be found between these two poles.

When we started working on the book, we tried to compose a work at a good academic level, which would not lack bolder theoretical interpretations, and at the same time it would be as free as possible from reproducing empty words. We leave the readers to judge the extent to which we have managed to do so. And we do so (as we hope) without self-righteousness, but also without anxiety, because we managed to gather a precisely selected group of authors which in our opinion guarantees academic reliability as well as practical awareness.

The study consists of ten texts. The first three chapters focus on theoretical issues and the remaining seven take a more practical and functional approach.



## Introduction

As is well known, there is no good practice without theory, and theory becomes useless without practical testing. Meanwhile the theory of deliberation emerged as an effect of a theoretical attempt at solving the democratic deficit, hence situating itself within the “classical” boundaries of political theory. It does not, however, often relate to the theory of public policy, especially its most critical strains. And thus it is sometimes less useful for public-political practice, especially where these practices are still not well founded.

In the paper opening the study Wojciech Ufel made an attempt at such a conflation, juxtaposing the “policy paradox” and the “argumentative turn” with the ideal(ized) models of deliberation, both type I and type II, recalling the debate on public policy that started in the 1980s/90s – right when the theory of deliberation was also taking off. The paper asks the question whether deliberation, as its most prominent proponents claim, is the answer to the political challenge of public policies, or should it rather be treated according to the logic outlined by policy paradox and argumentative turn. The author in his argumentation leans towards the second option, proposing instead a post-foundationalist and hermeneutic interpretation of political/policy fields in which deliberation occur. This leads to a substantial shift in the understanding of its potential effects and means.

The paper prepared by Aneta Krzewińska deals with two processes: deliberation and public policy making, the combination of which is often postulated in studies related to public policy making. The article starts with a description of the process of deliberation and indicating its basic characteristics. The second part refers to public policies and the process of their creation. The author describes the benefits and dangers that may arise as a result of combining these two processes. The article is primarily theoretical, but its conclusions can be translated into concrete directives to help policy makers and practitioners of social life. Initiating the practical debates over problems mentioned in the paper is crucial and hopefully may improve the quality of public sphere, public policymaking, and consequently improve the social space in which further deliberations on

important public issues can be organized with the real participation of citizens and not only experts, clerks and/or political leaders.

To be heard, one must have a visible “public standing” linked to recognition of one’s autonomy (Rollo, 2017, p. 608). In the paper written by Jacek Sroka and Beata Pawlica participatory budgeting has been treated as a crucial element of public policy planning and one of possible variants of deliberation. Participatory budgeting constitutes one of these (numerous) public life phenomena in which quality of the process depends on relations between involved participants. Only to a limited extent is the configuration of these relations dependent on methods of their day-to-day implementation, because effectiveness of these methods is defined by deeply rooted reasons embedded in specific patterns of culture. As a result, relations between participants are often not easy to study; hence it is difficult to reach so deeply and define “the final” model conceptualization of the problem and then to propose the methodology ready-to-use in most conditions. The paper does not refer directly to the case study the Polish civic budget but emphasizes the problem of the systemic position of a participating actor in the simplified context that can be seen as a model presenting a thinking scheme, but not as an element to be fully ready for empirical testing. It is still an attempt to define the model, and still it is not the ready-to-use one, though in the text the authors do use the term “model”.

The next chapter, by Jacek Klich, opens the part of the study which does not avoid theory, but is closer to methodological, formal, functional and practical issues, case studies and comparative analyzes. Health policy measured by objective and quantitative (budget spent) and subjective and qualitative (the position of good health in the ranking of goods the most desired by individuals) measures can be considered as one of the leading public policies. The article aims to analyses the processes of deliberation in health policy formulation with a special emphasis on Poland. The method is a meta-analysis. EBSCOhost, ScienceDirect, and BazEkon together with the resources of specialized institutions and think-tanks were searched. The time frame for the search was 2010–2021 and the

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keywords: deliberation, public consultation, public policy planning, public participation and debate, health care system, and health policy were used in various combinations. After the presentation of the goal and method, the experiences of selected countries in involving stakeholders in the process of health policy formulation are described. Then the Polish case is characterized and assessed. The article concludes that deliberation in health policy in Poland is in its infancy and differs from Western patterns, and it remains a research gap.

One of the specific and particular form of deliberation seems to be lobbying in the lawmaking process, practiced by parliamentarians themselves and professional and non-professional lobbyists, which is an effective tool for civil dialogue between the ruled and the rulers in the lawmaking process. Anna Solner describes lobbying as a civic tool for influencing the lawmaking processes to shape public policies, increasing their transparency and legitimacy in the eyes of citizens, with particular emphasis on the legal conditions in this area in Poland. It presents, among other things, the definition and genesis of the phenomenon of lobbying, methods of lobbying, legal regulations concerning the conduct of lobbying activities in Poland, and the related obligation to be transparent about the actions taken.

Aleksandra Zubrzycka-Czarnecka uses a qualitative case study approach to maximize the understanding of how NGOs (members of the Collective of United Associations) take part in housing policymaking through advocacy and lobbying, and what problems and obstacles impede their participation. The article analyses the delineation of housing advocacy and lobbying (HA&L), as well as the strategies applied in the context of creation and change of housing policy. The final part of the paper considers the interpretation of HA&L activities by representatives of French housing NGOs as a substitute for social dialogue instruments. Author concludes that lobbying, as one of the deliberative instruments, performs a function similar to collective bargaining on the labor market. However, numerous obstacles that hinder the participation of non-governmental organizations (through advocacy and lobbying) in shaping housing policy

show the weakness and lack of this substitution. It is also not uncommon to mention that the collective bargaining in Polish labor relations itself leaves much to be desired (Czarzasty, 2014).

Joanna Podgórska-Rykała focuses the elements of deliberative participatory governance on the example of citizens' assembly becoming one of the most popular mini-public all over the world. Two basic organizational standards for citizens' assemblies were analyzed: random selection of participants and related assembly demographic representativeness. The selected methods of randomizing participants were analyzed taking into account various selection algorithms, criteria of eligibility for participation in citizens' assembly and personal profiles of participants. Both indicated standards are focused on achievement of democratic equality, thus providing individuals with the chance to be selected to work within an assembly with equal probability. However, in practice, this demand is often difficult to achieve, mostly because of different participation ratios in certain subpopulations.

The issues mentioned above are investigated in depth by Joanna Podgórska-Rykała in the case study of the city of Mostar citizens' assembly. The author recognizes the Mostar's assembly as the first deliberative process in Bosnia and Herzegovina and more broadly – in Southeast Europe. The paper takes the form of a single case study and it does not aim to provide a comprehensive analysis of deliberative processes occurring during citizens' assemblies. However, some interesting deliberative practices have been previously held in the second half of the 90s in Srebrenica. Probably this difficult dialogue among the deeply divided Serbs and Bosniaks in Srebrenica may have been also one of the crucial causes or “transformative moments” for the further development the pro-deliberative orientations that led to the Mostar citizens' assembly (Merdzanowic, 2015; Steiner, Jaramillo, Maia, Mameli, 2017).

In the article by Paweł Ostachowski, pressure and resistance are much more visible than dialogue and deliberation, and no wonder, because in the field of electromobility the competitive influence of interest groups is noticeable. Cooperation and dialogue in this area is still a song of the future,

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although it seems that the fight to stop climate change in the world is approaching a tipping point. After many years of debates on counteracting the phenomenon of global warming, undertaken at the climate conferences in Paris or in Katowice, the pace of global climate polluters such as the USA and China leaving fossil fuels is still insufficient. Meanwhile, environmentalists are sounding the alarm that failure to take radical action will now end in a climate catastrophe. Soon we will see another installment of the climate discussion at a conference in Glasgow, Scotland, where the 26 key emitters of CO<sub>2</sub> into the atmosphere will debate about this problem. The real end of combustion motorization announced in “Fit for 55” for 2035 would be crucial in this respect. However, there are many voices that the proposed vision of such a rapid transition to full electromobility is another utopian concept of EU officials.

The study ends with a text related to the formal framework of the right to petition in Poland by Anna Solner. We put it at the very end of our volume not by coincidence, but because it relates to a formal framework for participatory citizenship initiatives. The tradition of the right to petition goes back at least as far back as the British Magna Carta, but at the same time this tradition must be alive today in order for a deliberative dialogue to arise from a participatory basis, the cornerstone of which is the right to petition. Author presents the theoretical and practical aspects of implementing the right to petition in the relation practice to the legal solutions that have been in force since the entry of the Act on Petitions adopted in Poland on September 6, 2015.

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Deliberation, when it is well felt, understood and practiced, guarantees a satisfactory quality of public solutions and can bring a visible democratic effect, but when it is so, it is not easy to fall into the trap of populism and inefficiency. In this sense, deliberative dialogue is not a panacea, and deliberation is not a cure for the lack of participation. We are learning to understand new ideas (such as deliberation) in a practical way – by interacting

with each other, and the way we interact affects the state of images and binding patterns of behavior. There is often a lot of misunderstandings, distortions and deceptions in this learning. But when, nevertheless, from time to time (even if only for a “deliberative moment”) we try to break down barriers and establish a new or fresh understanding, the probability of transforming polarized powerlessness changes into a real surge of deliberative power. Even only in particular cases, but at the same time with the power of an eye-catching example. This is just one of the potential conclusions we hope can be drawn from reading the book. We dedicate its message and content to both academics and practitioners who can “never get enough” of dialogue, although it is still not an especially extensive group. However, this enclave should be expanded, and thus go further in their theoretical considerations and practical solutions, which we hope is also evidenced by the results of analyzes proposed by the authors whose texts we managed to collect in this book and whom we would like to thank for a very successful cooperation.

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## Policy Paradox and Argumentative Turn as Challenges to Deliberative Policy Planning<sup>1</sup>

**Abstract:** The theory of deliberation emerged as an effect of a theoretical attempt at solving the democratic deficit, hence situating itself within the “classical” boundaries of political theory. It does not, however, often relate to the theory of public policy, especially its most critical strains. In this paper I make an attempt at such a conflation, juxtaposing the “policy paradox” and the “argumentative turn” with the ideal(ized) models of deliberation, both type I and type II. Recalling the debate on public policy that started in the 80s/90s – right when the theory of deliberation was also taking off – I ask the question whether deliberation, as its most prominent proponents claim, is the answer to the political challenge of public policies, or should rather be equally treated according to the logic outlined by policy paradox and argumentative turn? In my argumentation I lean towards the second option, proposing instead a post-foundationalist and hermeneutic interpretation of political/policy fields in which deliberation occur. This leads to a substantial shift in the understanding of its potential effects and means.

**Keywords:** theory of democracy, public policy, policy paradox, argumentative turn, deliberative democracy

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## Introduction

The theories of deliberative democracy and public policy emerge from different branches of political science and political philosophy, yet they share a common root in a belief of a possible extraction of the decision-making process from the burden of conflict and coercion of politics, or in other words “the political”. Public policy, at least in its mainstream strain dominated by the decisionist approach, relegates the policy analysis process to presumably non-political (and hence unbiased) experts. By basing the political decisions on knowledge, evidence and their scientific analysis, public policy promises optimized decisions, benefitting the stakeholders, as well as politicians, who can be perceived as effective (Bromell, 2017, pp. 89–90). This concept persisted through the consecutive iterations, or trends, within the theory of public policy, such as the New Public Management that dominated the field alongside the hegemony of Thatcherite/Reaganist neoliberalism (McLaughlin, Osborne, Ferlie, 2002), “good governance” through Public-Private Partnerships (Sabry, 2015), or triple/quadruple/quintuple helix models for innovations (Carayannis, Campbell, 2010).

Deliberation, on the other hand, rises from the political and theoretical discussions on the democratic deficit in liberal, capitalist societies of the post-War era. The claim is to bring democracy closer to “the people”, i.e. to by-pass the alienated elites with their particular, political goals, partisan bias, focus on PR and positive image in media, and susceptibility to corporate lobbying. Instead of relegating most important policy decisions to experts, deliberative democrats would rather refer to public reason and common knowledge, provided the appropriate process of its creation. A consensus based on in-depth, rational argumentation is said to be similarly non-political and unbiased, as evidence-based expertise of the decisionist public policy. Despite the fact that the theory itself has undergone numerous transformation towards more pragmatic types and generations (Bachtiger, Niemeyer, Neblo, Steenbergen, Steiner, 2010; El-stub, Ercan, Mendonça, 2016), loosening core idealistic assumptions of

consensus or purely rational mode of speaking did not weaken the belief in providing conditions to avoid “the political”. Rather, those discussions aimed at defending the “apolitical” status of deliberation, given the non-ideal conditions under which deliberation appears.

Despite both theories being primarily concerned with different goals – one aims at effective policy-making, the other one at the democratic dimension of this process – they both share an aversion for “the political”. It is not at all surprising. In fact, the search for the “apoliticalness” is a crucial concept for all modern theories of rational politics since the era of enlightenment, therefore they come as a natural extension – the answer to challenges – of a representative model of liberal democracy, which has been broadly implemented in the Western political systems after the World War II. This modernist, analytical approach has also been subjected to a careful and comprehensive analysis and exposition, first by hermeneutics and (*nomen omen*) critical theory of the Frankfurt School, and afterwards by poststructuralists, feminists, postmodernists etc. The theory of deliberative democracy, popularized and developed prominently by Jürgen Habermas, from its very beginning attempted at reconciliation of this criticism and the premises of the enlightenment and modernity (Habermas, 1987). Therefore, a profound criticism and debate never fully occurred within the field of deliberation, but rather took place outside of it, especially from radical democrats such as Chantal Mouffe (2000), or later generations of the critical school (Jaeggi, 2018). For public policy, however, the situation is different: in the late 80s through mid-90s – right when the theory of deliberation was also taking off – an interesting debate on its foundational character ensued and ever since occasionally comes back. This family of arguments, to which I refer to as “policy paradox” and a following “argumentative turn”, disclose policy analysis – and every other activity connected to policy-making – as inherently political, therefore biased and persuasive in a way that is more coercive than would follow from a purely rational argumentation.

In the following essay I aim at answering the following questions: How these debates relate to the core ideas of deliberation and what challenges

to its successful implementation they disclose? The argumentative turn intersects with the theory of deliberation at many points, and deliberative democrats even add to these debates under a label of “deliberative policy analysis”. John Dryzek, one of the main representatives of the deliberative mainstream in the theory of democracy, is the author of a chapter in the most important works that make up the argumentative turn (Fischer, Forester, 1993) and, co-authored with Carolyn Hendriks, (Fischer, Gottweis, 2012). However, in his most important publications on deliberation, he does not invoke the argumentative turn. In fact, the relationships between the theory of deliberation and the argumentative turn appear rather scarce. It cannot be found in the writings of other mainstream deliberation theorists, even the ones most critical of the argumentative process, such as Iris Marion Young and Jane Mansbridge. Deliberative democrats, even if they refer to the argumentative turn, they rather point to the common Habermasian sources of these trends (Florida, 2018). But the argumentative turn – as will be presented in this paper – draws from many other philosophical sources, not necessarily compatible with each other. I suggest that the argumentative turn in fact consists of two separate strains, interpretative and deliberative, which provide different answers to the common question of how to integrate politics (as in “the political”) and policy-making. A direct comparison of tensions existing between these two strains reveals certain lacks, omissions and misjudgments of the deliberative theory.

## **Paradoxes of decisionism**

The decisionist paradigm aimed at importing the rationalist econometry, an optic that treats political and social problems in a predominantly utilitarian way, to the field of public policy. It created a system of governance based on a simplified, narrow process with three steps: information – analysis – decision. Policy issues are narrowed down to factors that can be parameterized and later evaluated using mathematical and

logical indicators. As Giandomenico Majone – one of the first critics of this approach – argued in his 1989 book, the process of gathering and analyzing data is much more complex, ambiguous and nonlinear. Moreover, preparing and communicating its results in a manner that proves effective for policy analyst consists mostly of persuading those responsible for a decision making (the political class), and those holding them accountable (the democratic public). In such circumstances, the process is situated in an argument-based discussion:

in the system of governing through discussion, analysis – even professional – is less based on formal methods of problem solving and more on the argument process [...] the arguments put forward by analysts, if they are to be taken seriously in public debate forums, must be convincing. Therefore, all technical language problems, including rhetorical problems, will always concern analysts. (Majone, 2004, p. 21)<sup>2</sup>

This does resemble, to some extent, Michele Foucault's discussion on the political origin of knowledge, as in the inseparable complex of power/knowledge (Foucault, 1980). For the French philosopher, knowledge (and its institutions) is a mechanism of power, the area where it is exerted and, more importantly, where it reproduces itself. Therefore no knowledge can be independent of power or political relations, even if the connection between the politician and expert is not a direct relation of subordination. The abovementioned claim of Majone adds another layer to this criticism, i.e. it stresses that the position of policy expert relies more on persuasion and communicative skills than on actual scientific knowledge and analysis. Of course, sound and precise research provides for more accurate solutions, but the ultimate success lies in convincing and motivating certain public policy recipients (Majone, 2004, pp. 97–98). In the end, the decision is

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<sup>2</sup> Due to the difficulties in access to Giandomenico Majone's *Evidence, Argument, & Persuasion in the Policy Process*, all quotations from this book are translations from the Polish edition of this book.

made because of the power of persuasion in the process of formulating the information and giving evidence of its validity. As Deborah Stone (2012, pp. 381–385) writes, in public policy the dispute is most often not just about dry facts, but rather their interpretations and the value attributed to them: the analysis has “a point of view”, as it includes and excludes some things, gives or suggests value to certain facts, and basically does not remain objective and unbiased. In fact, analysts themselves have a tendency to become “inherently biased in their assessment of their proposals and more likely to be skeptical of any evidence of possible adverse effects than a less involved person” (Majone, 2004, p. 19).

Stone is the one who coined the term “policy paradox”. In the opening words to her book on this concept, first published in 1988, she underlines that “politicians always have at least two goals. First is a *policy goal* – whatever program or proposal they would like to see accomplished or defeated, whatever problem they would like to see solved. Perhaps even more important, though, is a political goal. Politicians always want to preserve their power, or gain enough power to be able to accomplish their policy goals. Achieving a policy goal can sometimes whart political gains – or vice versa” (2012, p. 3). The political goal narrows down to the assurance that after making all policy decisions, their systemic position and public support will allow them to at least hold their political post, or advance their career in another direction, either through elections or within the structure of their political organizations. This approach, based on the “universally understood conditions of political rivalry” (Stone, 2012, p. 10), is also transferred on the level of policy analysis. Those two inseparable goals often lead to the inevitable conflict of two normative orders, e.g. the economic growth, protection of the environment, or health and wellbeing of citizens vs the expectations of the electorate based on fear or resentment, interests of sponsors of political campaigns, or personal politics of the political party. Hence, the paradox of the policy analysis, which is situated at the cross of these conflicting orders, and therefore cannot be treated as devoid of “the political” one.

Stone (2012, pp. 34–35) builds on Majone’s argumentation and develops the argument in numerous directions, including the concepts of human

nature (altruism and egoism, individualism and community approach) and social change (cooperation, public interest, the perspective of discourse and social groups) to depict different dimensions in which the simplified, decisionist approach is not sufficient to explain and project effective and democratic policy-making process. However, for the sake of the argument with deliberative democrats, I would like to emphasize two points she is making: that the influence is always associated with persuasion, and the clear demarcation of it from coercion is always questionable; and that information is not, in principle, objective, but rather always incomplete, interpretable, and used strategically.

It is in this place where the first challenge to deliberative theory is posed, especially considering its most prevalent systemic approach, in which deliberative and non-deliberative elements coexist together in a way that democratizes the whole system. The absence of coercion is to be one of the key factors considered when assessing the deliberative component of proposed solutions. The systemic turn refers to “the intuition that being pressured into doing something and being persuaded into it are different. Deliberation is about genuine persuasion, not pressure. A full systemic theory of deliberation would require an elaborated defense of where to draw the line between pressure and persuasion” (Mansbridge, Bohman, Chambers, Christiano, Fung, Parkinson, Thompson, Warren, 2012, p. 18). An argument put forward by Majone and Stone suggests that this task is rather impossible to achieve. This notion has, in fact, troubled deliberative democrats since the early formulations of its type II (i.e. non-idealistic) models. Young (2000, pp. 67–69) emphasizes the role of rhetoric, greetings, the use of narratives and emotional speech, but only as long as they foster the communication based on rational argumentation. Dryzek and Simone Chambers (Chambers, 2009, pp. 339–340; Dryzek, Niemeyer, 2010, pp. 74–76) also recognize a potentially inclusive value of rhetoric, but only if it adheres to certain normative standards, such as representing morally justifiable values, being responsible for other interlocutors and the community outside of the deliberating mini-public, or only when the speakers yield undeniable trust and moral authority.

The extent to which those most eminent scholars of deliberation defend rhetoric and persuasion shows how important it is for deliberation to avoid its coercive use, which under the policy paradox arguments seems inevitable. Stone (2012, p. 330) expresses this writing about the “two” faces of persuasion; one associated with enlightenment and the other with indoctrination:

Persuasion as a tool of public policy has often been viewed either as a neutral instrument of science and the market or as a dangerous weapon of totalitarian governments. The ideal types obscure the nature of influence [...]. Shaping information is an inevitable part of communication and an integral part of strategic behavior.

Stone therefore argues that persuasion cannot be treated in isolation from its manipulative or coercive component. Any attempt to draw a sharp line between desirable and non-desirable persuasion serves to justify an ideal model that does not fit the practice of political communication. In case of deliberation, it aims at preserving its radically democratic legitimization that arises from the intersubjective rational agreement on particular validity claims. Nonetheless, the assumption that conceives deliberation as detached from political particularisms, must be questioned. The political dimension of this process not only affects (and is affected by) its immediate political and social environment, but, more importantly, it is inherent in the argumentation itself.

Stone (2012, pp. 34–35) does not unanimously reject deliberation, though. Despite being critical of its very foundations, what can be done only from a perspective of different foundations (in this case – through the ontology based on “the political”, the immanence of conflict and personal goals), her proposition for analyst does combine acknowledgment of both a conflicting rivalry of individuals, and the collaborative, more altruistic approach within groups and organizations as well as on a scale of larger, pluralistic social bodies, within a unit of analysis called *polis*.

## The argumentative turn and deliberative policy analysis

The phrase “argumentative turn” was coined in 1993 by the editors of *The Argumentative Turn in Policy Analysis and Planning* (Fischer, Forester, 1993). It has never occupied the central place in the mainstream theory and methodology of public policy, however it has seen several sequels (Hajer, Wagenaar, 2003; Hansson, Hadorn, 2016) and revoked debates central to the first book in consecutive decades. The starting point of the turn is similar to the one taken by Stone, i.e. the recognition of the two-dimensional context of the analysis in public policy: the substantive and political aspect of the term “argumentation” (Fischer, Forester, 1993, p. 4). The editors of the book draw on an eclectic range of theories and approaches in political theory and philosophy of science, including “Wittgenstein, Austin, Gadamer, Habermas, Foucault, and Derrida, and [...] postmodernism, post-empiricism, post-structuralism, post-positivism, etc.” (Fischer, Forester, 1993, p. 1). The authors of the argumentative turn also focus on the role of political analysts, situating them between expertise, policy and politics, and recognizing the multi-dimensional context of their work. An analyst carries out the following tasks: locating facts and creating data collection mechanisms; constructing values; anticipating the consequences of the proposed solutions in practical, political and ethical terms; developing social networks and ensuring personal relations with coworkers and stakeholders; evaluating uncertainties and planning strategies that take them into consideration; and analysis and understanding of general discursive frames (Fischer, Forester, 1993; Hajer, Wagenaar, 2003).

However, not all of these theories are compatible with each other, and especially Habermas – with his revoke of Gadamer’s and Wittgenstein’s hermeneutics and criticism of Foucault’s and Derrida’s presumed post-modernist relativism – stands out as a proponent of a post-analytical approach to public policy. From this position, his criticism of decisionism is not that profound, therefore it requires correction rather than negation. This distinction becomes apparent upon a closer inspection of the content of respective volumes on the argumentative turn, which – all of them being



multi-author collections of articles – allow for such an eclectic composition. By sharing a common core question, authors deliver different propositions for the science and practice of public decision-making that can be compared and examined to see whether the deliberative answer is, in the end, capable of recognizing problems indicated by the policy paradox.

The first strain of the argumentative turn, which I call interpretive or hermeneutic, adheres to the general assumption of the impossibility of reference to extra- or meta-linguistic aspects of society and politics. According to this approach, every information, data or observed fact of the society must be mediated by categories and norms emerging from linguistic practices, be it theory-embedded observations or normative claims. There is no objective reality that is directly accessible to political analysts, therefore their approach ought to be aware of their own (and their partners, coworkers and stakeholders') discursive reality. It leads certain scholars to dwell on problems that were also debated within the theory of deliberation. Such is a case for rhetoric and narratives, however it occurs in a way resembling the hermeneutic literary analysis (Gottweis, 2012; Kaplan, 1993, pp. 172–178), or emphasizing the role of listening to stories and befriending stakeholders with whom the analyst work (Forester, 1993, p. 192). A normative role of persuasion in the process of overcoming uncertainty of information and ambiguity of facts and values – another theme important for Stone – has also been discussed in the later instances of the argumentative turn (Hansson, Hadorn, 2016).

But the theoretical focus of the argumentative turn also goes further than it concerned mainstream deliberative democrats, as numerous authors also focus on discourses and their roles in public policy. Martin Rein and Donald Schön (1993, pp. 159–162) reflect on the importance of discursive frames, especially on the way in which the social world described by analysts is constructed by several discursive frames competing with each other over hegemonic formulation of the policy issues and solutions. They acknowledge the impossibility of choosing one of these frames as an objective reference point that would be validating the others, but still advise policy analysis to conduct frame-reflective discourses (or, in Mary

Hawkesworth [2012] words, a deconstruction of discursive frames) in order to better understand political and normative challenges it itself faces. Martin Hajer (1993, pp. 46–47) is interested in understanding how social change is fostered or obstructed by analyzing the strategic process of the formation of discursive coalitions. This leads to a rather genealogical inquiry in the modes of operationalization of several power/knowledge conglomerates, but at the same time encourages an empirical research of discourses and various actors of the social and political life, such as politicians and policy experts, but also media and journalists, experts, universities, different publics and so on.

On the other hand, the deliberative strain of the argumentative turn seeks another response to the experts' bias and persuasive influence. By a reference to legitimacy stemming from the consensus (Jennings, 1993), or by appealing to the discursive ethics (Dryzek, 1993), they claim that it can be overcome when mediated by rationality-based intersubjectivity. A broad array of citizens, when provided with proper conditions of mutual respect, increasing understanding and relatively similar initial positions/low polarization, is less likely to be partisan and biased, and the plethora of orientations and perspectives is working towards closing the gap of ambiguous information and unjustified ascription of value (Healey 1993, 2012; McRae, 1993). Unfortunately, the authors do not recognize the inevitable failure of this endeavor in non-ideal conditions, therefore do not recognize the issue of ambiguity and uncertainty as a serious challenge for deliberation.

The most nuanced elaboration on the deliberative theory in the context of the argumentative turn is delivered by Dryzek and Caroline Hendriks (2012), and therefore it is worth closer examination. In the editors' introduction and the first essay of the collection entitled *The Argumentative Turn Revisited*, the argumentative turn is presented as heavily influenced by the Habermasian turn to communicative practice embedded in the social and political context (lifeworld and the system). Dryzek and Hendriks (2012, p. 31) allocate the turn within two major shifts that advanced the deliberative theory: the extension of the scope of means of communication

accepted in the course of deliberation; and the movement towards institutionalization of deliberation into practices based on mini-publics. But their recognition of the influence of the argumentative turn on the theory of deliberation – despite bearing no real trace in the literature – seems to be a rather retrospective attempt at finding the connections with the main themes of the argumentative turn. At the same time, they are not accepting the assumptions and consequences of the non-Habermasian strain of the turn. For example, in their ‘broad view’ of what deliberation is about, they write: “We thus admit any kinds of communications as long as they can induce reflection on the part of those who attend to the communication, are noncoercive, can connect particular interests to some more general principles, and involve an effort to communicate in terms that others can accept” (Dryzek, Hendriks, 2012, p. 33). Those arguments can be traced down to developments in the theory that are independent of the argumentative turn, but at the same time they omit the answer to other challenges, posed by the interpretative strain: the impossibility of truly noncoercive communication, contingency of general principles, strategic construction of discursive framing (also the framing of the process of deliberation itself), and the unavoidable uncertainty and incompleteness of information. The only answer that deliberation can provide to the policy paradox, is therefore an extension of the problem from a single policy expert/analyst, to a larger public providing a broader overview of contingencies and biases that might occur within the traditional information-analysis-decision process. But it is not capable of overcoming the more general issues that structure and distort the policy decision-making process.

### **Conclusions: on the possibility of the hermeneutic approach to deliberation**

By revealing the complex and contingent role of information, and the persuasive process that follows its formulation and communication, the abovementioned criticism of the decisionist policy-making reveals certain

serious challenges to the theory of deliberation. Questioning core assumptions of deliberation confronts the whole theory with the problem of its justification – a problem which the founding fathers of deliberative democracy (Cohen, 1989; Habermas, 1996; Rawls, 1993), but also some scholars of today (Landemore, 2017), tried to solve exactly through rational, consensus-based deliberation. But these are not, by any means, challenges that has not been posed before: Habermas himself debated those issues with Gadamer and Foucault; the problems of discursive inequalities have been raised by radical democrats (Mouffe, 2000; Rancière, 1999) and feminist thinkers (Fraser, 1990); and an omission in the theory of authority has been criticized from the position of conservative political realism (Warren, 1996). What is different for argumentative turn, and in fact rare for such a profound criticism of deliberation, is that it does not reject the theory as a whole, but rather invites it to rethink its foundations and reformulate in order to be able to properly address contemporary challenges of public policy. While this invitation has not been fully “accepted” – deliberative democrats responding to the argumentative turn defended their position rather than recognizing the consequences of the interpretative approach – some concepts put forth by Stone, Fischer and others can be useful in overcoming certain problems that not only cause theoretical confusion, but also manifest themselves in practice.

But what would it mean to challenge the foundations of deliberative democracy? The main premise of the deliberative theory is to deliver rational and therefore radically democratic legitimacy to political decisions. To achieve that, a noncoercive, sincere and faithful argumentation (even if logics and evidence are not the only allowed means of communication) needs to provide a non-contingent basis for justification of validity claims on topics integral for policy-making: understanding of the issue at hand, values addressed to certain claims and their priorities, proposed policy solutions and their expected effects etc. An intersubjective, communicative rationality is to provide such a basis, but only if it can rely on noncoercive use of language. Therefore certain assumptions on language, communication, individual rationality and the autonomy of a citizen are

needed to be made, but all of them are challenged – at least to some extent – by post-foundationalist critique, including the policy paradox and the argumentative turn.

A particular criticism of rationality is also provided within the hermeneutic approach, and here I mainly think of Ludwig Wittgenstein's late *Philosophical Investigations* and *On certainty*. The possibility of its application to the problem of communicative rationality is already hinted by Mouffe (2000, pp. 60–77), and has been also put forward by several Wittgensteinian scholars, most notably James Tully and Aletta Norval. They adhere to Wittgenstein's description of how language games interact with each other in order to transform, clarify, solidify, prevent or even free one from specific ways of *seeing* the World, so-called "forms of life". A concept of language games does allow for both poststructuralist and deliberative conceptions of how language is used, i.e. it rejects (as nonsensical) the debate whether language is primarily divisive or consensual. In order to prove that languages – and therefore the whole communication – is primarily based on consensus and understanding, Habermas approached the issue by applying Austin's concept of illocution and perlocution and argued that even when language is used for a deception, there need to be a *primal* understanding of the words that are used by all interlocutors. Poststructuralists, on the other hand, claimed that language is primarily a function of *division*, as it is used to (arbitrarily) distinguish certain objects, material or ideal, from its surroundings, and therefore will always divide the World: exclude and hide *something*. In political theory of democracy, these concepts evolved into complex ontologies, which were, however, hostile to each other and fought for primacy over the possible meanings and forms of democratic social order. A Wittgensteinian approach would deem those discussions as fundamentally nonsensical, however it does not reject their results. It rather understands them as two ways of describing social and political reality, two separate language games, which might be operationalized to induce social change. Norval (2007, pp. 141–142) suggest that in this way a whole range of institutional politics – and through this also public policy – can be reinvented within the agonistic perspective

of democracy; Tully (1995, p. 25) also tackles the agonistic and poststructuralist approach to identity politics, which focuses on the difference and negation as means of establishing “true” identities, by stating that they can also be recognized and formed in dialogue. Those examples resemble the transformation of the decisionist approach to public policy proposed by Stone, who did not claim the need of replacement of one view of politics and policy by another, contradictory one, but rather proposed a complex model of *polis* integrating various aspects of both.

A deliberative theory void of its fundamental promise of bringing rationality and democracy together into a viable political practice must seek different justification, or purpose of its application. Interestingly, it is not a new task, but rather a redefinition of its priorities. Despite democratic legitimacy and rational foundation of politics being always the primal goal of deliberative democracy, stressed especially by Habermas (Habermas, 1996, pp. 107–110) in his discourse and universalization principles, there has always been other justification of why to implement deliberation? These were, however, treated rather as side effects of rational and democratic politics. Those other possible outcomes, despite not necessarily being rational or democratic, include: providing better grounds for making an informed policy decision; partial inclusion of some citizens, whose voices were earlier unheard<sup>3</sup>; conflict-solving and community-building, including the educational process of gaining deliberative competences and learning how the political system operates; and finally it also provides additional legitimacy to certain unpopular policies that politicians understand as vital to be implemented.

The hermeneutic approach also questions the validity of privileging the rational speech above other means of communication. While the current

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<sup>3</sup> Radical democrats stress that either rational speech, or in fact any political endeavor initiated from within the hegemonic system, will always be “blind” to some excluded groups, be it social outcasts, illegal immigrants, unacknowledged minorities etc. In case of deliberative policy planning, the inclusion is limited to those people who hold a status of citizens, and are already recognized as valid members of the society to at least some extent.

debate on deliberation acknowledges other, subjective modes of speaking as valid, they are only justified when actually helping rational arguments to be expressed clearly and in proper context. But the hermeneutic approach treats rationality not as an objective (or intersubjective) point of reference, but rather as a hegemonic expression of dominant norms, values, truths and myths about social order, and other standardized narratives of the hegemonic class. Rationality alone, therefore, is never subversive and can therefore be defective in providing radical change, especially when it is needed to tackle such challenges as climate change (Machin, 2012). Even deliberative democrats recognize that “cold rationalism” is a cultural characteristic that is mostly ascribed to certain, already privileged class, race, age and sex, i.e. middle- and upper-class, white, middle-aged men (Young, 1996, pp. 122–123). Only when other means of communication, including those that employ violence (i.e. protests, occupation of public spaces etc.) are understood and expressed<sup>4</sup> as equal language games to logic-based, analytical rationality, can deliberation move towards more open, compassionate and equal modes of functioning.

The abovementioned points are conceptual and directly related to the deliberative theory, but they also have practical consequences. There are, however, areas directly connected to the political practice that the policy paradox and argumentative turn emphasize, but are difficult to solve, or even nonexistent, in theoretical or conceptual approaches to deliberation. This is most prominently the function that expert knowledge plays in shaping the course of deliberation, but also the role of leadership. Both of those cases invoke some type of coercion and therefore are problematic for the (less or more) idealistic approach to deliberation. But a hermeneutic perspective on deliberation, by freeing it from the mirage of universalism, opens it up to new debates and discussion on how to operationalize those two by both acknowledging their coercive potentiality, but also the fact

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<sup>4</sup> A bold and direct expression of this is needed in order to empower those participants of deliberative process who, due to their subaltern position in the social dimension of power, do not feel “naturally” predestined to publically argue, make claims, defend their interests and give opinions on behalf of the rest of the society.

that they can foster understanding between participants or direct the discussion in a way that will more precisely address the problem at hand. A role of moderators, especially in large mini-publics that are constraint in time<sup>5</sup>, is rarely debated (Kuyper, 2012), while in many cases they become key actors influencing the course and results of the deliberative process. Aside from experts and moderators, discursive leadership is also exerted by politicians, media, lobbyist and many other agents in the immediate surrounding of the deliberation, and finally also by participants themselves. By opening the issue of leadership in deliberation to debate, new problems and challenges might be identified, but also a better understanding of good practices that foster deliberation – respective to its properly identified goals – might become a new and fruitful development in the theory.

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<sup>5</sup> As in the case of citizen's assemblies, perhaps the most popular deliberative practice promoted recently as a democratic innovation by NGOs, urban movements and politicians.



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## Deliberation for Public Policies, Public Policies for Deliberation – Cooperation or Strained Relations

**Abstract:** The article deals with two processes: deliberation and public policy making, the combination of which is often postulated in studies related to public policy making. The first part describes the process of deliberation indicating its basic characteristics. The following part refers to public policies and the process of their creation. The next – the most crucial part of the article – describes the benefits and dangers that may arise as a result of combining these two processes. The article is primarily theoretical, but its conclusions can be translated into concrete directives to help policy makers and practitioners of social life.

**Keywords:** deliberation, public policy, facilitator, decision-making, participation

### Introduction

After reading scientific studies on the use of deliberation in the process of public policy making, one may come across several approaches to this topic. The first group of publications shows positive cooperation between the two processes. In this case, we deal with descriptions of such public policy-making procedures in which deliberation played, if not the main role, then at least one of the main roles. In these texts – of a more practical than theoretical nature – we may find references

to specific phases in which an in-depth reflection about policy was undertaken among those interested in its creation. The second group of studies points to an evident separation of these two processes: deliberation and public policymaking, with the authors of these texts, clearly emphasising that the deliberation element is missing in the process of building a particular policy. Of course, I disregard here those texts that discuss either public policies or deliberation in complete isolation from each other. This reading of the texts leads me to a reflection that will be based on several assumptions:

- 1) Both the process of deliberation and the process of public policy making will be treated by me as model processes, definitely closer to ideal types, i.e., types whose descriptions can be found in scientific studies, but which are not to be found in the research reality.
- 2) Deliberation is treated as a process related to an in-depth reflection on socially important issues and does not refer to any specific deliberation techniques.
- 3) Deliberation is, in my opinion, an indispensable element of public policy making.
- 4) The permanent link between deliberation and public policies is independent of the area to which the policy relates.
- 5) The use of the deliberation procedure for public policy making can have both positive and negative consequences.

Being aware of a certain “artificiality” of these assumptions arising primarily from the fact that they are adopted for theoretical-methodological considerations rather than practical applications, I would like to present both the benefits and the dangers of combining the two processes.

## **Deliberation and its main characteristics**

Deliberation, which results in group decision-making, is most often identified as an exchange of views, sharing of ideas on how to solve a given problem, or verification of suggested solutions. Therefore, it is a process

of an in-depth and collective reflection on socially important issues, which allows participants of this process to realise and understand how complex the considered problems are, what interests each of the parties of this dialogue has and what their preferences as to proposed or possible solutions are. Such a kind of 'laying bare' of each party is, according to proponents of deliberative decision-making, a necessary condition to begin a detailed analysis of all aspects of a given issue. Deliberation differs from other political, economic, or social debates involving citizens, among other things, in that it is not superficial or piecemeal. On the contrary, it is characterised by an in-depth reflection that allows for thorough consideration of all possible points of view. In addition, it usually concerns "hot" issues, in which citizens participate without being coerced, and in which they could acquire the knowledge necessary for a rational debate and an in-depth analysis of the issue under discussion. Impartiality, the possibility to present one's thoughts, share experiences and opinions on a given topic are therefore extremely important.

In the literature, we find many definitions of deliberation containing more or less detailed characteristics of this type of debate (e.g. Bachmann, 2004; Habermas, 2005; Jabłońska, 2008; Juchacz, 2002; Sroka, 2009; Tully, 2002; Walzer, 2006; Wasilewski, 2007; Zgiep, 2013).

Although these definitions may differ in many respects, they usually contain a very similar set of features to which deliberations are entitled. For this article, I will use the ordering by Klaus Bachmann, who, referring to Jürgen Habermas' concept, gives the following conditions that deliberation must fulfil:

- “[...] discourse, regulated by law,
- total inclusion of all potential stakeholders,
- equality of all participants in the discourse,
- discussion free from coercion,
- openness to the possible subjects and contributions of the participants,
- possibility of later revisions of the results of the deliberation” (Bachmann 2004, p. 51)



Some of these points need to be elaborated further to bring the reader closer to the essence of this type of discussion. Thus, Bachmann assumes that there is a legal framework within which deliberations should take place. These regulations depend primarily on the subject and how the deliberation is used. If such a debate is an element of social consultations, then regulations related to consultations are the guardians of its proper conduct, while during deliberations used in meetings of various types of tripartite committees, legal provisions regulating the work of such committees should be observed, and so on. It seems that a generally accepted principle is “[...] to listen to the other side; for there is always something to learn from the other side” (Tully, 2002, p. 218). In such a discussion all interested parties may participate and it is unacceptable “[...] to apply gag rules” (Sroka, 2009, p. 33). Thus, all positions, views, opinions-including those not very “welcome” can be expressed and discussed. No propaganda tricks may be used, it is unacceptable to impose one’s opinion or to pull someone to one’s side with promises of additional profits. Deliberations are based on openness, allowing, and inviting not only those who are properly prepared and able to speak in public, presenting socially acceptable opinions, but also all others who may be interested in the subject of deliberation. The inclusive character of deliberations is guaranteed by the fact that they are open to “[...] people with different personality traits and worldviews, coming from a variety of backgrounds, social groups, etc.” (Zgiep, 2013, p. 52). As Jacek Wasilewski (2007) writes, each participant should be given equal access to all information needed to decide on a particular issue. Opinions and positions presented during the discussion should as widely as possibly show different points of view on a given issue. “It is then possible for the most diverse opinions and views to clash. This clash, however, should not take on the character of a fight and manipulation, according to the formula of an ‘argument of force’, but should be based on the desire to listen to each other, to get to know alternative points of view, according to the formula of a ‘force of argument’” (Jabłońska, 2008, p. 124). Deliberations are free from both external and internal coercion, which means that participants are only bound by certain

"[...] communicative assumptions and procedural rules of communication" (Sroka, 2009, p. 33). Everyone who has undertaken to participate in a debate has an equal chance of being listened to. Deliberations address important issues affecting all members of a community and are particularly recommended in situations of some scarcity of resources or means to meet the needs of all parties to potential conflicts. Those promoting deliberative debates hold the view that such debates can be held for virtually any issue that is controversial, as such a thoroughly discussed solution and a jointly made decision enjoy a higher level of legitimacy than imposed, external decisions. Elżbieta Wesołowska (2010, p. 28) believes that deliberations are such universal ways of working out decisions that they can be used "[...] in case of controversies of moral nature, and even in cases of long-lasting, inflamed conflicts that cannot be solved by previous means". An important feature of the deliberation is that the discussion can be continued virtually without restrictions and resumed (or perhaps rather awakened) at any time, which depends on the current situation. This, of course, has some disadvantages, since in such a situation it is difficult to speak of an unambiguous end of deliberation. It seems, however, that such a conventional end of a given round may be working out certain solutions, thus making a decision on a given issue.

Thus characterised, deliberation can be used to solve problems of the diverse scope: from local to transnational. What is more, the deliberative process of debating, and consequently working out solutions and making decisions, can relate to a wide range of topics?

### Characteristics of public policies

The above sentences, referring to a multitude of definitions of deliberation, can also be applied to the notion of public policies. Jerzy Hausner (2007) notes that creating public policies is one of the important and purposeful activities of political entities. These policies concern many spheres of social life and require the use of specific technologies, which include:

“[...] available resources, various techniques, types of justifications for actions taken, knowledge of decision-makers or skills at their disposal” (Hausner 2007, p. 51).

A more detailed definition can be found in the works of Andrzej Zybała (2012), for whom public policies are activities undertaken in an orderly manner by both citizens and the state to solve important problems affecting the inhabitants of a given country. In his definition, we also read that those public policies can use certain tools, which are: “[...] regulation (legal, but also self-regulation by different groups of citizens or business), cooperation, argumentation, debate, research, shaping positive incentives to adopt certain attitudes, performance indicators, evaluation, expertise (policy analysis), institutions (public offices and networks of social organisations)” (Zybała 2012, p. 13). Thanks to the development and implementation of public policies, appropriate conditions for development are created both at the collective (social groups, citizens, residents of specific cities, professional groups, etc.) and individual level.

An operational approach to public policies was presented by Jarosław Górniak and Stanisław Mazur (2010, p. 12), who indicated the forms they could take. Thus, their list includes normative acts, strategies, and programmes, which may be recommendations of a regulatory or allocative nature related to the appropriate distribution of resources in such a way as to take into account the assumed objectives, possessed resources, appropriate means and predicted deadlines for the completion of these activities. Another approach to the characterization of public policies involves defining by indicating moments when it is necessary to refer to public policies. These are then contrasted with market mechanisms that may encounter certain problems and cease to work effectively (Woźnicki, 2012, p. 133). In such a situation, intervention from the state apparatus is needed to deal with these encountered problems.

Management through the formulation and implementation of public policies is called public management, the main phases of which are:

- 1) identification of a problem with the recognition that the problem requires intervention,

- 2) development of specific solutions that will take the form of public policy,
- 3) gaining support for these solutions,
- 4) implementation of solutions,
- 5) evaluation of the effectiveness of the intervention,
- 6) introducing possible corrections to the actions undertaken.

Such a process may involve various entities, e.g., decision-makers, representatives of authorities, politicians, public administration officials, representatives of opinion formers, representatives of science, business, pressure groups, non-governmental organizations and representatives of interest groups, as well as those who are directly affected by a given public policy. Such a broad inclusion of groups involved in the process of public policy making stems from the concept of governance aiming “[...] that the rulers and the public administration should not be the only creators of public policy, but should be open to the participation of various non-governmental actors in shaping the public policy” (Graniszewski, 2017, p. 169). In this way, hierarchy disappears while networks of equal actors who work together in partnership appear instead. Governance is contrasted with the public policy-making process, which refers only to “[...] instruments of hard power and coercion according to the logic [...] of the ‘command and control’ principle. At the same time, the policy-making process is reduced de facto to a law-making process” (Zybała, 2013, p. 40). The correctness and effectiveness of the process of creating public policies is guarded not by power and authority, but by the standards of a professional approach to the activities performed, internalized moral norms, willingness to cooperate, the need for continuous learning and allowing for compromises that can be made at various stages of creating such policies.

## The place of deliberation in the process of public policy making

Public policy making is a long-term process and it can be divided into certain phases referring to the three most important stages: policy making, implementation of actions, evaluation of the effectiveness of the interventions undertaken. Dominik Kozaczka (2016), after analysing schemes of creating and implementing public policies, found that different researchers describing this process indicated between 5 and 7 stages. The author himself in the article “Public policies as a process” distinguished 5 important stages of public policy implementation, which include:

- 1) identification of the problem,
- 2) working out an optimal solution,
- 3) the decision to choose a specific solution,
- 4) implementation of the solution,
- 5) evaluation of effects. (Kozaczka, 2016, p. 332)

It always starts with paying attention to those elements that make up the functioning of the state, which are not subject to self-regulation and where intervention is needed. This is accompanied by making certain determinations relating to the objectives that one wants to achieve through the implementation of a given public policy, the actions that must be taken, the choice of an entity responsible for its management, how these actions will be managed and the actors who will take part in the whole process. This stage is related to the search for and generation of ideas to solve a given problem. Then, an attempt is made to integrate the instruments, tools and resources that can be devoted to the implementation of public policies. Alternative scenarios are developed and submitted to consultations with stakeholders interested in solving social problems. Once a decision has been taken on the implementation of a given public policy, its elements, i.e. the measures enshrined in it, are implemented. The whole process is subject to evaluation, in which, according to the principles of evaluation, both relevance, effectiveness, efficiency, utility and sustainability of the public policy should be examined (Olejniczak, 2008, p. 23).

The following questions arise: Is there room for deliberative discussions in the process of implementing public policies understood in this way? Which of the stages seem to be most compatible with deliberation and in which of them this type of deliberation should be excluded? Are there any pitfalls of introducing deliberation into the process of implementing public policies? Do deliberations work for the benefit or rather against the creation of public policies?

A careful reader can easily identify at least one place where the link between deliberation and public policies is natural. In the consultation phase, when ideas for solutions to social problems for which policies are made are evaluated, various types of deliberative discussion can be used. This is where it is appropriate to arrange debates engaging involved representatives of different backgrounds, organisations and institutions. In a discussion organised based on deliberative principles, without external or internal coercion, respecting different positions, experiences and opinions and justifying each point of view with appropriate arguments, all the pros and cons of each proposed solution can be considered. It even seems that this type of debate will ensure the participation of all interested parties, create an arena for all voices to be heard, both those in favour and those critical of a particular policy. This equal treatment of the participants in deliberation will promote the disclosure of all positions on a given issue. According to the theorists of deliberative democracy, it is precisely through deliberation that the limitations inherent in individual, private views can be overcome, and the quality of the public debating process enhanced. It also sometimes allows for a rebuilding of the consciousness of the subjects participating in such a debate and facilitates their understanding of the complex problems of the public world and the limited possibilities of their solutions. It is also possible to uncover the substrate of particularistic positions, preferences, and their ideological distortions, which in effect allows replacing “the language of interest with the language of reason” (Elster, 1989, p. 111).

Can these – in my opinion – evident advantages of deliberation also be used in other stages of public policy making? As a supporter of deliberative

elaboration of decisions and solutions, I must answer this question in the affirmative. Looking at the whole process of public policy making, I can see several places where deliberation could be applied. As early as at the very beginning, that is, when a problem arises and a decision is made to develop a public policy to remedy or remove it, there is a place for 'deliberative discernment'. By this, I mean organising such meetings using the principles of deliberation, during which it is possible to gain a thorough understanding of the sources and nature of the problem. After all, it happens that the same issue from different perspectives looks a bit different, e.g., unemployment is a phenomenon which is perceived differently by employers, differently by those looking for a job, completely differently by institutions helping the unemployed, and yet differently by those responsible for the education profiles of future employees. It seems, therefore, that looking from many perspectives and getting to know a range of opinions will allow for a better diagnosis of a given problem. The process of developing various solutions, i.e., creating proposals for public policies could also include deliberative elements. Probably we will not find room for them at the stage of creating specific documents, provisions, regulations, etc., but ideas for solutions that need to be properly formulated could be created during deliberative meetings attended by various parties interested in solving a social problem. Such an in-depth debate would certainly allow the creation of a list of advantages and disadvantages of each proposal, which would facilitate subsequent consultations of these solutions. Finally, the last phase related to the evaluation of implemented public policies may take the form of discussions with elements of deliberation (and thus be in line with the increasingly bold use of the qualitative approach in evaluation research), during which tools, solutions or measures would be analysed in depth. Again, multiple voices and a diversity of perspectives may help to produce such a final evaluation.

## **Conclusions: benefits and limitations of using deliberation in public policymaking**

When one looks at the opportunities that deliberation opens for public policymaking, doubts arise about the dangers of such a combination. Given that I am proposing to combine two processes: deliberation and public policy making, the limitations of this combination lie in each of these processes separately, as well as the resulting overlap of these limitations.

Critics of deliberation mention a number of its characteristics that may influence the low popularity of using this type of debate for decision-making relating to social issues. They write, therefore, of an overly idealistic approach to the possibility of widespread use of deliberation. It is not and probably will never be a universal method of decision-making. The demand that deliberation should end with the development of a joint position is also limiting. This requirement is being weakened and, as Jacek Wasilewski (2007, p. 16–17) writes, consensus “[...] does not necessarily mean that everyone agrees on all aspects of a given issue. Consensus may also be the result of a certain compromise behind which differences of opinion persist; it may be a kind of ‘tactical’ consensus, a solution considered the best in a given situation”. However, when such an agreement proves impossible to reach, then one often has to be content with conclusions on which all participants in the discussion agree and with outlining ‘areas of disagreement’, i.e. those fields where compromise was not possible. It is believed that those who advocate the introduction of deliberation have an overly idealistic vision of the society consisting of citizens ready to debate and willing to compromise. Not every potential participant has sufficient knowledge and skills to take part in such a discussion and to follow all its rules. This may contribute to the abandonment of such debates in favour of discussions among a small group of specialists in each field. An argument in favour of limiting access to debates held as part of the process of creating public policies is also the fact that the participants could be people who would completely undermine the validity of creating such policies – after all, the possibility to participate in deliberation is open



to everyone. During the discussion, there could be people who disagree with the proposed solutions, tools and measures needed to solve a given social problem. There may also be reservations related to the lengthiness of the deliberation process. Polish practices of creating public policies show that they tend to be developed in a short period of time when another social problem needs to be “extinguished”. They are not planned and thought through in such a way that there is time to carefully consider all possible scenarios. Therefore, there seems to be even less room for lengthy deliberations, which may undermine even what has emerged in previous rounds.

However, introducing deliberation into the public policy-making process allows, among other things, to increase the responsibility of decision-makers towards citizens, raise the level of understanding among decision-makers of the social concerns prevailing in the society, grow the level of legitimacy for the worked-out solutions, strengthen the public position of citizens and additionally enrich their experience, knowledge and skills, because the flow of information between participants allows all parties involved in the creation of public policies to get to know each other better, it works in favour of social trust towards authorities and each other, increases the knowledge of how the state works, what tasks and capacities of particular institutions are, what responsibilities of each of them are, and finally, it creates an opportunity for future cooperation.

Alastair Stark, N.K. Thompson and Greg Marston have made two pertinent observations concerning the agreement of political issues and decision-making by those with power, which can – in my view – also be applied to the call for deliberation to be used more frequently in public policymaking.

Large-scale policy consultations ought to include a citizen-deliberation component even if decision makers do not wish to share decision making power with citizens. Data from a deliberative component can be triangulated with “snapshot” forms of consultation to give policy analysts a fuller understanding of public opinion. [...] Deliberative mechanisms should be

employed in policy design processes when analysts need data about policy mixes, prospective political problems and the potential ways in which public opinion might undermine the legitimacy of a policy instrument. (Stark, Thompson, Martson, 2021, p. 11)

I fully agree with these postulates, and therefore I believe that initiating such discussions may improve the quality of public policymaking, and consequently, create social space in which further deliberations on important public issues can be organised with the participation of “ordinary” citizens and not only specialists in a particular field. It also results in the accumulation of knowledge on social, political, and technical topics that can be freely used by all interested parties. It brings the public policy-making process closer to the people, who are directly affected by the consequences of decisions.

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## Deliberation for Public Policies, Public Policies for Deliberation...

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## Systemic Position of an Actor and Relations between Actors in Democratic Forms of Negotiating Preferences in Public Policy<sup>1</sup>

**Abstract:** To be heard one must have a visible “public standing” linked to recognition of one’s autonomy (Rollo, 2017, p. 608). When treated as a crucial element of public policy planning and one of possible variants of deliberation, participatory budgeting constitutes one of these numerous public life phenomena whose quality depends on the relations between involved parties. Only to a limited extent is the configuration of these relations dependent on methods of their day-to-day implementation, because these methods are defined by deeply rooted reasons embedded in cultural structures. As a result, such relations are not easy to be studied; it is difficult to reach so deeply and define model conceptualization of the problem and the methodological aspect of this type of research. This is one of the most challenging and the most promising research fields within public policy. While not giving up on this perspective and being aware of the scale of the challenge, we are going to try to simplify the issue specified in the title, whose conceptualization we are working on in relation to implementation of the project

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entitled Evolution of civic budget in Poland – towards deliberation or referendum? (2019/33/B/HS5/00353, NCN OPUS 17). In this paper we do not refer directly to the case study the Polish civic budget constitutes within this project, as we want to underline the problem of the systemic position of a participating actor in the simplified context that can be seen as a model presenting a thinking diagram, but not as an element to be subject of complex empirical testing. As a result, it is still the attempt to define the model, not to provide a ready-to-use one, though in the text we do use the term “model”. In our previous papers we have documented certain stages of defining its specific elements, but we decided not to quote them too much to make the general view on the problem clear.

**Keywords:** public policy, systemic position, interest intermediation, participation

## Methodological approach to the problem

We are aware that even when we try to avoid the word “model” (which is difficult), we do make models, trying to include fragments of the so-called hidden structures, and remain constantly close to the post-structuralist approach, within which model making is generally avoided on behalf of various meta-analyses that are also present here, but we are not going to list them separately. Also, in the paper we still search for functional (systemic) relations, especially those that are possible to implement, but we also look for functional relations, keeping in mind key and fundamental cultural links. We search in culture “load-bearing elements” for systemic structures used in participation in deliberation, especially those that could be subject to additional regulations resulting in changing social and political practices, leading to desired modifications in patterns of behaviour, thus these culture components that directly and commonly define actions of individuals and groups. If it is really possible to perform manipulation of levers defining our behaviour in a given context, then we are on a clear path to the desired change of behaviour patterns we are bound with. It does not happen often, but sometimes such changes are successful and this is why we are interested in participation and deliberation. It is based on curiosity regarding their new, more effective forms that could

be implemented more efficiently, if some behaviour patterns embedded in our political and administrative culture were successfully changed in compliance with rules of deliberation.

Finding equilibrium between the aforesaid problems is not easy, but it also seems to have some potential to avoid unreasonable systemic structuration and blurring the essence of the problems in highly sophisticated cultural, communication or language discussions that may sometimes get close to the point of an idea, but are also far away from "real world". In this real world it is worth trying to implement such public improvements that, if correctly implemented, will result in ideas which are (as far as possible) introduced and whose local emanations would have been a result of well-thought reforms, participation, and good decisions. In other words, practice can have impact on changes in political and administrative culture, though it is difficult to control such a transformation process, but without participation its crucial orientation on democratic ideas is lost. Then there is only cold-hearted systemic pragmatism left, which uses the idea of democracy only in the context of its formal system which, when deprived of cultural essence, becomes a set of empty acts of law void of thought or ideas. Formal and institutional empty shells lose their mobilization, causative and controlling capabilities and the system is immersed in post-democratic development variants (e.g. *democradura*, *dictablanda*) or evolves to even more non-democratic forms. Projecting of democratic institutions can be understood as a nested game<sup>2</sup> and these institutions can be to a various extent adapted within the rules of democracy. This is why selection of institutions matching certain democratic projects is surely very important at the beginning, but it is not final, as institutions

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<sup>2</sup> In Polish "absorption" is more accurate than "inception" that has become popular because of the film *Inception* (directed by Christopher Nolan, 2010). The plot focuses on the possibility to implement the most important elements of the perception of reality in human psyche. In general, this is also the case of the nested democracy game; it becomes the "only game available" only when all participants are continuously re-oriented to its rules and still want to play it.



evolve in the way partially dependent and partially independent from our corrective measures.

We try not to walk already known paths and not to hang on tightly to demarcation lines between the “structural and post-structural”. However, while not denying structuralism and post-structuralism, we attempt to make use of the more deductive systemic approach, associated with structuralism and recommending to use analysis to estimate ambient parameters and systemic functions, but we also eagerly use the most inductive post-structural approach which focuses primarily on cultural conditions and is based on the method of *heuresis* that can be helpful when complexity of problems is too large for analysis.

Let us start with the optimistic, pro-democratic and non-falsifiable thesis that is generally possible to initiate democracy in almost each structural, cultural and political context, while specific systemic, cultural and political conditions may develop and uplift it or limit it and clip its wings (Schmitter, 2015, p. 2). In our opinion, this thesis, though non-falsifiable, defends itself in an obvious way and there is no need to provide detailed evidence regarding the “uplifting” or “clipping wings” of certain examples of democracy. It is very often clearly seen with one’s own eyes, even when parameterized evidence proves otherwise.

Accurate and (to some extent) measurable evidence giving a guarantee for democracy assessment has been and are still provided by authors, for example in the form of classical legacy of Robert Dahl, Arendt Lijphart or Adam Przeworski. Also, institutional democracy rankings have been prepared for years, whose authors declare independence and impartiality of results (e.g. Freedom House). However, even without parameterized evidence and expertise, but using simple awareness, it is possible to notice the most important differences and transformations of past and existing democracies (polyarchy). These differences will surely be seen in the future, too, though future attempts of conceptualization and parameterization will probably be more and more difficult.

One of the clearly seen essentials for democracy is dialogue, and precisely language dialogue games. However, their analysis always leads to

the conclusion that the essentials for human communication games are blurred – the lever of democracy in the form of dialogue seemingly emerges from nowhere, it has no solid logical grounds<sup>3</sup>. This happens because of various reasons and the most important of them may be unthinkable, but one of definable reasons of this “lack of essentials” of lingual games may be the fact that the pattern of their code is expressed in the form of contradistinctions, by dualisms that lose sense at the level of essentials themselves of what can be expressed; also, nothing else emerges in language that could be used instead of them, because language is based on dualisms reflecting contradistinctions in the form of symbols. As a result, language game essentials are unstable and this is also what interacts with the instability of human life. Considering the above, all we can do is to have a good life and play language games, the more inclusive, the better.

As language game essentials become blurred (i.e. they become indefinable for us), it is not possible to define the foundations of democracy in a finally parameterized way, either. Referring to the problem in the more “realistic” and Wittengensteinian way, we say may that what is, matters, thus it matters how and with what practical effects specific incarnations of democracy work, though defining their essentials is similar to futile attempts to define language game essentials without which polyarchy does not exist.

Considering the aforementioned reasons, what we define in brief as a model in the text is close to the term “approach” in the context of methodology. As a result, we propose the approach containing the adopted perspective and a customized way of looking at proposed issues, also to consider them (when applicable) with use of measurable parameters, however, giving the priority to quality-related nuances of the topic being discussed, thus not leaving the method of *heuresis* behind.

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<sup>3</sup> Ethical grounds for dialogue are not *credo* – they do not derive from the moral monolith and have plenty in common with language games. In this paper we do not focus on this issue in details, leaving the space for others to refer to this problem with respective proportions.

## Introduction

Let us start from the initial statement that complex and most often hidden and hardly noticeable cultural structures constituting *spiritus movens* of social life (including public life) are represented in the directly perceived social world by stratification structures (classificatory, distributive and controlling). We are going to try to define types and forces of impact of these stratifications on participation and deliberation in general, and on civic budgeting in particular.

Extrema of stratification are determined basing on the already well-known and new asymmetries taking the forms of various exclusions, elitism, familialism and patron-client relations. However, there is also evidence of the existence of possibilities to overcome stratifications by specific “breaking out of character” by social actors. We have noticed the examples of such incoming, though not very numerous situations during our research. These moments do occur, even when they seem to be quite unreal. We may find information about their potential in scientific literature and sometimes from observation and our own activities: we know that in order to enable real start of deliberation an accurate, propitious moment (i.e. favourable conjunction of relations between actors, roles and assets) needs to be supported by predominantly deliberative attitudes among participants, however they are burdened with systemic conditions preserving dominant cultural patterns.

As a result, the generalized systemic position of an actor should be seen as one of issues and even one of complex problems from which it is worth starting the analysis of the actual deliberative potential in the practical form of participatory and dialogue-oriented coordination of public decisions. Within this approach formal and institutional conditions are not omitted, on contrary, their interpretation becomes more important; however we are not going to include its significant portion in this text because of the limited form of the chapter.

While working on conceptualization of the conditions of actor’s systemic position, we focus on orientation on analysis of the data collected

during the project and the suggestions of Polish and international researchers on participation and deliberation. We especially remembered the one formulated by John Parkinson in the conclusions included in the paper co-edited by Jane Mansbridge and stating that if deliberative democracy is supposed to be an actual, normative and emancipating project, we should look for answers not only to questions how citizens should co-decide in a diversified deliberative system, but also to consider how this system is itself embedded in political economy, administration, culture, ideologies, power relations and interests. Parkinson (2012, p. 171) indicates that is uneasy task should be performed in three stages. The first one would be a critical analysis of model framework that would determine existing inconsistencies, while “not throwing the entire deliberative project into a dustbin”. The above author adds that “all political visions hide contradictions and tensions (and are ‘messy’ in this context – author’s note), while neat visions are often supported by those who forgot about something important – usually something very human”. Within the second stage, empirical research should be conducted in order to provide details on understanding the reality and possibility of deliberation. In the third stage empirical data of the highest possible quality should be selected and they should be then re-introduced to the theory.

While determining research assumptions, selecting methods and completing and analyzing data, we act in a similar way: trying to adjust a profile of a proposed interpretation model to a current state of research, we remember about classics, while analyzing data, we do not forget about dynamics and diversity of national and local conditions. And though we witnessed multiple contradictions, we threw neither entire nor potential “deliberative project” of pro-participatory systemic changes in Poland into a dustbin, as well as its real, budgetary-civic part, not only as suggested by Parkinson, but also on the basis of our own experience and common sense. Instead of examining symptoms in order to find definite decisions oriented on finding deliberative El Dorado in participatory budgeting, we are focused on defining elements of the wider diagnosis. We assume that its subsequent development will give a chance to go beyond the formula

of “simple” symptomatic treatment (using law as the main tool) and will make it possible to leave the fantasy on the “Golden City” behind. We do not limit ourselves to characterize results, but we search for reasons or possible remedies adjusted to the challenges which Polish civic budgets face as a result of dialogue-oriented tradition and participatory contemporaneity of open political systems. When confronted with local incarnations of civic budgets, we still try to rebuild certain elements and one of our crucial efforts is to provide more details on model conditions of the systemic position of an actor. The suggested model and its operationalization are oriented on searching tools to map relations between entities participating in civic budgeting and in the related forms of participation and deliberation.

## **Systemic position of an actor**

As concluded by Luigi Bobbio (2010) (whose analytical proposal constitutes the primary inspiration, but it will not be discussed separately), the systemic position of an actor can be defined in a more or less definite way and be made aware of to various extent.

In this paper the systemic position of an actor will be understood in the simplified way as a result of the (1) territorial, (2) material, (3) stratification-social-economic; and (4) stratification-political arrangements. In the proposed approach the problem of being aware of an actor’s systemic position is integrated within stratification conditions. The parameters of (systemic) arrangement of an actor within relations are shown in Table 1 and they are subsequently presented in detail in the summary of Table 2.

## Systemic Position of an Actor and Relations between Actors...

Table 1

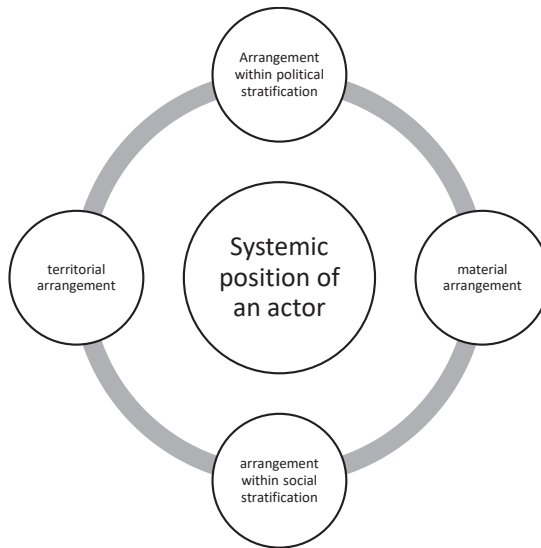
*Parameters of arrangement of an actor within relations*

<b>Type of arrangement</b>	<b>Characteristic</b>	<b>Source of data</b>
Territorial	Domicile and/or place of business operations	Demographical or statistical data, formal information, interviews
Material	Level of wealth	Demographical or statistical data, formal information, Internet sources
Stratification – (social-economic)	Related to having a specific position with the role system and within the social division of work and distribution of goods, that depends on the symbolic context and its local and cultural aspects	Demographical or statistical data, formal information, Internet sources, interviews
Stratification – (political)	Related to the existence of the systemic possibility to use advantage in relations, be in (direct and indirect) control and to apply approved pressure	Demographical or statistical data, formal information, Internet sources, interviews

Source: own work.

In fact, these parameters are strongly connected, dependent on each other and internally diversified. A similar situation occurs for possibilities of acquisition, control, operationalization and capitalization of assets – they are also complex and mutually dependent, which may seriously hamper participatory designing and public planning. As a result, each time a proposed model frame should be adjusted to a specific case. With use of quantitative and qualitative tools the proposed model assumptions should be modified in a way making it possible to uncover causative powers of an actor in theatres of social, economic and political life, while considering their relation-oriented character. The aforementioned

powers do not exist *solo* and are made real *in gremio*. Thus, it is assumed that (usually) clearer agency will be accompanied by the higher level of being made aware<sup>4</sup> of the systemic position of an actor. A similar situation refers to the problem regarding the extent to which the systemic position of an actor is to be defined; (the formal and informal) level of its defining will be higher in cases, when the aforementioned causative powers are more evident. After recognizing these assumptions, efforts are made to define actual conditions of relations, with particular consideration of consensual relations. Simplicity of the proposal and its resulting (as we assume) usefulness in mapping the systemic arrangement and interactions among the process participants are presented in Diagram 1.



*Diagram 1.*

Systemic position of an actor as a result of four arrangement aspects

Source: own work.

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<sup>4</sup> In this context it can be self-awareness of their own position by an actor, as well as a conscious perception of their position by other actors.

In contrast to Bobbio's model that constituted the primary inspiration for the proposed modification, we do not define the field scheme for certain types of relations<sup>5</sup>, but we only indicate the simplified elements of the systemic position of an actor, among which the most important are stratification issues. The adopted code of conduct results also from the general assumption to consider different contexts, possibilities and limitations of decentralization in public policy analyses. The issue of inclusive, efficient and systemically functional decentralization permanently constitutes a serious public problem in Poland. This problem is mostly qualitative, which is a reason of the functional character of the approach proposed.

It seems justified to comment on the individual and collective components. The proposed characteristic of an actor's systemic position was defined in a way suggesting a singular, that is, referring to individuals. In this context it is a generalized quantifier meaning a set of subjects towards whom analytical use of this quantifier has sense. As a result, the used generalized quantifier refers to both individual actors (persons) and various (less or more formalized and organized) collective actors. Let us also remember that collective actors find their potential not only in generalized and functionally arranged "mass" of assets of their participants; it is not the typical, "arithmetic" sum of particular assets. The potential of a collective subject also depends on type of internal and external relations, those connecting participants and involving them in external relations. Character and course of these relations define conditions of exchange and transactions, as well as methods and effects of acquisition, capitalization and operationalization of assets. Analytical focus on these relations also allows concluding that systemic components (arranged in compliance with this paradigm) of internal and external surroundings penetrate everywhere. Like programmable controllers, they are currently present at all levels and areas of the system, also its (real and apparent) boundaries, such as organizational practices of groups of interest. They can also be seen in complex

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<sup>5</sup> More on social fields of play, e.g.: Bourdieu, 2005; Ruskowski, Wójtowicz, 2009; Stankiewicz, 2017.



network relations (Błaszczyk, Sroka, 2006; Sroka, 2004). Networks can act in a way similar to power transformers by intensifying capabilities of connected actors and an entire network and by leading to fragmentation of exchange, dispersion of impact and loss of assets. They can guide or define entire systemic courses by making them more egalitarian or elitist.

In the proposed model the general rule is simple and has the utilitarian or even “practical” character: the more advantageous an actor’s systemic position, the rarer their adverse asymmetric relations will be. It is also the minimalistic variant of the well-known maximin solution, whose connotations allow making detailed conclusions on the reasons of mechanisms of generating and preservation of domination. However, it can be very misleading, if symbolical conditions are not considered. Finally, this rule, deprived of fineness and restraints, turns out to be destructive not only for deliberation but for communities in general. It is usually (except from crisis conditions) limited, softened and culturally-oriented in an appropriate way within its several diversified incarnations containing more cooperation than rivalry.

Codified standards are important, but also secondary to cultural patterns, excluding some cases of states of emergency, when a state closes its ranks, leaving only small space for any independent public activities. Attempts to correct cultural patterns with the use of formal tools may sometimes give good results, and then we are entitled to speak about so called culture-forming legal standards, but almost equally often formal normative efforts produce unexpected or even no results at all. Codified standards may also hamper development of deliberation by guiding it closer to traditional decision-making forms that provide decision-makers with more asymmetric ruling possibilities. Also, transaction costs (including costs of persuasion) may turn out to be significant, especially regarding large-scale pro-deliberative systemic changes (Perote-Peña, Piggins, 2015).

Because of the aforesaid and many other reasons, just thinking about the deliberative reform of the public space may not come easy. It is easier to think this way, when somebody has already tried to think and introduce it. Then such thinking is enriched with individual experience and

social competences. In turn, it will be definitely more difficult to think this way, when non-dialogue local cultural patterns clash with general normative schemes, e.g. in form of pro-dialogue EU formal acts. In such conditions such thinking must reach the fundamentals and start from deep understanding of the essence of decentralization and from noticing the included and intermingling social, economic, political and administrative elements. Such deduction does not come from nowhere; it emerges, if there is a specific need (e.g. need of safety), and follows stimuli constituting a promise of the optimum way to meet it. If for most citizens, culturally supported centralism meets various key needs on the acceptable level, then they do not think about decentralization innovations or, at least, they think about them much less. After getting used to centralism, people do not think easily and calmly about decentralization. Moreover, social and public patrons and customers permanently invest in mutual relations, as long as the relation balance is definitely profitable (for some) or just merely satisfactory (for others), though still acceptable. Asymmetric relations are characterized by the tendency to exaggerated expectations in terms of profits. They tend to become inertial and limit access to the network relations (and subsequently to assets). As a result, intensification of the patronage-customer relations preserve the so-called *top heavy society*, not only in the centralized context, but also in all other areas of organized social life (Olson, 1982). Then, excessive orientation on one's own interests and self-limiting become imitated and turn out to be more and more culturally embedded phenomena. They become so intermingled in the social life that all attempts to correct them can be seen as phantasmagoria, unless they constitute a type of legitimizing political and bureaucratic ritual, as in case of "reforms" of inherently incorrigible real socialism in Poland of the 1980s.

As a result, we should not go overboard, giving analytical priority only to the focus on common good and setting mundane particular orientations aside. As wisely noticed by James Stuart over 250 years ago, if miracles of the natural law have been uncovered day by day, they would not have been such anymore and if everyone has acted on behalf of common good

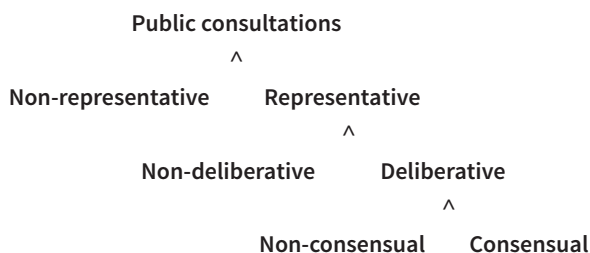
except themselves, a politician would have been confused if people have remained indifferent to their own interest, it would have not been possible to rule them (Stuart, 1767, pp. 143–144). For this politician such people would be unpredictable and he would become unnecessary. Such citizens would be entirely self-controlling and they would correctly and amicably define public goals and would choose optimal directions of collective actions. In such a world, spontaneous self-organization would stand triumphant; it is a utopia. People's actions are based on complex, dynamic, but often somehow imperfect set of orientations to their own and collective interests. And in the real world this makes them predictable and also opens the path to persuasion constituting the core of the policy oriented to participation of co-deciding. Persuasion is an exchange of arguments, as well as an exchange of opinions, preferences, proposals, benefits, assets and emotions and emotional support. All these are in turn related to transaction costs, also those intermingled with profits or losses regarding values that are fundamental for democracy. They are diversified within various forms of negotiating preferences in the public policy.

## **Operationalization in context of democratic forms of negotiating preferences**

In this paper the detailed parametric version of the (systemic) position of a relation actor is presented in the creative context of the fundamentals of public policy systemic forms referred to by James Fishkin (2009). It also brings out the balance of costs and profits related to deliberation. Fishkin draws attention to the relatively obvious, though not always fully known matter, namely that specific forms of public consultations can be of the following types: representative, unrepresentative, deliberative, non-deliberative, consensus driven and non-consensus driven (aggregative). On the basis of conclusions of system analysts and our own research experience, for the purpose of this model we propose to modify the system, distinguishing it from Fishkin's approach saying that both consensual and

## Systemic Position of an Actor and Relations between Actors...

non-consensual consultation forms lead to consolidation of particular interests in the process of their adjustment to public interests. As a result, in the approach presented in this paper, both forms (consensual and majority non-consensual) are of the aggregative type and constitute elements of the process of interests intermediation and their effects (Diagram 2).



*Diagram 2.*

Forms of public consultations

Source: own work on the basis of: Fishkin, 2018, p. 612.

In general, contemporary democratic decision-making processes may be described on the two levels, i.e. with use of referendum methods (e.g. individual voting) and deliberative solutions that are generally characterized by collective consideration, determination and decision-making. They define public policy spheres in different, though complementary ways. Their culturally, systemically, network and situation-determined unique combination makes the aggregation of interests more competing or more cooperating. In this way specific strategic choices and more and less participatory systemic versions are shaped and continuously corrected. The type of democratic system depends on the proportion between indirect decision-making (representation), decision-making in referendum and deliberation based on co-deciding (dialogue oriented on co-deciding). It is clearly seen in the systemic comparative analyses of Adam Przeworski (1991) or Arendt Lijphart (1999), in which various

forms of currently existing majority-oriented and consensual political systems are investigated, including their pluralist and corporatist formulas to make agreements regarding group interests, as well negotiable and non-negotiable methods to determine preferences, when it comes to the gradation of public goals.

Fishkin shows intermingling of referendum and deliberative methods in the diagram presenting the set of the four basic democratic fundamentals and the four systemic forms of negotiating preferences.

Table 2 includes the slightly modified version of Fishkin's concept with a short commentary. Both the modification indicated and the commentary have the purpose of providing details of the role and comments regarding parameters of the relation actor arrangement, considered in the proposed model (Table 1, Diagram 1).

Table 2

*Forms of negotiating preferences in context of the level of democratic fundamentals implementation*

Fundamentals <sup>6</sup>	Forms of negotiating preferences <sup>7</sup>			
	(A) Competitive democracy	(B) Elite deliberation	(C) Participatory democracy	(D) Deliberative democracy
(1) Political equality	+	?	+	+
(2) Participation	?	?	+	?
(3) Deliberation	?	+	?	+
(4) Non-tyranny	+	?	?	?

Source: own work on the basis of: Fishkin, 2009, p. 65; Țuțui, 2015, p. 181.

<sup>6</sup> See: Fishkin, 2009

<sup>7</sup> See: Fishkin, 2009

As seen in the Table 2, the diagram itself, though resembling a “score-board”, does not give a definitive result, however it gives some concern, revealing the peculiar “draw” (or stalemate) regarding the systemic efficiency of implementation of general democratic fundamentals. In case of each systemic forms of negotiating preferences, considered by Fishkin, at least one of the democratic fundamentals is introduced, namely the one related to the “first choice” goals within the given form (A, B, C, D) of negotiating preferences, while three or two remaining fundamentals become the “second choice” values. The latter are labelled with question marks; eight of them have been taken from Fishkin’s original work (i.e.. 1-B, 2-A, 2-B, 2-D, 3-A,3-C, 4-C, 4-D) and one has been added (4-B). The “second choice” values remain somehow suspended and can be implemented to larger extent in favourable surroundings under condition of prior assurance of realization (one, two or three, depending on a fundamental – 1, 2, 3, 4) of criteria that are more important within a given form of the decision-making process.

When it comes to chances for implementation of democratic fundamentals in all four forms of the decision-making process, as proposed by Fishkin, the relatively greatest are the chances to introduce political equality, while the chances for participation and non-tyranny are smallest. According to the diagram, realization of (formal) political equality will be assured in three (A, C, D) among four democratic forms of negotiating preferences. Deliberation will be found a priority in two of these forms (B, D), while participation will be implemented as a primary value in one of them (C), as well as non-tyranny (A).

After giving it a closer look, it is easy to notice that political equality (1) becomes potentially unstable or endangered only in case of domination of elite deliberation (B), within which equal access is challenged by clearly asymmetric relations resulting from the systemic elevation of the role of elites, e.g. expert and/or organizational elites, as in case of such “inclusive methods in exclusive clubs” typical for noocracy, industrial relations and social dialogue or management of controversial technological innovations (Sroka, 2017, 2020; Stankiewicz, 2017).

In turn, value of participation (2) will be introduced in the best way in the typically participation system framework (C), whose best example is Switzerland where “total” direct democracy does not exist, either<sup>8</sup>. The Swiss reality takes the form of semi-direct democracy. This example illustrates how many things should be done in terms of participation, as even in Switzerland it is still pursued, though this pursuance has been lasting at least since passing the federal Constitution in 1848. It can be surely said that the path to democratic participation has no visible end. Also, the “context plays the leading role in order to achieve specific effects of political activities” (Bollinger, 2013, p. 29). As a result, we may see than even places where participation has been constantly improved for many years, still rather use a democratic (but the only valid) pattern than “the one and only” practice. In turn, we should say that public participation is not a “mirage” occurring in many places outside Switzerland (Frieske, 2008). Wolf Linder (1996, p. 143) writes about the essence of the Swiss formula of “semi-direct” democracy as follows: “the most important issues are to be decided by the society, the important issues by the parliament and those of minor importance by the government”. Within the most important matters defined in such a way in Switzerland we have political system principles, key treaties, long-term development strategies, multi-year (re)distribution programs, etc. Important matters include standard parliamentary legislation, while current matters of minor importance are managed by the government by means of executive regulations and administration. The mechanics of the Swiss system is mostly of the grass-root and spontaneous type, thanks to cultural patterns and corresponding participation that is more vibrant than in most cases of polyarchy.

Deliberation (3), understood as one of four democratic fundamentals, obviously reaches its best development conditions in the consequently deliberative systemic formula (D), but also within elite deliberation (B), which is, however, exclusive and develops only within separated enclaves (the aforesaid “clubs”). The first connotation referring to this situation may

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<sup>8</sup> See more on participation in Switzerland, e.g. Linder, 1996; Bollinger, 2013.

be related to Nobles' Democracy. It is admittedly inaccurate and closer to a metaphor, but refers to the parity of sector representation, the most of them being present in industrial relations and social dialogue, though they are also relatively clearly seen within institutionalized civic dialogue.

Non-tyranny (4) will be assured in the best way in competitive democracy (A) with its typical mechanisms like *checks and balances*. If they work well, then the system of mutual incentives and limitations staves authoritarian trends away (though it sometimes enhances rivalry and weakens cooperation). In his original work Fishkin apparently admits that freedom from tyranny is also protected by elite deliberation, however, it is difficult to agree with this, when we look at the examples of etatized forms of corporatism and social dialogue that have been functioning in many places all around the world. The most authoritarian among them take the form of tyranny of various elites, which admittedly make their decisions in the form of deliberation, but the process is performed within hermetic and exclusive circles. As a result, regarding the modification proposed in this paper, e.g. on the basis of previous research of social dialogue (Sroka, 2009), it was determined that in elite deliberation non-tyranny is the "second choice" category and Fishkin's proposal was corrected, as presented in the Table 2 in which in the box 4-B we put a question mark as a symbol of the "second choice" value within certain forms of negotiating preferences.

### Summary

Within four democratic forms of negotiating preferences, implementation of fundamentals can be potentially close to *some* (i.e. corresponding to specified principles) perfection within competitive democracy, elite democracy, participatory democracy or deliberative democracy. However, in practice, the most important factor is the culturally, geopolitically and economically defined path dependency and sometimes complex circumstances (David, 2000; Pierson, 2000). Still, relation actors are never "entirely programmed"; i.e. they are not completely dependent on the abovementioned path and



certain circumstances. Indeed, the range of their possible actions is limited, moreover, within all of four forms of negotiating preferences (i.e. A, B, C, D in the Table 2) it is limited in different ways. Also, much depends on the situation-related and long-term invention of participants and their will to act with purpose to change present conditions. Activism on behalf of change of stratification systems and related asset exchange processes is important, as well practicing dialogue relations, genuine and efficient enough in order to overpower preserved non-dialogue patterns.

As a result, the issue is to popularize a change-related orientation and corresponding attitudes that would express the autonomy of certain subjects, their inner locus of control, efforts for agency and efficiency. These orientations must not be too particular (like in Nobles' Democracy). They have to contain the evident public component whose existence limits excessive particular efforts, also making their realization more possible in the wider and still negotiated political and public context.

Individual and collective orientations undertaken by actors may become pragmatic in the sense that, firstly, they allow to reject excessive optimism regarding real possibilities for the efficient use of potentially available procedural solutions in the system and, secondly, when the effect of accumulation of pragmatic strategies becomes visible, then it is possible to overpower present patterns, overcome affective polarization (as regards world-views, or ideological or religious context) and it becomes practically possible to extend the scope of deliberative interactions within each forms of negotiating preferences included in the Table 2. As a result, active non-public entities are able to define the direction of systemic evolutionary changes. However, the scale of popularization of the required strategies is important, as well as maximum involvement of mini-publics known to us from daily life (sometimes planned, sometimes spontaneous)<sup>9</sup>. One of the most significant effects of thus defined change can be better a protection

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<sup>9</sup> In the narrow context, the development of mini-publics is one of deliberative techniques, however in this context mini-publics are defined in a much broader way, also as spontaneously created groups, for example among neighbours (Lafont, 2017).

of implementing the democratic foundations, namely aforementioned political equality, participation, deliberation and non-tyranny.

When operationalizing parameters of relation actor arrangement in specific conditions, it is worth paying attention to those practical aspects that can be related to capabilities and limitations of activity within the defining process of public preferences (Table 3).

Table 3

*Parameters of relation actor arrangement – details and subsequent operationalization*

Type of arrangement	Characteristics	Source of data
Territorial – decides on “territorial features” of arrangement	domicile and/or location of business operations, activities (including level of dependency on specific location) with consideration of organizational position of an individual actor and the rank of organization itself (collective actor) in public order, which is related to potential of its activities	generalized social and economic profile of SGU, with consideration of statistical data; local activity of internal (local) entities; local activity of external entities, SGU strategic location, if present, and its possible unfavourable location
Material	level of material wealth with consideration of asset availability, including the most important elements of human resources (human capital), related to the structure of education, competences and their usefulness on local labour markets	generalized profile of material wealth, considering statistical data in particular, community and public contexts; also, possibly objective (e.g. structural) barriers for increasing profits
Social and economic stratifications	declared and hidden (latent) <sup>10</sup> functions related to certain position held within the role system and social division of work and distribution of goods, seen in context of real policy network capabilities <sup>11</sup>	demographical, statistical, data, formal information, predominant opinions, information from reliable Internet sources, interviews

<sup>10</sup> See more on latent functions in the classic paper (Merton, 1957) or practical research application (Manges, 2018).

<sup>11</sup> Find more on network systems: in public policy (Sroka, 2004), in Polish regions (Błaszczuk, Sroka 2006).

Type of arrangement	Characteristics	Source of data
Political stratifications	declared and hidden functions related to existence of the systemic possibility to use advantage in relations, be in (direct and indirect) control and to apply approved pressure, seen in the context of occurrence of so called parallel relations of power <sup>12</sup> , potential and actual coalitions of support, distributive coalitions, problem-related networks and other existing network systems, also those possible to occur within SGU public policy	demographical, statistical, data, formal information, predominant opinions, Internet sources, interviews

Source: own work.

Our proposal is not “complete and ready to use in practice”, as other concepts regarding implementation-oriented medium-range models that can and should evolve, following cultural changes and attempts to define them. We assume that using the results that are actually being developed within the project will enable us to continue research with purpose to give a closer look at impact of systemic positions of actors on relations occurring among them.

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<sup>12</sup> Find more on parallel relations of power (Crozier, Friedberg, 1982).

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## Deliberation in Health Policy: The Case of Poland

**Abstract:** Health policy measured by objective and quantitative (budget spent) and subjective and qualitative (the position of good health in the ranking of goods the most desired by individuals) measures can be considered as one of the leading public policies. This article aims to analyse the processes of deliberation in health policy formulation with a special emphasis on Poland. The method is a meta-analysis. The EBSCOhost, ScienceDirect, and BazEkon together with the resources of specialized institutions and think-tanks were searched. The time frame for the search was 2010–2021. The keywords: deliberation, public consultation, public policy planning, public participation and debate, health care system, and health policy were used in various combinations. After the presentation of the goal and method, the experiences of selected countries in involving stakeholders in the process of health policy formulation are described. Then the Polish case is characterized and assessed. The article concludes that deliberation in health policy in Poland is in its infancy and differs from Western patterns, and it remains a research gap.

**Keywords:** deliberation, public consultation, public policy planning, public participation and debate, health care system, health policy

### Introduction

Health policy can be perceived as an important public policy (understood as a set of actions the government takes to address issues within society)



for at least two reasons<sup>1</sup>. First is the economic dimension of health and the second is the high subjective and objective value of health.

The economic dimension can be measured by health expenditure per capita. In 2018 the US spent about \$3.6 trillion on health care (18% of GDP) and about \$11,172 per person (Health Care Costs By State 2021, 2021). In the same 2019 in the European Union countries health expenditures per capita averaged to Euro 2,572 (8.3% of GDP at average) (OECD/European Union, 2020, pp. 157–158).

Health is also highly valued as an axiological category. Health is a value thanks to which an individual or a group can fulfil their aspirations and need for satisfaction, as well as change and deal with the environment and plays a significant role in social consciousness. Health is regarded as an inherently good thing and instrumental for more ultimate good things (Culyer, 2014, p. 5).

An anecdotal argument could be the fact that in almost all cultures all over the world, among the best wishes to loved ones, friends and acquaintances, good health is at the forefront.

Consequently, health policy fully deserves to be the subject of the analysis in this article and a contribution to the wider discussion about deliberation in public policy.

Let us start by defining the terms from the title of the article. Consequently, the meaning of *deliberation*, *health policy*, *public health policy*, and *health-related policy* should be clarified.

After Sroka (2019, p. 72) deliberation is understood here as:

[...] the most advanced form of dialogue co-decision, in which consensual parties work together and voluntarily to develop new, shared knowledge (episteme) and implement – according to this shared knowledge – decisions that multiply individual and group opportunities, as well as resources of a community nature (the so-called common pastures). Deliberating

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<sup>1</sup> Street et al. (2021) arguing for the implementation of deliberative inclusive approaches to health policy pointed also at such arguments.

parties respect their autonomy and do not disregard their mutual interests, as well as expert and secular knowledge, as well as individual and group emotions.

One may also identify three basic components of deliberation: expert knowledge, stakeholder interests, and emotions (Komporozos-Athanasiou, Thompson, 2015; Zabdyr-Jamróz, 2018). In the deliberation processes and governance, it is important to combine the knowledge of the authorities and public administration (ruling elites) with the knowledge of citizens. In addition, deliberation procedures – taking into account the participation of representatives of various social groups – guarantee public authorities access to knowledge and information resources at the disposal of the community (Kołomycew, 2020, p. 27). An interesting issue is researching public deliberation effectiveness (Bruns Ali, Ganapati, 2020) but it can only be acknowledged in this article.

Coming to health policy and leaving aside the review of dozens of health policy definitions presented in the literature, we assume in this article that health policy is the decisions, plans, and actions that are taken to achieve specific goals in society (Klich, 2021, p. 171). Consequently, it is a formal statement or procedure within institutions (notably, government institutions) that defines priorities and the parameters for action in response to health needs, available resources, and other political pressures. Health policy can be communicated through decisions, plans, procedures, and actions on all levels, starting from global, and then through central, regional and local ones. World Health Organization emphasises that in the process of developing and implementing the health policy: “Consensus can then be strengthened, and various groups can understand what might be their expected role in implementing the policy” (WHO. Regional Office for Europe). This in turn leads us to communication and deliberation in shaping health policy.

There are many categories of health policies, for example, global health policy, public health policy (see below), mental health policy, health care services policy, health insurance policy, personal healthcare policy,

pharmaceutical policy, and policies related to public health such as vaccination policy, tobacco control policy or breastfeeding promotion policy. Each category of the health policy can then be disaggregated. For example, the health insurance policy can have the form of public health insurance (including tax-based public health insurance and social security schemes) or private health insurance (including health insurance that is compulsory per legal stipulation). The latter can have four forms: private employment group health insurance, private employment group health insurance, private community-rated health insurance, and private risk-rated health insurance. One can have also a mix of public and private health insurance policies (OECD, 2004).

One may distinguish between two types of health policies: regulatory and allocative. Regulatory health policies help standardize and control certain groups of people while allocative provide one group of people with resources or power by taking it from somewhere else. Examples of regulatory policies are market-entry restrictions, rate- or price-setting controls on health services providers, quality controls on the provision of health services, market-preserving controls, and social regulation. An example of an allocative health policy is a list of free-of-charge pharmaceuticals for senior citizens (age 75 or older) in Poland.

One may conclude that health policy is a heterogeneous and complicated phenomenon linked directly and indirectly to nearly all the spheres of human activity.

As indicated above, public health policy can be considered as a subcategory of health policy. Public health policy is defined (again, taking apart the review of the existing definitions of the term) as the laws, regulations, actions, and decisions implemented within society to promote wellness and ensure that specific health goals are met. Public health policy plays a role in multiple sectors, including health care, insurance, education, environmental protection, transport, etc.

Health-related policies in turn are formal or informal written statements that are designed to protect or promote health. Examples of health-related policies include policies prohibiting tobacco and alcohol

use, policies requiring healthy foods to be served in schools, policies allowing for flexitime to exercise or attend health programs in workplaces, policies aimed at reduction of carbon dioxide and sulphur dioxide, policies of protection against air, water and soil pollution, sustainable urban development policy, noise reduction policy, agricultural policy, employment policy, etc.

All three terms introduced above are interconnected. The scope, the nature, and the character of health policy stipulate that in the process of health policy formulation and implementation many stakeholders are involved (Numerato, Honová, Sedláčková, 2021). They represent various interests, sometimes conflicting. That is partly why “Politics, for better or worse, plays a critical role in health affairs politics” (Oliver, 2006, p. 195). This in turn requires good communication and deliberation. Public deliberation is understood in this article as an approach policy-makers can use to tackle public policy problems that require the consideration of both values and evidence (Solomon, Abelson, 2012).

The goal of this article is to answer three questions: (1) What is the scope of deliberation in shaping health policy? (2) What are the international experiences with deliberation in health policy planning? and (3) What are the Polish experiences with deliberation in health policy formulation?

The method is a meta-analysis. Three databases were searched: EBSCOhost, ScienceDirect, and BazEkon together with the resources of specialized institutions and think tanks. The time frame for the search was 2010–2021 and the keywords: *deliberation*, *public consultation*, *public policy planning*, *public participation and debate*, *health care system*, and *health policy* were used in various combinations. The selection process had three stages. In the first stage, the publications were checked by their titles to eliminate those not connected to the three research questions. The second stage was the elimination of overlaps. In the third stage, after reading and assessing the content of all of the abstracts of publications identified in the previous stage, 108 publications were identified for in-depth study. In addition to this, several further sources from think-tanks and professional associations were used.

The article is structured as follow. First, the review of the literature is presented followed by the foreign experiences with deliberation in health policy. Here the main determinants of effective deliberation in health policy are indicated. In the second part of the article, the Polish experiences and achievements are presented and compared to the international ones followed by conclusions and limitations of the study.

## **Deliberation in health policy**

Research on deliberation in public policy has a considerable record, but deliberation in health policy is still considered a comparatively new method (Degeling, Carter, Rychetnik, 2015; Powers, Shore, Perez, Ritley, Kuppermann, Holmes, Tzimenatos, Shawargga, Nishijima, 2019). This situation may come as a surprise as the health sector is built on public values which play important role in health policy (Baker, Mason, McHugh, Donaldson, 2021; Whyte Olivier, 2021).

Following Solomon and Abelson (2012) reasoning, one may maintain that health policy covers issues that are well suited to public deliberation because they are tightly connected to conflicting public values (for example, setting policies for population biobanking requires weighing privacy and consent against ease of research and outputs; and individual control over biobanks against benefits and risks to communities and unconsenting individuals), high controversy (for example abortion or/and euthanasia), combined expert and real-world knowledge (for example health insurance coverage, vaccination mandates, clinical trial design, and biobanking policies), and low trust in government.

As indicated earlier, deliberation is focused on values and evidence. Anthony J. Culyer (2014) elaborates on social values in health and social care and outlines some of the main value judgemental issues that arise in health and social care. He presents these issues as conflicts. Based upon the post-war discussions about health and social care policy in the UK he distinguished between liberalism versus libertarianism, the market versus

the state, public versus private insurance, equity versus equality, inequalities of health versus inequalities of health care, equity versus efficiency, needs versus wants, prices versus rationing, financial protection versus quality of life, public versus private, agents versus principals, universality versus selectivity, comprehensiveness versus limited benefit bundles, centralisation versus decentralisation, competition versus collaboration, and experts versus citizen. The majority of these conflicts can be observed also in other countries and other healthcare systems, Poland and the Polish healthcare system including (this issue will be elaborated on later in the article). One value judgemental issue which is common for all countries is experts versus citizens conflict. One may agree that medicine and medical science require specialized knowledge and skills thus one may question whether deliberation is a proper method to shape health policy.

One may question Culyer's conflict: experts versus citizen. As Kaplan, Farooque, Sarewitz and Tomblin (2021) showed using the example of the Expert and Citizen Assessment of Science and Technology (ECAST) network, citizen deliberation may contribute to innovative and reflexive participatory technology assessment method. This method, after some adjustments, can be used as a deliberation tool in health policy.

Keeping in mind that deliberation is focused on values and evidence, one may argue that it fits with health systems characteristics. As shown by Whyte and Olivier (2021) health systems are complex social systems, and values constitute a central dimension of their complexity. Deliberation can be used practically in all four mechanisms by which health systems are considered to contribute social value to society identified by the authors.

The tight relationship between deliberation and health is acknowledged by Culyer (2014) who maintains that almost all decisions about the design of health system, as well as those to do with their continuing operation, are deeply imbued with social values; that is, value judgements about what is good for society.

Several deliberative methods can be used in health policy formulation. Degeling et al. (2015) in their scoping review of public deliberation in public health and health policy research (years 1996–2013) identified the following

deliberative methods to engage citizens in a formal process of information exchange and knowledge-making: choice work dialogue, community or citizens' juries, citizens' panels, deliberative polling, deliberative public participation meeting, consensus conferences, deliberative mapping, town hall meetings/issues forum, and structured decision-making workshop (Degeling et al., 2015, Appendix A, p. 120). They consider deliberative methods best-suited to resolving complex policy issues where people's values are of central importance either because of the number of people affected or the profound impact on individuals. Deliberative methods are particularly useful for policy questions about situations involving clear conflicts between ethical imperatives (justice, beneficence, and respect for autonomy for example) such that the decision entails the unavoidable creation of unlucky or even unjustly treated individuals or populations; and/or so-called 'hybrid issues'. These are issues where the technical and normative aspects of a question are profoundly interwoven, including when there is significant technical uncertainty or normative conflict (Degeling et al., 2015, p. 115).

Such a variety of deliberative methods opens the door for practical questions. The first one could be for example: What criteria should be used when choosing specific methods? Which of these methods is the most commonly used? Which are the most effective? or When to choose deliberation? (Solomon, Abelson, 2012). This, in turn, implies the possession of knowledge originating from empirical studies on using deliberation methods in health policy formulation. Here, however, one notices limitations due to the moderate number of empirical studies.

It seems strange that on the one hand deliberative public involvement methods are being used but on the other, they have not been evaluated rigorously (Abelson, Eyles, McLeod, Collins, McMullan, Forest, 2003; Krinks, Kendall, Whitty, Scuffham, 2016). As far as the problem of the effectiveness of the deliberation process in health care is concerned, one may acknowledge the study by De Vries, Stanczyk, Wall, Uhlmann, Damschroder and Kim (2010). They examined four dimensions of the quality of deliberation: (1) equal participation by all members of the session, (2) respect for the

opinions of others, (3) a willingness to adopt a societal perspective on the issue in question (rather than a focus on what is best for participants as individuals), and (4) reasoned justification of one's positions (De Vries et al., 2010, p. 1986). Following this, Blacksher, Diebel, Forest, Goold and Abelson (2012) maintain that robust and reliable deliberative processes must provide participants with balanced factual information, ensure that a sufficiently diverse range of potentially conflicting, minority and marginal perspectives are considered, and create opportunities for free and open discussion and debate within and between citizens and researchers or policy actors, or both, to challenge and test competing claims. These three conditions are considered minimum and mandatory.

Some of the Solomon and Abelson's questions have the answers. For example, we know from the findings by Street, Fabrianesi, Adams, Flack, Smith, Carter, Lybrand, Brown, Joyner, Mullan, Lago, Carolan, Irvine, Wales and Braunack-Mayer (2021) and Degeling et al. (2017) that the most popular deliberation method in health policy is the citizens' jury method. It is worth noticing, however, that the citizens' jury method has been evolving and currently the term describes a broad array of methodological approaches. It is also important that the standards for what constitutes a good quality citizen/community juries deliberation have not been identified yet (Scott, Sims, Degeling, Carter, Thomas, 2019).

The latter leads us to the statement, that there are many challenges deliberation in health policy is facing, for example broadening its reach and scale, increasing its acceptability to policymakers, and integrating it into policy decisions (Abelson, Warren, Forest, 2012). There is no doubt that the process of deliberation deserves further research (Lehoux, Proulx, 2019). One of the current streams of research on deliberation in policy-shaping refers to Web 2.0 environment (Hope, 2018).

One may conclude that the research on deliberation in health policy remains in its infancy. Having said that, let us come back to the research questions of this article.



## What is the scope of deliberation in shaping health policy?

Degeling et al. (2015, p. 117) indicated that deliberative techniques were applied to many disparate and overlapping problem domains in health policymaking. These included:

- health technology assessment,
- health priority setting and resource allocation at local and national levels,
- priority setting for health research,
- policies that direct acute clinical activities – especially surrounding triage in pandemic planning and organ donation,
- questions about population health interventions – especially regarding services to address the social determinants of health,
- questions about access to levels of health insurance coverage, and
- values-oriented questions about the governance and planning of health services such as, for example, e-Health, privacy and genetic testing, Telecare, xenotransplantation, and point of use water treatment in remote communities.

Now, in the time of the COVID-19 pandemic, the scope of public deliberation in health policy has been extended. It is because the SARS-CoV-2 pandemic has unprecedented health and economic consequences (Chen, Chang, Rao, Lerman, Cowan, Ferrara, 2021; Jit, Ananthakrishnan, McKee, Wouters, Beutels, Teerawattananon, 2021)<sup>2</sup> and impacts virtually all spheres of human existence (Erni, Striphas, 2021). Consequently, it is intensively explored by the media. Sometimes COVID-19 is used as a tool in a political game leading to the politicization of public health practices (Chen et al., 2021). National COVID-19 policies vary across European countries (Engler, Brunner, Loviat, Abou-Chadi, Leemann, Glaser, Kübler, 2021). It is worth mentioning the Swedish COVID-19 policy which differs substantially from

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<sup>2</sup> An anecdotal evidence could be the result of a quick search in google scholar where the conjunction of the terms “COVID-19” and “health policy” was used. On October 12, 2021 there were over 3.1 million findings indicated.

others. The Swedish “soft measures” strategy against COVID-19 is based upon two pillars: evidence-based medicine and a close partnership between the government and society (Kavaliunas, Ocaya, Mumper, Lindfeldt, Kyhlstedt, 2020). Concerning the latter, deliberation is used. The pandemic strengthens the need to improve the quality of public deliberation, particularly about science as advocated by Gusmano (2020).

The rising trend of deliberation in health policy notwithstanding, one may conclude that countries differ in the scope of using it. Using the number of publications as a proxy<sup>3</sup>, one may maintain, that the USA may be perceived as a leader in using deliberation in health policy (Brown, Gusmano, 2013; Carman, Mallery, Maurer, Wang, Garfinkel, Yang, Gilmore, Windham, Ginsburg, Sofaer, Gold, Pathak-Sen, Davies, Siegel, Mangrum, Fernandez, Richmond, Fishkin, Siu Chao, 2015; De Vries, 2020; Dzhurova, 2020; Goold, Myers, Danis, Abelson, Barnett, Calhoun, Campbell, Hammad, Rosenbaum, Kim, Salman, Szymecko, Rowe, LaHahn, 2018; Gusmano, 2013; Kuehl, Anderson, Mehlretter, Holman, Hunt, Leichter, 2020; van Leersum, van Steenkiste, Moser, Wolf, van der Weijden, 2020; Menkel-Meadow, 2011; Mitchell, Hartelius, McCoy, McTigue, 2021; Morrissey, Rivera-Agosto, 2021; Waljee, Ryan, Krenz, Ioannou Beste Tincopa, Saini, Su, Arasim. Roman, Nallamothu, Goold, Danis, Abelson, Gornick, Szymecko, Myers, Rowe, Kim, Salman, 2019). The next two countries are Canada (Boothe, 2019; Lehoux, Jimenez-Pernett, Miller, Williams-Jones, 2016; Nicholls, Etchegary, Carroll, Castle, Lemyre, Potter, Craigie, Wilson, 2016) and the UK (Karimi, Brazier, Paisley, 2019; Komporozos-Athanasίου, Thompson, 2015; Pearse, 2020). Followed by Australia (Boswell, 2014; Street et al., 2021) and New Zealand (Walker, Egan, Young, Jaye, Jackson, 2020). One may say that the core Anglosphere countries are the leaders. Deliberation in health policy is practised also in other countries like Germany (Gansen, Klinger, 2020; Gansen, Klinger, Rogowski, 2019), Sweden (Baekkeskov, Rubin, Öberg, 2021), Finland (Raisio, Vartiainen, 2015), and Spain (Osuna, Pérez-Carrión, Pérez-Cárceles, Machado, 2018).

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<sup>3</sup> Keeping in mind all of the limitations of such a measure, the share of the US social science in the global science being one of the examples.

Along with the research on a single country deliberation in health policy cited above, there is a stream of comparative studies for example by Baekkeskov et al. (2021) on Sweden and Denmark, by Truchlewski, Schelkle and Ganderson (2021) on European Union countries, by Bogliacino, Charris, Gómez, Montealegre and Codagnone (2021), on low-and middle-income countries by Berlan, Buse, Shiffman and Tanaka (2014) or on Italy, Spain, and the UK, and by Pedersen and Borghetto (2021) on Italy and Denmark.

One may conclude that deliberation in health policy is used in countries of developed and stable democratic systems (all of the examples provided above) and mainly in countries with a social structure that is diverse in terms of culture, language or customs (USA) or/and open to migrants (Australia, Canada, Germany, and Sweden).

## **What are the international experiences with deliberation in health policy planning?**

Although there are publications on deliberation in health policy, there is a limited number of publications focusing on deliberation in health policy planning. One may maintain that among problem domains in health policymaking where deliberative techniques identified by Degeling et al. (2015) only two are directly connected to health planning. They are health priority setting and resource allocation at local and national levels, and policies that direct acute clinical activities – especially surrounding triage in pandemic planning and organ donation. The first can be illustrated by Hirsch and Rice (2020).

Hirsch and Rice (2020, p. 122) describe a tool for governance and planning of HIV/AIDS services at the provincial level (Hai Phong) in Vietnam<sup>4</sup>. This tool includes a System Dynamics model and an interface (developed by Forio)

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<sup>4</sup> The authors refer to collaborative governance in the article therefore, qualifying this as the example of deliberation may be questioned but variety of stakeholders involved in the process as well as the way of communication allow for treating it as deliberative government.

that enables its use by planners and multiple stakeholders. The tool supports two modes of planning: a normative mode (allowing to explore mixes of service interventions directed at high priority target populations and then to think about where the necessary sources of funding might be mobilized) and a budget-based mode (starting from assumptions about funding levels). The Hai Phong case shows that a tailored interface for the provincial HIV/AIDS model with user-friendly input screens for specifying interventions can lead to better planning and management of complex problems such as HIV/AIDS. Although the planning component is present in the article, the mainstream of considerations is focused on management problems.

This less than the moderate number of research on deliberation in health policy is also mirrored in the recent publications. Here, among the topics covered during deliberations one may find:

- clinical trials (Powers et al., 2019),
- obesity (Boswell, 2014),
- vaccination (Baekkeskov, 2016),
- patient and physician autonomy in decision making Maurer, Mangrum, Carman, Ginsburg, Gold, Sofaer, Pathak-Sen, Richmond, Siegel, 2017),
- drug assessment by patients (Boothe, 2019),
- patient health state preferences (Karimi, Brazier, Paisley, 2019),
- euthanasia (Raisio, Vartiainen, 2015) and assisted dying (Assisted Dying Bill, 2021; Walker et al., 2020),
- Food and Drug Administration (FDA) decisions (Gusmano, 2013),
- Health Technology Assessment Agencies (Goetghebeur, Cellier, 2021; Kaplan et al., 2021),
- patient self-determined and independent life (Gansen et al., 2019),
- repercussions of COVID-19 (Baekkeskov et al., 2021; Bogliacino et al., 2021; Ingraham, 2021; Pearse, 2020; Truchlewski et al., 2021),
- hepatitis C treatment (Waljee et al., 2020),
- eating behaviour (König, Sproesser, Schupp, Renner, 2021),
- sharing administrative health data with private industry (Street et al., 2021),

- abortion (Aarons, 2012),
- fighting against AIDS, tuberculosis, and malaria (Brown, 2010),
- long-term care (van Leersum et al., 2020),
- health-related quality of life (Gansen, Klinger, 2020),
- social and ethical implications of prospective health technologies (Lehoux et al., 2016),
- genomic risk (Nicholls et al., 2016).

The assessment of deliberation in health policy formulation is generally positive but one must acknowledge that research on the effectiveness of various deliberation methods in health policy remains in its infancy. This refers also to deliberation in health planning. Consequently, it is risky to generalize.

## What are the Polish experiences with deliberation in health policy planning?

“Poland: A large but still under-researched country”

Reinhard Busse

The motto of this paragraph is the title of the article by Reinhard Busse, a well-known researcher of health care management processes, published in *Health Policy* a few years ago (Busse, 2016). The motto shows, in a nutshell, what are the achievements of research on health policy in general and on deliberation in health policy in particular in Poland.

One should acknowledge, however, that deliberative democracy and deliberative governance are studied by Polish researchers (Gorgosz, 2014; Grygieńć, 2016; Krzewińska, 2017; Pawłowska, Kmiecik, Kołomycew, Radzik-Maruszak, Antkowiak, 2020; Sepkowski, 2016; Sroka, 2019; Zabdyr-Jamróż, 2018; Zybala, 2013, to name a few) including public deliberation modelling (Zgiep, 2013).

The less than moderate level of the development of deliberation in public policies (as compared to the West) in general, and deliberation

in health policy, in particular, allows maintaining that this article may contribute to fulfilling the research gap.

Let us start with the diagnosis of the way how the state and its citizens organize the process of solving public problems, including public health ones. It is assessed rather as unsatisfactory (Krzewińska, 2017; Potorski, Willa, 2018; Zybala, 2013). Krzewińska (2017, p. 45) writes about “[...] extremely rare application of the procedures of deliberative democracy in Poland”. She points to the reasons for the low level of civic activity of Poles arising, among others, from the low level of social trust and social capital in Poland, low voter turnout, unavailability of respondents in public opinion polls, a lack of interest in social consultations and local affairs, and little experience in making decisions on social issues (Krzewińska, 2017, p. 69). Deliberation processes as such get a negative assessment. Here one may find that the places where deliberations are most often organized are often alien to the participants of the discussion and are not conducive to conducting the debate itself. Methods of recruiting participants are questionable, as are the ways and channels of information. Quite often topics for deliberations are assessed by the participants as “difficult” and boring. What can be problematic is the nature of deliberation rules when participants play different social and professional roles. Sometimes conclusions from the deliberation processes are wicked and also their quality may be questioned. Last but not least is the low level of acculturation of the deliberation procedure (Krzewińska, 2017). As one may expect, also the implementation of modern tools of deliberation is rare in Poland<sup>5</sup>. Stasik (2015) reviewing most important experiences with the application of different methods designed to take into account knowledge, perspectives and interests of a broader array of stakeholders or members of the general public in the political discussion on the potential implementation of new technologies, such as consensus conferences, citizens juries, and scenario workshops, refers to two projects: “Włącz się” [Join in] for

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<sup>5</sup> For example Kubiak and Krzewińska (2012) indicated that deliberative polling<sup>®</sup> – the opinion research method created and patented by James S. Fishkin was used only once in Poland (in 2009 in Poznań).

public participation in the creation of local energy strategies, and a project “Razem o łupkach” [Together on shale] concerning the conditions of shale gas exploration in specific municipalities (Stasik, 2015, p. 88).

A separate but interesting problem tightly connected to the very meaning of deliberation is the involvement of experts and external consultants in deliberation processes. Here we may indicate some administration officials' reluctance to invite external consultants. Administrative officials also have a sceptical attitude to the legitimacy and purposefulness of cooperation with experts. To say more, public administration and advisory and analytical institutions do not have a mutual understanding of the context and purpose of both types of institutions. There is also a lack of conviction among some Polish decision-makers (especially politicians) about the necessity to pursue an evidence-based policy (Gorgosz, 2014).

It is double important in the health care system where information asymmetries between physicians and health professionals on the one hand, and politicians and patients on the other are huge. What is worth mentioning is the way physicians and health professionals define themselves in the health care system. The most recent, but only anecdotal evidence could be a quote from V Kongres Wizja Zdrowia – Diagnoza i Przyszłość – Foresight Medyczny [V Congress Health Vision: Diagnosis and Future – Medical Foresight] and XV Hospital & Healthcare Management Congress which took place in Warsaw on October 13–14, 2021. The Congress is an important forum for medical professionals (mainly physicians) and health care managers. One of the topics during the Congress was the draft bill on quality in health care. Some experts (physicians) claim that it should not include a consumer approach to the patient. According to one expert “[...] the patient cannot be seen as a client, because the relationship between them and the health care system is asymmetrical – the patient is usually not able to assess whether the optimal treatment has been applied” (Lurka, 2021). Such an attitude may suggest that physicians (health care specialists) do not perceive patients as partners in deliberation on health-related problems.

To conclude that the achievements in the field of deliberation about health policy are far from satisfactory in Poland, let us comment shortly on

health policy itself. The Polish health policy is a subject of criticism. It represents the “survival model” characterised by inactivity (Domagała, Klich, 2018) and is used instrumentally by politicians, of which the presidential election during the COVID-19 pandemic in July 2020 is a good example (Włodarczyk, 2020). The short-term perspective prevails in health policy in Poland and the system is focused on responding (usually with a substantial delay) to problems and challenges. Organized, properly planned, prospective actions and activities are rare. There is a lack of political will to initiate public discussions on fundamental issues such as insufficient financing of healthcare (and here co-payment as a still unsolved problem), the role of the private sector in health services delivery (private health insurance as a still existing problem), abortion (which will be commented below), or ageing. To a great extent, all these are consequences of the institutional weakness of the Polish model and deficiencies of collaborative spirit.

Coming back to deliberation in health care let us compare the list of topics of deliberation in Western countries to the Polish practice as it is documented in the literature. Table 1 shows the results.

Table 1  
*Topics of deliberation in the health care system in the West compared to the Polish practice as documented in the literature*

Activity/issue	Present in deliberation in Poland	Comments
1. Clinical trials	No	This is not perceived as a public health problem.
2. Obesity	No	Obesity becomes a health problem in Poland, especially among children (Krzyszczcha, Skrzypek, Gorał, Szczygieł, Kowal, Pokarowski, Momora, 2021; Żegleń, Kryst, Kowal, Woronkowicz, 2021). About 30 per cent of children in early school age and 20 per cent of teenagers suffer from obesity



Activity/issue	Present in deliberation in Poland	Comments
3. Vaccination	No	In the time of the COVID-19 pandemic, there is a group called in the media the antivaccination movement. No organized deliberation processes with them have been prepared are
4. Patient and physician autonomy in decision making	No	Patients are not considered as partners in therapeutic processes by the majority of physicians
5. Drug assessment by patients	No	
6. Patient health state preferences	No	
7. Euthanasia and assisted dying	No	The strong influence of Roman Catholic Church accompanied by the current ruling political parties block deliberation on this
8. Food and Drug Administration (FDA) decisions	n/a	n/a
9. Health Technology Assessment Agencies	No	HTA in Poland does not initiate any actions aimed at a consultation
10. Patient self-determined and independent life	No	
11. Repercussions of COVID-19	No	No single measure/action undertaken by the government and the Ministry of Health was a subject of deliberation
12. Hepatitis C treatment	No	Hepatitis C disease is not an epidemiological problem so far in Poland
13. Eating behaviour	No	Some positive legal regulations were passed but without public consultations

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14. Sharing administrative health data with private industry	No	This important issue is not seen as the problem in Poland
15. Abortion	No	Restrictive health policy in this respect has not been consulted
16. Fighting against AIDS, tuberculosis, and malaria	No	These are not big public health problems in Poland
17. Long-term care	No	Polish society is ageing but no orchestrated actions are taken to address this issue in health policy
18. Health-related quality of life	No	Although the issue is perceived as a problem, nothing is done to deliberate on it
19. Social and ethical implications of prospective health technologies	No	Polish health care system is only moderately technically developed
20. Genomic risk	No	Polish health care system is only moderately technically developed

Source: Author's own materials.

Table 1 shows that none of the twenty deliberation topics identified in the recent publications is the subject of deliberation in health policy in Poland and presented in the literature, both English and Polish language. This does not necessarily mean that consultation is absent in the Polish health care system. To develop this further, first, the main stakeholders in the Polish health care system should be identified and then the institutional framework of public consultations in the health care sector should be presented. Table 2 presents the most influential stakeholders (as stated in appropriate legal regulations) of the Polish health care system.

Table 2  
Main stakeholders in the Polish health care system

Institution	Main responsibilities	Comments
Ministerstwo Zdrowia (Ministry of Health)	Organization of the health care system, health policy formulation and implementation, control over National Health Fund	Although there is a separate Department Dialogu Społecznego (Department for Social Dialogue), there is no public information available on its activities
Narodowy Fundusz Zdrowia (National Health Fund)	Purchasing health services from public and non-public health care providers	It has a monopsony position in the Polish health care system
Agencja Oceny Technologii Medycznych i Taryfikacji – AOTMiT (Health Technology Assessment Agency)	Supporting the minister of health in the decision-making process regarding health technologies and from 2015 also regarding the financing of drug and non-drug services	AOTMiT (established in 2005) is a consultative and advisory organizational unit with a legal personality, supervised by the minister responsible for health. In June 2019 AOTMiT received a new statutory task regarding initiating, supporting and conducting analyzes as well as scientific research in the field of health technology assessment, pricing of health services. AOTMiT is the most influential (although not decisive) body for defining the basket of health services financed by the obligatory health insurance system. AOTMiT also opinions Programy Polityki Zdrowotnej – PPZ (Health Policy Programs) prepared by local government units
Rzecznik Praw Pacjenta – RPP (Patient's Rights Ombudsman)		The establishment of Patient Ombudsman in 2008 (Act of November 6, 2008, on patient's rights and the Patient's Rights Ombudsman (with amendments), Journal of Laws 2020, item 849) is the result of patient community pressure and lobbying
Stowarzyszenie Pacjentów Primum Non Nocere (Patient Association Primum Non Nocere established in 1998)	Helping patients – victims of medical malpractice/errors	Approximately 20 thousand instances of medical malpractice are registered yearly in Poland but only one in ten victims initiate a legal procedure

<p>Federacja Polskich Pacjentów – FPP (Federation of Polish Patients)</p>	<p>Informing and teaching all stakeholders involved in drug research and development by explaining how to gain more meaningful involvement in areas such as drug discovery, planning and conducting clinical trials, drug safety assessment, risk-benefit assessment, and health economics</p> <p>Protection of patients' rights and representing their interests before authorities, state administration and local government as well as other bodies, institutions and entities</p>	<p>FPP represents European Patients Academy on Therapeutic Innovation – EUPATI. FPP initiated in 2012 Dialog dla Zdrowia (Dialogue for Health). FPP is involved in projects financed by European Economic Area Grants and Norway Grants</p>
<p>Polska Federacja Szpitali – PFSz (Polish Federation of Hospitals, with over 280 members)</p>	<p>PFSz works for better financing of hospitals, increasing the importance of hospital management, the safety of patients and hospital employees, as well as for quality, good management practices, education and good legislation</p>	<p>There is a separate association, Ogólnopolskie Stowarzyszenie Szpitali Prywatnych (Polish Association of Private Hospitals with 106 members)</p>
<p>Związek Pracodawców Innowacyjnego Przemysłu Farmaceutycznego INFARMA (Association of Employers of the Innovative Pharmaceutical Industry INFARMA)</p>	<p>“The goal of INFARMA is to undertake initiatives positively influencing the creation of systemic solutions in the field of healthcare in Poland. Such solutions should enable Polish patients to use modern and most effective therapies, so that Polish treatment standards correspond to the global standards” (Retrieved from: <a href="https://www.infarma.pl/o-infarmie/dzialalnosc">https://www.infarma.pl/o-infarmie/dzialalnosc</a>, 27.10.2021)</p>	<p>In Poland, INFARMA represents the European Federation of Pharmaceutical Industries and Associations (EFPIA). The goal of INFARMA is rather elusive and its practical activities bear the hallmarks of lobbying activities aimed at including new, innovative drugs in the list of reimbursed drugs.</p>

Source: Author's own materials.

The content of Table 2 should be supplemented by the organizational setting for public dialogue in the healthcare sector. It should be acknowledged that in Table 2 Rada Dialogu Społecznego (RDS) (Social Dialogue Council) is missing. RDS was established according to the Act of July 24, 2015, on the Social Dialogue Council and other social dialogue institutions (Journal of Laws of 2015, item 1240). It is a forum for tripartite dialogue in Poland and cooperation between employees, employers and the government, operating at the central level. The RDS's role in the social dialogue in Poland notwithstanding, one can prove that its role in deliberation in the health care sector in general and in health policy in particular, is only moderate since there are other deliberation institutions. For example, the structures of the Ministry of Health include the Tripartite Team for Health Protection (which mirrors, to a certain extent, RDS function), the Public Health Council (with the working team for public health development, the team for dietary supplements and the team for the prevention of suicides and depression), and the Steering Committee for the coordination of ESIF interventions in the health sector (MRPiPS, 2018).

The goal of the Tripartite Team for Health Protection (operating since 2005) is to develop common positions in the area of health protection, respecting the constitutional fundamental rights, in particular: the right to freedom, the right to life and the right to freedom of business activity (MRPiPS, 2018, p. 241). At the meetings of the Tripartite Team in 2017, among others, the following topics: legislative work of the Ministry of Health on the prepared system solutions, financing of health care, draft assumptions for the draft act on quality in health care and patient safety, National Program for Mental Health Protection, the situation in the State Sanitary Inspection, draft acts amending the Act on the State Medical Emergency and some other acts, draft act on the method of determining the lowest basic salary of employees working in medical professions, information on the financial situation of the National Health Fund, information from the Ministry of Health summarizing the publication of the list of hospitals included in the so-called hospital network (MRPiPS, 2018, p. 242).

For comparison, in 2016, in the Tripartite Team for Health Protection, the following topics were discussed

[...] the role and place of the public and non-public sector in ensuring the health of Poles [...], the so-called hospital network, the financial situation of research institutes, the pharmaceutical industry in the Plan for Responsible Development, implemented and planned systemic changes in the area of nursing and care services as part of long-term care as well as palliative and hospice care, and public blood service. (MRPiPS, 2017, p. 230)

This looks good, but the devil is in the detail. In the Tripartite Team for Health Protection there is no patient representation and in the Public Health Council patient associations may have just one representative (with one vote) out of several Public Health Council members.

One may conclude that although institutions of social dialogue at the Ministry of Health exist, patient associations do not have a strong representation. They are, however, active on other forums. The record of the activity of patient organizations in cooperation with the regulator has a relatively long history, both before and after 1989. The first patient initiative of a national scale “Rodzić po ludzku” [To Give Birth in a Humane Way] was initiated in 1994. This women movement – supported by influential Polish daily *Gazeta Wyborcza* – succeeded with the improvement of quality of care in hospital maternity wards (Wittenberg, 2014). The strengthening of the patients’ rights movement has been documented by several events of consultations, for example, participation in “Okrągły Stół” [Round Table] meetings organized by the Minister of Health Marek Balicki (2004–2005), participation in the work of the “Teraz Zdrowie” [Health Now] Coalition (2006), and active contribution to “Biały Szczyt” [White Summit] (2008) (FPP, 2021a). On the initiative of the Federation of Polish Patients (FPP) in 2011, Minister of Health Bartosz Arłukowicz approved the idea of regular working meetings with representatives of patients’ associations. Among them were: Instytut Praw Pacjenta i Edukacji Zdrowotnej (IPPiEZ) (Institute of Patient Rights and Health Education),

Ogólnopolska Federacja Stowarzyszeń Reumatyków “REF” (Polish Federation of Rheumatics Associations “REF”), Polska Koalicja Organizacji Pacjentów Onkologicznych (PKOPO) (Polish Coalition of Cancer Patient Organizations), Polskie Stowarzyszenie Diabetyków (PSD) (Polish Diabetes Association), Federacja Stowarzyszeń “Amazonki” (the Federation of “Amazons” Associations), Krajowe Forum na rzecz Terapii Chorób Rzadkich ORPHAN (the National Forum for the Treatment of Rare Diseases ORPHAN), and Ogólnopolskie Stowarzyszenie Młodych z Zapalnymi Chorobami Tkanki Łącznej “3majmy się razem” (the Polish Association of Young People with Inflammatory Diseases of the Connective Tissue “let us stay together”). Then in 2012 on the initiative of the Polish Federation of Associations “REF”, the team was enlarged by experts in the field of law, medicine, economics and it was called Dialog dla Zdrowia (DdZ) (Dialogue for Health). DdZ initiatives were coordinated by FPP (FPP, 2021a) and may be classified as deliberation. It is interesting to notice that DdZ meetings (by the way: organized in the Ministry of Health facilities) between 2012–2016 were organized regularly (in 2012 – 6 meetings, in 2013 – 6, in 2014 – 8, in 2015 – 5, in 2016 – 4) and were properly reported. However, in 2017 there were only 2 meetings, and reports ended on May 31, 2017 (FPP, 2021b) which suggest that DdZ lost its continuity. This may suggest considerable FPP dependence on external funding<sup>6</sup>.

An interesting proposition of FPP is the strategy and areas of cooperation with patient organizations. Four areas have been distinguished: strategic, economic, technological and scientific as well as socio-cultural. In the strategic area, FPP places cooperation with European Union institutions, reform of the health care system and its stabilization, prevention and promotion of health, the position of patient organizations and the impact of European regulations. The economic area covers the consequences of the financial crisis and the rising costs of healthcare. In the technological and scientific area, there are eHealth and telemedicine, individualized medical

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<sup>6</sup> FPP is financially supported from European Economic Area Grants and Norwegian Grants.

care, patient data, communication technologies and “e” information and education. The last highlighted area, socio-cultural, is represented by: patient-centred health care, patient empowerment, patient acceptance/scepticism, and consumerization and individualization (FPP, 2021a). One may conclude that the above areas of cooperation match with some of the deliberation topics in the Western countries indicated above.

There is some anecdotal evidence suggesting certain problems in patient associations’ day to day operations. For example, in 2018, the Minister of Health – within the framework of work on a new act on quality in the health care system – established a team for patient rights and obligations, the members of which were representatives of patient associations. After a few months of the operation of the team, Adam Sandauer, the founder of Patient Association *Primum Non Nocere* quit the team together with a representative of another patient association, *Alivia*. They revealed to the media their the greatest reservations caused by the fact that the authorities (i.e. Ministry of Health representatives in the team) did not take into account the comments submitted by patients’ representatives, the lack of voting protocols and minutes from the meetings, and the unclear way of making decisions (*Puls Medycyny*, 2019).

Staying for a while with anecdotal evidence one may point at a positive example connected with a problem which is the policy of reimbursement for medicines and pharmaceuticals. The assumptions of the draft act on reimbursement medicines, foodstuffs for special purposes, nutrition and medical devices were made public on 8–11 September 2010 by the Minister of Health during the session of the 20<sup>th</sup> Economic Forum in Krynica. At the same time, the project appeared on the website of the Ministry of Health (Bochenek, Urban, Giermaziak, Kucharczyk, Brzozowska, Jahnz-Różyk, 2013, p. 2). Finally, a new act on reimbursement was passed through the Polish Parliament on May 12, 2011. Medicines are reimbursed by an administrative decision of the Ministry of Health, which also determines the official selling price (issued for a period of two to five years). The list of medicines and their prices is opinioned by the President of AOTMiT and then by the Economic Commission of the Ministry of Health. Interestingly



enough, one may notice a kind of inconsistency here. Elements of deliberation were used in the process of the new law creation and implementation but there is no deliberation mechanism in the process of preparation of the lists of reimbursed medicines (which directly influence patients' budgets).

Another positive example could be the most current activity of the Ministry of Health in respect to public consultation which is the draft act on the national oncological network. On October 29, 2021, the stage of agreements, opinions and public consultations on the draft act on the National Oncological Network began. The draft act introduces a new model of organization and management of oncological care, which will improve the organization of the system of providing healthcare services in the field of adult oncology. Let us hope that the patients' voices will be heard carefully in this deliberation.

The mechanism of patient associations' influence on health policy planning remains to a large extent unknown. There are no publicly available publications analysing the mechanisms and effectiveness of patient involvement in this process. Only anecdotal kinds of assessments are available, mostly of journalistic, not analytical character which can be interpreted as a research gap.

Probably the most striking evidence of the rejection of very needed public deliberation is changing the anti-abortion law in Poland. One may notice that such an important issue as planned restrictions in access to abortion procedures was not discussed by the Public Health Council before the Constitutional Tribunal ruled on October 22, 2020, that abortions due to severe, incurable and fatal fetal defects are inconsistent with the Constitution. To be exact, the Constitutional Tribunal stated that article 4a, section 1, point 2 of the Act on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy (the so-called embryo pathological premise) is inconsistent with Art. 38 (the principle of protection of life) in conjunction with Art. 30 (protection of human dignity) and Art. 31 sec. 3 of the Constitution (the principle of proportionality). The manner of proceeding with the amendments to the anti-abortion law was criticized by many lawyers, intellectuals,

and politicians not only from the left side of the political scene. Also, the Polish ombudsman, Adam Bodnar, criticised the changes arguing that any change in anti-abortion law should be preceded by a fair, public debate, during which interested parties will be able to present their arguments (Starzewski, 2020). The restrictions of the anti-abortion law led to a massive social protest called Ogólnopolski Strajk Kobiet (National Women's Strike) on the streets of dozens of Polish cities and involving hundreds of thousands of protesters for months.

### Conclusions

The conclusions can be formulated as follow:

- 1) In Western countries, deliberation in health policy is still considered a comparatively new method.
- 2) Deliberative public involvement methods used in health care systems in various countries have not been evaluated rigorously.
- 3) Deliberation in health policy is used in countries of developed and stable democratic systems and mainly in countries with a diverse social structure.
- 4) Deliberation is usually used in respect to health technology assessment, health priority setting and resource allocation at local and national levels, priority setting for health research, policies that direct acute clinical activities – especially surrounding triage in pandemic planning and organ donation, questions about population health interventions – especially regarding services to address the social determinants of health, questions about access to levels of health insurance coverage, and values-oriented questions about the governance and planning of health services such as, for example, e-Health, privacy and genetic testing, telecare, and xenotransplantation.
- 5) Although there are some publications on deliberation in health policy, there is a limited number of publications focusing on

deliberation in health policy planning. This particular aspect will have to be researched.

- 6) In the West, deliberation in health policy can contribute to health policy planning since the deliberation processes are conducted before changes in the legal regulations or actions are undertaken. It can therefore be said that in the West deliberation has a prospective character.
- 7) In Poland, the research on deliberation in health policy remains in its infancy. This is a research gap that needs to be filled up.
- 8) Although the institutional setting for public dialogue (i.e. institutions responsible for public consultations) in the Polish health care sector may be assessed as satisfactory, little is known about the effectiveness of deliberation in health policy (in general) and in health policy planning (in particular).
- 9) Anecdotal kind of evidence shows that the mechanisms of deliberation do not work properly in Poland. In some cases, deliberation in health care has a reactive character that contradicts with planning.
- 10) As the case of the Constitutional Tribunal decision of October 22, 2020 shows, unlike other countries where abortion laws were subject to public deliberation, in Poland patients and citizens were refused to be consulted on such an important issue.

## Limitations

The article lacks a rigorous analysis of consultation and deliberation processes in the Polish health care system. This is partly due to the limited information on the procedures of consultations on the level of the Public Health Council at the Ministry of Health. Health policy was presented only on a central level, ignoring actions and initiatives undertaken on regional and local levels.

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## Lobbying Activity in the Lawmaking Process as an Example of Public Deliberation between the Ruling and the Ruled

**Abstract:** Deliberation concerns the involvement of social groups in creating a rational or conceptual framework for planned public activities through dialogue for analyzing the general issues to develop solution projects. That is done by pointing to arguments and searching for compromises between various interest groups and their priorities. We may also consider deliberation a process in which many voices and arguments are revealed in a given public subject, based on an understanding of the reasons behind them. This takes place within the adopted rules for the exchange of reasons and arguments. There are many formalized deliberation mechanisms in Poland. They take various forms. We see them, for example, in the mechanisms of social consultations, the appointment of various consultative and advisory bodies, forums for dialogue, and the exchange of opinions. They often have a more vital link to the lawmaking process than to the process of formulating public policies. Members of various fora for dialogue are more likely to focus their efforts around specific laws that the government submits or plans than around a specific spectrum of problems and their possible consequences over specific time scales. In other words, the subject of interest is the correlation of group interests with specific legal provisions. Much of the deliberation often moves to the parliament as the rulers redirect some of their program activity there. In parliament, the discussion takes place mainly among deputies and senators. Nevertheless, there is also a place for a particular form of deliberation that allows citizens to present their positions in the legislative process. It is about lobbying

activities in the lawmaking process, practiced by parliamentarians themselves and professional and non-professional lobbyists, which is an effective tool for civil dialogue between the ruled and the rulers in the lawmaking process. In this article, the author describes lobbying activities as a civic tool for influencing the lawmaking processes to shape public policies, increasing their transparency and legitimacy in the eyes of citizens, with particular emphasis on the legal conditions in this area in Poland. It presents, among other things, the definition and genesis of the phenomenon of lobbying, methods of lobbying, legal regulations concerning the conduct of lobbying activities in Poland, and the related obligation to be transparent about the actions taken.

**Keywords:** lobbying, deliberations, public policies, interest groups, lawmaking

## Introduction

Deliberation concerns the involvement of social groups in creating a rational or conceptual framework for planned public activities through dialogue for analyzing the general issues to develop solution projects. That is done by pointing to arguments and searching for compromises between various interest groups and their priorities (Zybała, 2013). We may also consider deliberation a process in which many voices and arguments are revealed in a given public subject, based on an understanding of the reasons behind them (Majone, 2004). This takes place within the adopted rules for the exchange of reasons and arguments. Thus, deliberation is a multifaceted, rich, and interactive phenomenon. It is considered a critical phenomenon that enlivens modern democratic systems (Uziębło, 2009). It also creates an opportunity to overcome the visible defects of today's democracy, which suffers a kind of damage as a result of the emergence of various phenomena with which it cannot deal effectively and permanently (e.g., in specialized issues, there is a tendency to make decisions basing solely on technocratic reasons, apart from the democratic debate). Deliberation plays a significant role in politicians (Hausner, 1999). It increases their legitimacy, creating an opportunity to include a more significant

share of social interests in politics (Lathrop, Ruma, 2010). It increases the interest in problems, draws attention to different, complementary, or contradictory dimensions of public action. It is a space for agreeing with a possible social consensus around specific public decisions. It enables building adequate resources of operational knowledge. It enhances the process of learning about public issues (Majone, 2004).

There are also many formalized deliberation mechanisms in Poland (Grygień, 2017; Juchacz, 2006; Krzewińska, 2016; Sroka, 2009). They take various forms. We see them, for example, in the mechanisms of social consultations, the appointment of various consultative and advisory bodies, forums for dialogue, and the exchange of opinions. There are relatively many of them, but it is often difficult to determine the effectiveness of these deliberations in terms of the impact on deepening the understanding of public problems or identifying critical challenges. They often have a more vital link to the lawmaking process than to the process of formulating public policies. Members of various fora for dialogue are more likely to focus their efforts around specific laws that the government submits or plans than around a specific spectrum of problems and their possible consequences over specific time scales. In other words, the subject of interest is the correlation of group interests with specific legal provisions (Antoszewski, 2003; Grochalski, 2003; ). Much of the deliberation often moves to the parliament as the rulers redirect some of their program activity there (Jasiecki, 2001b). In this way, the government has the opportunity to avoid the need to conduct public consultations and sometimes the same deliberation in a broad public (public consultations are required only in the case of submitting government draft laws). In parliament, the discussion takes place mainly among deputies and senators. Nevertheless, there is also a place for a particular form of deliberation that allows citizens to present their positions in the legislative process (Bierć, 2000, 2001, Matraszek, 2000). It is about lobbying activities in the lawmaking process, practiced by parliamentarians themselves and professional and non-professional lobbyists, which is an effective tool for civil dialogue between the ruled and the rulers in the lawmaking process (Kurczewska, 2006).



In this article, the author describes lobbying activities as a civic tool for influencing the lawmaking processes to shape public policies, increasing their transparency and legitimacy in the eyes of citizens, with particular emphasis on the legal conditions in this area in Poland. It presents, among other things, the definition and genesis of the phenomenon of lobbying, methods of lobbying, legal regulations concerning the conduct of lobbying activities in Poland, and the related obligation to be transparent about the actions taken.

## Definition of lobbying

The word lobbying comes from English. Literally translated, “lobby” means a hall or corridor therefore, it comes from where citizens could meet with representatives of the authorities. Hence, lobbying means “the activity performed in the lobby” (Zorack, 1990). As Janina Paradowska (2000) writes, the hotel lobby for American members of Congress or the lobbies of the British House of Commons was the only place where ordinary citizens and business people could stay. They also waited for politicians to present them their matters to be dealt with. With time, influencing the state’s decision-making processes, including the parliament’s legislative activity, was commonly referred to as lobbying, and amateurism was replaced by professionalism. The term “lobby” has also begun to denote, in a verbal sense, the entirety of the means of pressure exerted by lobbyists (Zorack, 1990). Nowadays, lobbying is defined as activities aimed at advocating the interests of social groups towards power structures, mainly state power. It is primarily convincing, providing information and promoting certain decisions, actions, and solutions (Srokosz, 2007). The specificity of this type of activity is the specificity of the target group. It is mainly composed of decision-makers at various levels. As Philip Kotler (1991) points out, lobbying is contacting and convincing members of legislative bodies and state officials to specific legal and administrative solutions. On the other hand, Judith Symonds (1994) believes that lobbying is one of the ways in

which citizens can participate in the formulation of government policies and defend their interests. From the point of view of governments, it is a way of getting opinions on various issues. In short, lobbying is a way of promoting ideas and causes. This is the marketing of ideas. Lobbying can be characterized as the ability to persuade a decision-maker to do something that he would not have done without the persuasion of the lobbyist or to abandon something that he would normally have done. In other words, lobbyists are responsible for changing the way they act and behave and, consequently, for the content of the final decision. The lobbyist's effectiveness is directly proportional to their persuasion skills (Mastromarco, Saffer, Zieliński, Biedrzycka, Hryciuk, 1995). Dan Mastromarco, a professional lobbyist in the United States, says lobbying is like a war in which both sides try to force their way through. Sometimes it is a knife war, but sometimes it is also child's play with various tricks supported by bold ideas. According to him, lobbyists in the United States resemble salespeople selling ideas, the implementation of which leads to changes in the proposed regulations and laws. Lobbying, in his opinion, is a child of democracy, thanks to which pressure groups have an impact on the shape of the law. If a group feels threatened, then by using lobbying techniques, it can effectively force its position. Thus, lobbying is a kind of dialogue between society and the authorities. From the above considerations, the term lobbying combines both a behavioral element (i.e. activity and action) and a factual element, indicating a message. Therefore, it seems justified to position lobbying from the communication perspective. Lobbying largely concerns establishing direct relations between the pressure group – the lobby and the state apparatus. As a rule, advocacy of interests is presenting information to decision-makers in the form of reports, analyzes, simulations, or comparisons of data from below, from the practitioners of a given issue. This information makes it possible to make a decision based on a multilateral consideration of the issue and to predict its various consequences (Ziemniak, 2002). Therefore, the information provided below makes decisions that affect reality, that is specific social and economic matters. As Marek Matraszek (2000) writes, lobbying is nothing more than

simply an effective transfer of reliable information to those who make political and clerical decisions. Generally speaking, lobbying interests come down to influencing decision-making processes in state institutions and concerns, particularly persuading, providing, and obtaining information (Lewicka-Strzałecka, Protas, 2009). Consequently, these actions lead to the promotion of certain decisions, actions, or solutions (Rippel, 2003). This exchange between both parties – decision-makers and citizens – of additional information about reciprocal relationships and the undertaken activities contributes to disseminating mutual knowledge and understanding (Clamen, 2005). Therefore, as Ewa Karpowicz (1999) argues, lobbying is sometimes considered a representative activity that complements the election process, creates an opportunity for citizens to get involved in public affairs, and encourages them to do so.

## The genesis of lobbying

Broadly understood advocacy of the interests of social groups in the structures of power is not an entirely new phenomenon. For even in ancient Greece, direct democracy allowed citizens to express their demands personally in front of a public assembly. It is commonly believed that the procedures of that time, which allowed for the articulation of one's views, wishes, or claims, were also conducive to influencing decisions of a more comprehensive public scope. Except for the small city-states of ancient Greece, similar behavior was possible only for a narrow, privileged group of people, usually staying in close proximity to state dignitaries (Zorack, 1990). As a result, the phenomena that we consider today in terms of influencing decision-making processes for centuries have mainly taken the form of clique actions, informal connections, often having the nature of specific patron-client relationships or corrupt practices, utterly different from the current standards of representative democracy (Jasiecki, Mołęda-Zdziech, Kurczewska, 2000, 2005). Since time immemorial, merchants, entrepreneurs, and candidates for brilliant political careers have sought the support

of people and groups who exercise power and make key state decisions, i.e., rulers. The kindness and protection from the leading players on the political scene brought quite tangible profits and allowed them to gain an advantage over their competitors (Mróz, 1998). Only the development of parliamentarism initiated the creation and development of representation mechanisms, from which lobbying became one of the most important forms of communication and interaction between the ruled and the ruling. Lobbying took place on a large scale in the developed democracies of the modern world, where the particular interests of professional groups, entrepreneurs, and associations gave rise to the functioning of pressure groups. Great Britain is considered to be the homeland of lobbying in Europe. With the spread of the custom of informal meetings, the term lobbying began to be used to describe talks behind the scenes, and from around the 1930s, the same name was used for pressure groups intended to influence members of the House of Commons and the House of Lords (Karpowicz, 1999). Both the phenomenon itself and the term that defined it spread to other European countries and the United States. In Washington, for example, the word lobby or lobby-agents, and soon also the neologism “lobbyist” have been in common use since 1982 (Wiszowaty, 2006). Thus, the two English democracies, with their usual pragmatism, gave the right of citizenship to this cultural diplomacy, as old as social relations themselves (Zorack, 1990).

### **Legal regulation of lobbying in Poland**

Lobbying activities for a long time were not reflected in the Polish law (Deszczyński, 2005). The government was afraid of lobbying because it was perceived as a corruption-generating activity. Contacts between the world of politics and business, especially those aimed at a specific shaping of reality through the enactment of appropriate regulations, were limited to the minimum necessary so as not to be accused of favoring private interests. There were also restrictions of an objective nature. One of such

brakes was the state ideology and system conditions in force. For a long time, the issues of pressure groups and lobbying in Poland remained on the outskirts for political and ideological reasons. The communist government wanted to have absolute power, to decide on the separation of various goods on its own, and was reluctant to see the formation of any structure that could threaten its position and even become an equal partner in managing the country. In addition, the state that created the budget and managed its expenditure was also the owner of the entire economy, so it had no one to exert pressure on it (Zaraska, 1994). Hence, the operation of pressure groups under the previous regime was often classified and sometimes even illegal. The public did not know how to effectively exert pressure on decision-makers and perceive and evaluate lobbying activities. This phenomenon caused a distance and aversion to lobbying and a widespread misunderstanding of the needs of advocacy and professionalization. This situation partially changed with the beginning of the political transformation. The systematic introduction of numerous market reforms and the transition to the democratic system resulted in significant changes in the entire system of representing interests, which initiated the formulation and development of the general institutional framework for lobbying activities (Wrzeszcz-Kamińska, 2003). It was then that it turned out that the society does not speak with one voice in every matter, that there are interest groups in Poland (in the positive sense of the word), such as private entrepreneurs, farmers, employees of the so-called budgetary sphere, importers, exporters, producers of certain goods and services. Group interests which were organized and demanding to be taken into account emerged only after 1989. It was possible due to the democratization of decision-making procedures in our country, including, in particular, the strengthening of the Sejm as an organ of the actual legislative human rights, such as freedom of speech, petitions, associations, and assemblies. During the first period after the political breakthrough, it was not yet realized that the phenomenon of parliamentary and extra-parliamentary lobbying was proliferating in our country. At the same time, public opinion was informed that enterprises, professional or economic

self-governments, trade unions, associations, and even churches often strive for gaining access to deputies and senators for the legislative acts to be given the shape desired by these organizations (Winczorek, 2002). Lobbying activities were planned to be regulated in 2000 in the M.P.'s draft law on transparency of decision-making procedures, interest groups, and public access to information (Jasiecki, 2003a). The draft of this Act contained regulations on the principles of transparency of decision-making procedures, access to information, and the maintenance of websites by public authorities and information on persons performing public functions, as well as consulting legal acts (Jakubowski, Kaczorowski, 1999). Lobbying activities were to be carried out without the obligation to obtain special powers or registration but would be publicly disclosed by the public authorities against which they were conducted. The project can be assessed as a contribution to the regulation of lobbying. However, the works on this bill have not been completed due to the end of the term of office of the Sejm. The events of 2001–2003 accompanying the work on the government draft amendment to the Broadcasting Act, commonly known as the “Rywin-gate”, turned out to be a turning point in the discussion on the legal regulation of lobbying, which had been going on for years. They led to public hearings before the first parliamentary investigative committee established under the provisions of the Constitution of 1997. In turn, during the work of the Investigative Committee to investigate the allegation of irregularities in the supervision of the Ministry of the Treasury over representatives of the State Treasury in PKN Orlen S.A. and the allegation of using secret services (formerly UOP) to illegally pressurize the judicial authorities in order to obtain decisions aimed at exerting pressure on the members of the management board of PKN Orlen S.A., the backstage of Polish lobbying regarding the draft act on biofuels was revealed (Wiszwaty 2010). Representatives of the Ministry of the Interior and Administration, representing the Council of Ministers during the work on the government draft act on lobbying activities, pointed out that the draft was not created due to the above-mentioned scandal, as work on it began much earlier. However, during these works, M.P.s repeatedly referred to

situations of corruption, paid protection, and other illegal situations that took place in the first years of the 21st century:

In our country, lobbying has bad associations. Undoubtedly, such icons will go down in the history of Polish parliamentarism, such as the issue of the Broadcasting Act and the famous words “or magazines”, the Act on Games of Chance, where tax privileges for slot machines, or the Act on biofuels. This is the dark side of this Sejm term – the Rywin-gate, Rywin’s investigative committee, Orlen’s and PZU’s investigative committees. (Sejm session, July 2005)

The need for an act on lobbying activities was also discussed in the context of the “gelatin scandal” (Pilczyński, 1999; Szoszkiewicz, Trębski, 2000) and reports and recommendations on counteracting corruption in Poland presented by the European Commission, the World Bank, and the Supreme Audit Office, in the atmosphere of a crisis of confidence in the public sphere related to the “Rywin scandal” and the Act on Games of Chance, considered in terms of pathological lobbying, as well as the deteriorating image of Poland in the international arena (Jasiecki, 2003b). During these discussions, the opinions of science about Polish lobbying were dominated by three proposals to regulate it. The first concerned regulating the behavior of people occupying high positions in the state, the second postulated special lobbying legislation, and the third called for environmental self-regulation (Wiszwaty, 2010). Ultimately, it was decided that Polish lobbying law, which is universally applicable, consists of the Act of July 7, 2005, on Lobbying Activities in the Lawmaking Process (t.j. Dz.U. z 2017, poz. 248) and three executive acts issued to that (Wrzeszcz-Kamińska, 2003; Kuczma, 2008a). Important issues, in particular regarding public hearings in the field of bills, were included in the Regulations of the Sejm (resolution of the Sejm of the Republic of Poland of July 30, 1992 – Regulations of the Sejm of the Republic of Poland, M.P. of 2021, item 483) and the Regulations of the Senate (Resolution of the Senate of the Republic of Poland of November 23, 1990 – Regulations of the Senate, M.P. of 2018,

item 846). In the Act on lobbying activities, the lawmaking process includes a reference to the regulation of these resolutions (Wielowieyska, 2005).

### Statutory solutions for lobbying in Poland

The Act specifies issues related to lobbying activities – professional and non-professional – but only in the lawmaking process (Wielowieyska, 2005). Therefore, its provisions do not regulate lobbying activities in other areas that are not lawmaking, for example, in the process of recruitment for state positions, in the area of spending public funds, conducting social campaigns, or in the area of applying the law, e.g., in issuing administrative decisions (Kuczma, 2008c). In the doctrine, lobbying activities regulated in the commented Act are therefore called legislative lobbying, as they influence the law's establishment or amendment (Deszczyński, 2005). During the work on the draft of the discussed Act, focusing on lobbying in this area, it was emphasized that the lawmaking activity of the state is the most important area exposed to the interest of various interest groups because the adoption of specific legal regulations favorable to certain groups is a guarantee of their stability. The subject of lobbying is therefore influencing lawmaking, which includes establishing universally binding and internally binding law and binding law throughout the country (e.g., laws and regulations) and local law, i.e., acts of local law (Kubiak, 2013). The lawmaking process should be understood broadly and even refer to the stage of consultations and drafting opinions. Consequently, also from the subjective point of view, a maximally extensive interpretation is possible, and anyone who influences the lawmaking process in the manner provided for in the Act should be considered a lobbyist (Kuczma, 2011). According to Art. 2 clause 1 of the Act, "lobbying activity is any activity carried out using legally permitted methods, aimed at influencing public authorities in the lawmaking process". This influence, however, cannot be aimed at legislating according to particular interests, regardless of costs, but should only strive to obtain the most favorable regulation,



which, however, corresponds to the principle of a democratic state of law and the principle of legalism (Kuczma, 2007, 2008b; Spurek, 2015). In this definition, several elements can be distinguished – each action, an action carried out using legally permitted methods, action aimed at influencing, exerting influence on public authorities, exerting influence in the lawmaking process. The phrase “aimed at influencing public authorities in the lawmaking process” should be understood as all actions, even those that were not completed, i.e., those that were not successful in the form of a change in the applicable law (Spurek, 2015). It is not only about influencing, but also attempting to influence. Therefore, the result of the lobbying activity which is favorable for the client does not determine the classification of a specific activity as lobbying or non-lobbying (Wiszowaty, 2010). Using the term “public authorities”, the definition of lobbying activity in the lawmaking process very broadly defines the group of addressees of lobbying activities, although the subsequent provisions of the Act significantly limit its subjective scope (Kuczma, 2012). However, it should be emphasized that the addressees of lobbying are all public authorities that participate in the lawmaking process, although it is not possible to enumerate them exhaustively (Spurek, 2015). These will certainly be supreme and central bodies, government administration bodies, and local government bodies. The definition formulated in this way shows that the guidelines concerning the authorities (Art. 4) and types of legal acts (Art. 5) included in the other part of the Act should be treated as an exemplary and not exhaustive list (Wiszowaty, 2010). Interpretation difficulties also concern the meaning of the term “lawmaking”. Certainly, one should agree that lobbying is an attempt at this influence on all normative acts, both universally binding and internal acts (Spurek, 2015). Lobbying in this context may take the form of presenting draft legal acts, opinions on legal acts, or postulating changes in regulations. Regardless of the introduction into the Polish legal norms and the functioning in this system of a broad definition of lobbying activity in the lawmaking process (which is, in fact, non-professional lobbying activity) it must not be forgotten that the most important function of lobbying is to mediate

between the interest group and the state authority. Utilizing this mediation function, “those interested in the content of political decisions can exert influence by intermediaries-lobbyists” (Kuczma, 2012). The Polish legislator took it into account in the commented Act, defining professional lobbying activities in the lawmaking process. Pursuant to Art. 2 clause 2 of the Act, “professional lobbying activity is a profitable lobbying activity conducted for the benefit of third parties in order to take into account the interests of these persons in the lawmaking process”. The provision of paragraph 3 specifies that “professional lobbying activity may be performed by an entrepreneur or by a natural person who is not an entrepreneur under a civil law contract”. It is rightly emphasized in the doctrine that professional lobbying activity is a suitable lobbying activity in the broad sense (Wiszwaty, 2010) and simply one of the forms of lobbying activity (Spurek, 2015). Therefore, it should be emphasized that any unpaid lobbying activity will not be a professional lobbying activity, so it will not require registration. As it is rightly pointed out in the doctrine, unpaid lobbying activities characterize non-professional lobbyists. A person who acts on their own behalf, and their actions are aimed at influencing the lawmaking process to take into account their interests in this process, and not the interests of third parties, will not be a professional lobbyist. A good example given by representatives of the doctrine is a member of an association who acts for remuneration, but in the association’s interest, and therefore in a sense, in their interest. Importantly, lobbyists who undertake activities on their behalf and for their account, or carry out free lobbying, not only do not have to but cannot even register their activity as professional lobbying activity in the lawmaking process, i.e., in the register kept by the minister responsible for public administration. It is indicated that this may cause professional lobbyists to act as representatives of associations or chambers of commerce to bypass the obligation to register (Kuczma, 2009a).

## Lobbying methods

According to the statutory definition, lobbying is any activity carried out using legally permitted methods (Kuczma, 2007, 2008b). Influencing groups or professional lobbyists can influence decision-makers through any action carried out using legally permitted methods, i.e., in a direct way, seeking direct access to them, or indirectly by convincing the public and the media beforehand (Benedikt, 2014; Jasiocki et al., 2000; Piwowar, Świeca, 2010; Podgórski, 2006). It should be noted that direct lobbying is primarily based on maintaining constant and direct contact with decision-makers. This is done through face-to-face conversations, meetings in smaller or larger groups, and discussions that allow lobbyists to explain and justify their position to decision-makers (Benedikt, 2014; Piwowar, Świeca, 2010). In face-to-face contact, the presented position of the lobbyist should be substantively and socially justified, and the arguments used should be rational and emotional. Rational argumentation in direct lobbying is based on a thorough interpretation of social phenomena and processes. The purpose of this kind of argumentation is to explain and justify the lobbyist's position, find the convergence of the group's interests with the government's aspirations, and present arguments confirming the benefits of cooperation (Paclawski, 2002). Lobbyists use these techniques to develop written materials, including one-sided information, more comprehensive documents, graphs, summaries, or econometric analyses of a given issue. Only thus prepared documentation constitutes the basis for the expertise and the provision of consulting services (Benedikt, 2014). Emotional argumentation consists in making decision-makers aware of the positive and negative consequences of implementing the proposed legislative measures. In their emotional argumentation, lobbyists refer to lofty feelings, a sense of solidarity, social responsibility, etc. In order to convince decision-makers to take specific actions and decisions on the matter proposed by them, they usually justify their legislative concepts with the public interest and the good of the whole. Thus, in their postulates, they refer to reasons that go beyond particular benefits. It is indicated that

face-to-face contact with politicians should not be longer than half an hour (Mastromarco et al., 1995). Few of the authorities have the time and willingness to listen to extensive deliberations and explanations. Therefore, professional preparation is of great importance in face-to-face meetings. A lobbyist must be factual, act quickly and succinctly (Osiński, Kędziora, 2005; Pałowski, 2002). Decision-makers expect a short and clear presentation of the problem, often supported by a specific expert opinion (Jasiecki, 2003c). Hence, an important element of the face-to-face technique is, in addition to the verbal form, the use of additional documents which, even in the absence of the lobbyist, play the role of a “spokesman”, reminding the decision-maker of the lobbyist’s position (Osiński, Kędziora, 2005; Żaczek, 2005;). Therefore, the best tool for face-to-face contact is concise information, rich in clear charts, pictures, tables, and point-based arguments that well visualize the issue, and are quick and easy to read and understand. Providing decision-makers with expertise in direct contacts is an important element of the lobbying strategy of each group that takes its work seriously (Jasiecki et al., 2000; Kalinowski, 2016). They are an important tool of influence because they function as an independent document that lives its own life and is passed on to other politicians, presented at committee meetings, etc. If recognized authorities in a given field participate in the preparation of such a study, its value automatically increases (Rozwadowska, 2002). Policymakers then more readily accept the information provided by groups. The expertise provided by the groups must consider the matter in detail (Hodges, Wood, 2000). It is not enough to approach the issue only from the perspective of the group’s interests. It is important to consider both sides of the issue: the group and the government. Therefore, lobbyists should also be aware of the reasons for adopting a particular solution by decision-makers. The knowledge of all factors determining the legislative solution proposed by the government facilitates establishing contacts with representatives of the authorities (Osiński, Kędziora, 2005; Pałowski, 2002). The awareness of these factors makes the lobbyist appear to be a competent and prepared partner for the conversation. Then it is easier for the group to suggest to decision-makers

a different approach to the issue. Direct lobbying also involves creating specific “networks” interested in a given issue among other pressure groups or directly among the deputies themselves so that individual interests are not too visible. Collaboration with other groups helps support the cause and increases the chances of decision-makers’ chances to adopt arguments in a given field. Lobbying activities are usually more effective when they involve individual entities and groups and many affiliated organizations. Lobbying for a single entity is rarely successful. In practice, much better results are obtained when representing the interests of a larger number of groups organized with each other (Rozwadowska, 2002). Hence, one of the tasks of direct lobbying is to build a coalition of common interests. Interest groups form special associations for this purpose. They aim to show that lobbying activities are not about defending the spectacular interests of the minority, but about a certain larger community, representing the good of the general public. Building a coalition within a leading interest group increases the reach of influence (Mastromarco et al., 1995). The coalition makes it easier for groups to access more decision-makers. It gives the issues communicated by groups more credibility in the eyes of decision-makers by confronting them with many opinions of the groups belonging to the coalition. The coalition also increases the number of issues and information on a given case and the number of people involved in disseminating them. Direct contacts with decision-makers within a jointly created coalition are simpler and more effective. It is known, however, that lobbying is not only about direct talks with politicians. If a pressure group wants its demands to be taken seriously, it must gain public support before starting talks. Paying public attention to a given problem and building support for specific legislative intentions consists of informing the public about a given issue and mobilizing, i.e., stimulating citizens to approach specific actions. Shaping public opinion to obtain the greatest possible support for the legislative endeavors of a given group is called indirect lobbying (Jasiecki et al., 2000; Kalinowski, 2016). One of the traditional ways of activating public opinion is image creation in the media. Collaboration with the mass media, especially

organizing a campaign related to an issue lobbied by an impact group, can be a handy tool for informing citizens about a given issue, mobilizing their support, and engaging in the group's work. As the objective voice of the public, the media can be instrumental in conveying the intended information. In order to force their point of view, companies engaged in lobbying activities often deliberately present their positions in the press. However, the most effective contribution of the mass media to lobbying activities is the public coverage of a specific issue by the media themselves on their own initiative. Policymakers listen to the mass media, which are at the same time a direct source of information for the electorate (Benedikt, 2014; Mastromarco et al., 1995). The media have tremendous power. They can influence both local communities and parliamentarians. The power of the media also lies in seeing them as an objective source of information. Proper use of the media for lobbying purposes can help win the support of the "lowest level", i.e., citizens, and influence the actions of the government and parliament. Media campaigns are usually costly. To achieve the intended result, they must be well organized. Creating a positive image of an organization's activity or a favorable atmosphere for certain interests in the media is usually only a starting point for more specific actions. Regardless of whether an issue important for the group has met with the public interest and whether it has been publicized in the media, lobbyists build support that considers a wider community than the one directly affected by the problem. For this purpose, lobbyists use another method of indirect lobbying appealing to the public, the so-called bottom-up lobbying (Piwowar, Świeca, 2010). The purpose of gaining the lowest level of support is to arouse the widest possible interest in a given problem for citizens who will be directly affected by decisions taken by the authorities due to the adopted legislation. Pressure groups, therefore, seek to express their support in an organized, visible form. They usually use boycotts, petitions, mass campaigns, sending letters by e-mail, faxes, telegrams, or organizing demonstrations (Jasiecki et al., 2000). Bottom-up lobbying is often emotional. All collective actions of a mass nature require building a sense of community. In addition, they use methods of

persuasion. The essence of lobbying campaigns based on the lowest level, in which the largest number of participants is involved, is directly asking the addressee to take action and address their demands (Benedkt, 2014; Piwowar, Świecki, 2010). Proposals to amend the bill submitted directly by citizens, i.e., the electorate of a given politician, always have a greater impact on the final decisions of the authorities than the independent actions of lobbyists. One form of bottom-up lobbying is a boycott. As a method of fighting for social interests, it is a particularly effective weapon. Mass protests require much organizational effort and the determination of their participants, but they also usually echo loudly in the mass media, thanks to which the interests or values for which they were undertaken are popularized. Another form of lobbying that exploits the potential of “lowest level” supporters is the use of petitions. It consists in collecting signatures of supporters of a given project. Above all, it requires patience and consistency in implementation. This method takes a classic form, dating back to the beginnings of lobbying. Another well-known example of bottom-up lobbying, which uses the involvement of numerous social strata, is the organization of mass letter campaigns, the so-called mailing. It is a modern form of a petition. However, the effectiveness of this method depends on its scale. To be effective, the mailing must be massive. Today, the Internet can play a large role in this type of campaign, an information flow channel. Engaging support as part of bottom-up lobbying is also visible in the form of demonstrations (Jasiecki et al., 2000). Well-organized, they are spectacular events, usually becoming media events. They are quickly gaining publicity. Their purpose is to publicize and highlight a given problem without presenting complex information issues. The public opinion takes a position depending on the degree of sympathy towards the problem. On the one hand, demonstrations are an effective way of reaching the public. On the other hand, they are too late, usually in the so-called advanced stage of the decision-making process. High organizational costs and the risk of deviation are indispensable characteristics of demonstrations. They can get out of the organizers’ control and become unlawful. In practice, manifestations are used as the final form of action when

other measures fail. As a result of this form of pressure, only well-organized, strong groups, such as farmers, gain. The techniques used by lobbyists to influence the government are very diverse. All of them undoubtedly require great professionalism in their application and moral culture, particularly direct contacts with politicians. They are desirable and effective as long as they are applied fairly, convincing decision-makers with substantive rather than financial arguments. Indirect methods, especially demonstrations and boycotts, are also effective tools of lobbying strategies. However, lobbyists must conduct them with great caution, in an organized and controlled manner, so that they do not turn into scandalous street fights, strikes that unnecessarily paralyze social life and demoralize the professional image of mass lobbying. When assessing the effectiveness of the techniques as mentioned earlier, it can be stated that the highest in the hierarchy is direct lobbying methods, especially those based on personal, face-to-face communication. The more the methods are depersonalized and the more indirect, the lower their effectiveness is assessed to be. Among the techniques of direct lobbying, the most effective is the personal presentation of the position, i.e., a direct conversation with the decision-maker. On the other hand, among the techniques of indirect lobbying, propaganda campaigns received the highest scores, including letter campaigns (Benedikt, 2014).

### **Transparency in lobbying activities**

Bearing in mind depriving lobbyists of their main advantage, i.e., the possibility of effective activities in a discreet manner, the legislator defined the principles of open lobbying in the lawmaking process. Thus, unlike the methods of functioning of interest groups, the lobbying activity is open. Transparency, firstly, prevents corruption, and secondly, it enables a wider group of people to familiarize themselves with the planned course of work on future legal acts. This is served by the provisions of Chapter Two of the Act, which obliges the Council of Ministers to keep relevant lists



of legislative works, provide information in this regard to the Sejm, and publish in the Public Information Bulletin (BIP) referred to in Art. 8 of the September 6, 2001 Act on Access to Public Information as an official ICT publisher. In addition to the list as mentioned earlier, there are also departmental lists. The main list includes the following projects: assumptions of bills, acts, ordinances of the Council of Ministers. It specifies the reasons for submitting the Act as well as the needs associated with the initiative. This list is published in the BIP, which is fully justified because in the light of Art. 1 clause 1 of the Act on Access to Public Information, “each information on public matters constitutes public information within the meaning of the Act”. This information is undoubtedly public, and publication in BIP is one of the modes of disclosing public information. Documents related to draft legal acts are also made available. Upon publication, anyone may express their interest in participating in legislative work (Article 7 [1]). Pursuant to Art. 7 sec. 3 of the Act “The notification referred to in sec. 1, shall be made available, except for addresses of natural persons, in the Public Information Bulletin as a document concerning works on a bill or assumptions for a bill, a bill or a draft regulation”. Applying creates a formal opportunity to participate in the work on the bill or regulation but cannot be treated as a form of guarantee of participation in this work. The notification also specifies names and surnames and addresses of persons authorized to represent this entity in works on the bill or assumptions of the bill, bill or draft regulation; if it acts for a legal person – name and registered office of that person; if he acts on behalf of an entity other than a legal person – their name and surname and address, or their name and registered office, respectively; the interest which it intends to protect concerning a given regulation, and the legal solution which it will seek to take into account. A special method of conducting consultations, used in the legislative process, which enables the presentation of opinions on draft legal acts by entities external to public authorities, including lobbyists, is the “public hearing” (Dobrowolski, Gorywoda, 2005; Graniszewski, 2015; Gross, 2017; Kuczma, 2009b; Piwowar, Świeca, 2010). The public hearing has been regulated in Art. 8 and 9 of the Act on

Lobbying Activities in the Lawmaking Process. This law provides for two types of hearings: concerning the draft law and the draft regulation and shall be made available on the terms and in the manner specified in this Act. In both cases, the statutory regulation is supplemented by the Rules of the Sejm (art. 70a–i), the regulation of the Council of Ministers on a public hearing concerning draft regulations, and the provisions of the Rules of the Senate (art. 80a), respectively. In the literature on the subject, the concept of a public hearing should be understood as an institution that allows anyone interested in the content of the enacted law to express their position and opinion in the presence of the organizer responsible for its implementation, which is, as a rule, an institution that proposes a given legal solution or is responsible for adopting a specific legal act (Dobrowolski, Gorywoda, 2005; Graniszewski, 2015; Gross, 2017; Kuczma, 2009b; Piwowar, Świeca, 2010). It is emphasized that the purpose of a public hearing is to provide the legislator with arguments and opinions of various entities and balance the parties' conflicting interests. By listening, one can get valuable information on proposed changes or the effects of planned legal solutions (Kuczma, 2009b). Moreover, providing everyone with legal and formalized access to decision-making bodies reduces the need to search for illegal or ethically questionable ways of contacting politicians (Gasparski, 2003). In the public hearing, both the organizer and the decision makers act as listeners, not speakers, making the hearing process more open and participatory. The purpose of a public hearing understood in this way is, above all, to provide the legislator with comprehensive, in-depth, and structured knowledge, which should constitute the basis for its legislative decisions. Public hearing also serves to balance the conflicting interests of citizens in order to achieve the common good, and in a broader perspective, it is conducive to the democratization and rationalization of the legislative process (Wronkowska, Ziemiński, 1997). However, it does not apply in those situations where it is necessary to agree on positions between participants or develop a consensus. Marek Safjan, in a dissenting opinion to the judgment of the Constitutional Tribunal of November 3, 2006, stated that the public hearing belongs to those

statutory institutions which aim to implement certain elements, elements of direct democracy in parliamentary procedures. It ensures the presentation of a wider than usual spectrum of opinions by interested public, social and private entities on the proposed legislative solutions, thus fostering the building of civil society (Wyrok TK z 3.11.2006 r., K 31/06). The essence of a public hearing is to allow everyone, both persons and institutions, interested in the content of the enacted law to express their opinion in an orderly manner. The adjective “public” means that anyone who expresses such a wish and accepts the rules contained in the rules of hearing can participate in this undertaking (Gross, 2017). The catalogue of entities that may participate in the public hearing is virtually unlimited because every interested party, including “ordinary citizens” if they meet the formal criteria, has the opportunity to express their position during the hearing. For practical reasons (limiting the duration of legislative work) and systemic reasons (encouraging citizens to join forces to represent their views and interests properly), collective entities are preferred, e.g., expert circles, citizens’ associations, producer groups. The literature distinguishes three groups of possible participants in the hearing (Kuczma, 2011). First, professional lobbyists who were entered in the register were kept by the minister competent for public administration. These are entrepreneurs or natural persons who work based on a civil law contract for the benefit of third parties, intending to consider these persons’ interests in the law-making process. Second, there are unregistered lobbyists, the so-called occasional ones. This category includes anyone who submits a report based on the provisions of the Lobbying Act and is not a professional lobbyist. The Lobbying Act does not include the characteristics of the lobbyist himself, while in the context of the definition of lobbying activity, anyone who aims to influence lawmaking is considered a lobbyist. It is also possible to distinguish entities that have expressed interest in the work on the draft act pursuant to Art. 70b of the Regulations of the Sejm. It should be noted that the Act does not establish an obligation to comply with the demands of participants submitted during the public hearing. As pointed out by the Constitutional Tribunal (Wyrok TK z 3.11.2006 r.,

K 31/06), public hearing serves only to familiarize itself with opinions that are not binding on the organs of the Sejm. Information collected through a public hearing may be considered in the course of legislative work – but to the same extent as other information collected by the committee (Wołpiuk, 2006).

### **Comments on the need for better regulation and good practice in lobbying**

Despite the introduction of legal regulations on lobbying in Poland, the Act on Lobbying Activities in the Lawmaking Process does not fully meet expectations. It is an apparent regulation that does not allow for effective control of lobbying activities. It does not meet the standards. It is non-transparent (Fundacja im. Stefana Batorego, 2015). It does not make it easier for professional lobbyists who want to act following democratic rules, nor for officials or politicians. The Act on Lobbying Activities in the Lawmaking Process creates prominent control institutions over professional lobbying (Kuczma, 2011). This applies in particular to the mechanisms for registering lobbyists and reporting obligations (Spurek, 2015). The existing tools, established by the Act's provisions in question, do not operate in the best possible way. In practice, the register of professional lobbyists is a loose collection of random entities and individuals who do not necessarily engage in lobbying because of their professional qualifications. Due to the unclear, broad definition of lobbying, it is impossible to determine who is and who is not in fact a lobbyist. Reports on lobbyist activity required by public institutions (Articles 16–18) are very short and do not contain complete accurate information. For the same reason, and also due to the lack of political will, public institutions avoid reporting on ongoing basis having contact not only with professional lobbyists but also with other groups of stakeholders, to which they are obliged by the discussed Act. Moreover, it is worth noting that the legislation in force does not impose any reporting obligations on lobbyists. Therefore, little

is known about the activity of all registered professional lobbyists. Meanwhile, the combination of the reliable information obligation of public authorities about actions taken against them and the reporting obligation of the lobbyists themselves would be only the most effective way to control such actions (Spurek, 2015; Kuczma 2011). A significant drawback of lobbying in Poland is its narrow scope. The Act on Lobbying Activities in the Lawmaking Process applies only to selected public institutions (ministries and the Sejm) and, as its title indicates, to the legislative process, and therefore administrative or political decisions are entirely exempt from its provisions. The poor quality of the Act's provisions on lobbying activities in the legislative process is why most (especially professional ones) lobbying activities do not fall under its rigor. For example, the register of professional lobbyists includes many entities entered there only "just in case". They are not involved in any professional lobbying activities. At the same time, although law and consulting companies carry out thoroughly professional lobbying campaigns, are not listed in this register and do not bear any consequences (for example, fines) provided for by the discussed Act. Other problems worth emphasizing include, for example, the almost complete lack of self-regulatory initiatives in the lobbying community, both professional and those engaged in advocacy activities or various forms of civil dialogue. The lack of self-regulation shows, on the one hand, the weakness of these circles and, on the other hand, the passivity of the state, which does not try to encourage them to undertake such activities. Therefore, in order to more effectively reduce the risk associated with unfair lobbying, attention is drawn to the need to amend or adopt a new law regulating the performance of lobbying activities. The new regulations should create a framework for even greater transparency of lobbying, especially in lobbyists' registration and reporting both on their side and on the side of their recipients, i.e., public institutions. The regulation should also cover a more expansive catalogue of public institutions and decisions (not only legislative, as it is now). Based on the new regulations, it would also be necessary to eliminate the conflict between efforts to regulate lobbying, which results in certain limitations, and guaranteeing the possibility of

exercising fundamental civil rights (e.g., the right to petition). Public institutions (especially ministries), which, pursuant to the Act, are obliged to report on an ongoing basis and publish reports on contacts with lobbyists, should also create internal rules for contacting stakeholders. However, these obligations are not fulfilled (Marcinkiewicz, 2009).

### Conclusions

The phenomenon of influencing power by organized pressure groups has always existed. Legislation of developed countries, striving to civilize lawmaking procedures and streamline the flow of information, established a lobbying institution. In the opinion of some, lobbying is a specific bridge between the authorities and society. The bridge, as history shows, although sometimes shaky and unidirectional, is nevertheless indispensable in the lawmaking system (Rzepka, 1997). For centuries, lobbying has been taking place in a triumphal march through the halls of power; it is practiced with an open or closed visor by organizations operating officially or informally (Rabiej, 1996). Recent years around the world have been characterized by a spontaneous increase in the activity and importance of pressure groups. Lobbying is now practiced not only by businessmen and large corporations. Groups representing non-economic interests are also playing an increasingly important role (Jasiecki, 2000). Any professional, industry, or social group can potentially act as a pressure group. Despite many years of tradition in the lawmaking process, lobbying does not evoke positive reactions even if regulated by law (Zalega, 2003). The reserve for advocacy of interests derives not only from the suspicious, backstage pedigree of lobbying but also concerns related to its role. The negative approach to advocacy in Poland is largely the result of certain historical, institutional, and cultural conditions. Many years of experience of Poles have taught them that wherever they come into contact with the world of institutions, having “business ties”, “relationships”, “lauouts”, or more elegantly – support, protection, and connections plays a crucial role.

All these terms have one common denominator; they refer to direct, personal contacts aimed at gaining some benefits by the parties, which at least one of the parties uses for this purpose formal roles performed in various institutions. Therefore, these relations are openly corrupt or located in the “grey area”, where there is a narrow line between legality and crime (Pilczyński, 2006). Long years of living in conditions of permanent and widespread shortages and inefficient, hostile institutions popularized the belief that systems are the most effective and sometimes the only way to alleviate the inconvenience and difficulties of everyday life (Knast, 2006). Such thinking has cemented the image of pressure groups rejecting formal procedures of settling matters in favor of informal measures. It is customary to assume that pressure groups use power for private purposes that do not have much to do with the principle of the common interest and good of citizens. Therefore, questions often arise as to whether lobbying is a specific state-shaping force, positively influencing the course of public affairs and established law, or if it is a destructive force which promotes significant domination of individual interests over the public interest in the content of the law being created. So, is lobbying pursuing a greater good and optimizing the lawmaking process, or is it a measure that corrupts the law? The distrust of advocacy of interests has a specific justification, as it concerns a specific type of discrete service activity, namely the way of representing citizens’ interests and lawmaking. A serious and the most frequent accusation against lobbying is the belief that the influence of pressure groups on the authorities is connected with the misuse of ethically questionable methods for this purpose. Forcing decision-makers to pursue the individual interests of groups in the content of the rights they create is associated with the public opinion of unfair trading in influence, i.e., protection and corruption (Wołpiuk, 2004). Undoubtedly, this is true of the so-called hidden and uncontrolled lobbying. The covert and dubious way of articulating interests increases the risk of extremely unethical actions, including inter alia, corruption, and so-called “systems” in the decision-makers’ environment serving narrow interests. On the other hand, open lobbying, subject to appropriate social and institutional

control, contributes to optimizing the lawmaking process. It facilitates balancing the arguments between various pressure groups. Thus, it favors the formation of a specific social balance (Jasiecki, 2001a). In a democratic state ruled by law, lobbying can be a valuable supplement to the representative system. It can be treated as a kind of advisory, expert representation, not derived from elections, but providing citizens with an influence on public affairs. In practice, most legal acts result from a “party game for the law”, that is, the resultant of the influence of many groups of interests, usually divergent or conflicting. Lobbying may therefore contribute to a better definition of the public interest in the enacted legal acts. It allows for learning about various extra-parliamentary points of view on the proposed solutions and enables a clearer articulation of particular interests and their polarization, especially when the views of two opposing interest groups clash (Bierć, 2002). In today’s world, where there is constant competition between the divergent interests of many entities and groups, the institution of lobbying guarantees the stability of the democratic structures of the state. Various interest groups can directly provide decision-makers with their position on a specific issue (Benedikt, 2014). As a result, lobbying by interested parties in a given case makes it easier for decision-makers to take the best possible solutions. As argues, “each of the lobbying groups presents their arguments for and against the proposed resolution or suggests their concept of solving the decision problem. Lobbying, therefore, allows decision-makers to familiarize themselves with the multiple aspects of the same case and possible options for resolving their decisions” (Ostrowski, 2002). Lobbying is a specific mechanism of dialogue between various interest groups and the representative system. It channels potential tensions and social unrest. For politicians, it is a kind of “early warning system” about various social problems, and for organized interest groups, it serves as a useful tool in solving problems. Whoever in a modern state cannot use lobbying is condemned to the status of a mute in the permanent social dialogue between the ruling and the ruled. Opinions about lobbying, as can be seen, are varied. Some praise and support it as advocacy of interests, while others consider exerting



influence on the legislature destructive. The supporters of supporters argue that pressure groups are a constructive element of public life because when verbalizing group interests, they see the public interest perspective necessary for their implementation. They claim that lobbying is a tool for communicating information about public moods. After all, one lobbies not only for the benefit of corporations or other narrow interests but also for the wider public interest, for example, in the field of environmental protection, prohibition of abortion, etc. (Gestern, 2001). Opponents argue, however, that interest groups favor the privileged and pose a strong threat in the form of corruption and depravity in public life (Protas, 2003). In their opinion, lobbying disturbs decision-making processes and destroys the peace necessary for the legislator to make rational decisions; therefore, it is democratic, as it disturbs the relations between the electorate and the authorities. Nevertheless, the importance of lobbying is growing. It is commonly referred to as the “fifth power” (Trębski, Sachno, 2003). Although the results of lobbyists’ activities are often immeasurable, they sometimes have a considerable influence on decision-making processes. The importance of lobbying cannot be overestimated. In the world and Poland, its strength is constantly growing, resulting in inter alia from the increased number of interests taken into account when making decisions (Jasiecki, 2001a). This situation forces pressure groups to organize themselves more efficiently. At the same time, decision-making procedures become less readable and more complicated for the uninitiated; therefore, it is more and more difficult to predict the effects of decisions made (Ostrowski, 2002). All this has caused the development of lobbying and its professionalization (Podgórski, 2006). Persons dealing with advocacy of interests professionally use not only lobbying but also marketing strategies and techniques. Professional lobbying takes the form of specialized lobbying companies, public relations agencies, separate units in enterprises, or institutional lobbying of economic organizations. Professional lobbyists have excellent knowledge of democratic structures and procedures, including personal knowledge. Former politicians, journalists, or senior officials are often found in this profession. They have analytical facilities that allow them to

provide parliamentarians with information which is difficult to obtain and interesting expert opinions, which are generally well-received. The effectiveness of action is also important, as it consists in recognizing what, to whom, at what time, and in what form. Professionals generally avoid methods related to corruption and violation of the law (Pilczyński, 1999). Lobbying is ceasing to be something reprehensible and becomes a part of the free market ritual. Properly functioning lobbying is essential today – it provides decision-makers with information about the effects of their actions and enables interest groups to correct state solutions in the desired directions. Open channels of pressure keep lobbying in check as a tool for correcting the social equilibrium, i.e., balancing the arguments between the state and the citizen in shaping public policies (Rabiej, 1996). A lobbyist is not a person who gives bribes officials, but a professional whose task is to present the client's arguments and arguments for a given solution (Styczek, 1996). Undoubtedly, the existence of effective legal provisions regulating lobbying activities allows, on the one hand, organizing this activity, and on the other hand, preventing unwanted behavior.

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# Lobbying and Advocacy as Tools for NGOs to Participate in Deliberative Public Policymaking on Housing<sup>1</sup>

**Abstract:** This paper uses a qualitative case study approach to maximize the understanding of how NGOs (members of the Collective of United Associations) take part in housing policymaking through advocacy and lobbying, and what problems and obstacles impede their participation. The article analyses the delineation of housing advocacy and lobbying (HA&L), as well as the strategies applied in the context of creation and change of housing policy. The final part of the paper considers the interpretation of HA&L activities by representatives of French housing NGOs as a substitute for social dialogue instruments.

**Keywords:** deliberative democracy, NGOs, advocacy, lobbying, France

## Introduction

The issue of advocacy and lobbying of NGOs has been a topic of increasing scholarly attention. The analyses conducted so far have explored the factors that make NGO lobbying effective (Tallberg, Dellmuth, Agné,

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Duit, 2018) and the tools that make it successful (Junk, Rasmussen, 2019). Researchers have also sought to analyze the inside and outside strategies in NGO campaigns targeting both the state and the market (Colli, 2019). Some have examined the frontiers of NGO advocacy influence (Van Rooy, 1997). Existing studies tend to focus on the implications of NGO lobbying on participatory governance (Brass, 2012; Charnovitz, 1997). Unerman and O'Dwyer (2006), however, suggest that there is a problem of accountability mechanisms of advocacy and lobbying within the third sector of non-governmental organizations. Furthermore, researchers have studied the topic in the context of a specific public policy area (e.g., human rights [Kingston, Stam, 2013; Meyers, 2016]), environmental policies (Biliouri, 1999; Junk, 2016), and health care (Durstine, Leitman, 2009; Omungo, 2011). Nevertheless, there is no one definition of NGO advocacy or lobbying (e.g., Leech, 2010; Salamon, Lessans Geller, Lorentz, 2008).

The approach of the paper is to broadly define HA&L. Within this context, the study refers to Eade, who argues that the word “advocate” is derived from the Latin word for “someone called to one’s aid”. The word itself has two meanings: (1) it denotes a legal representative and (2) “someone who argues for a cause or a recommended course of action” (Eade, 2002, p. XIII). The latter meaning illustrates the advocacy of NGOs best. Rugendyke (2007, p. 7) stresses that the term “advocacy” is generally used by NGOs to refer to campaigning, which involves attempts to change public opinion. Roche (1999, p. 192), in turn, describes the advocacy of NGOs as the “strategic use of information to [...] improve the condition of those living in poverty”. NGO advocacy has typical aims, types and strategies. In general terms, it is connected to a collective interest. There are two types of advocacy: (1) direct (e.g. private meetings) and (2) indirect (e.g. protests). Two strategies of advocacy can be found: (1) the “insider strategy” (e.g. long-term relationships with politicians or bureaucrats) and (2) the “outsider strategy” (e.g. demonstrations, email alerts, marches, boycotts, rallies, public hearings, letter-writing campaigns, researching public problems) (Pekkanen, Rathgeb Smith, 2016, p. 5). NGOs can decide to conduct advocacy alone (utilizing their staff, or by delegating

the advocacy function to an affiliated firm or by hiring a lobbyist), or in coalition (with national or international partners). Moreover, according to Rugendyke (2007, p. 7), advocacy encourages public support for lobbying activities, which aim to change public policies. NGOs can thus channel their advocacy and lobby on behalf of many social actors (such as courts, bureaucrats, or the general public). The article focuses on HA&L activities directed at politicians. Finally, advocacy (except for its public education function) has a political nature and attempts to influence policy formation as a means of facilitating positive change in people's lives. One can observe the growing role of social media in NGO advocacy practices (Mosley, Weiner-Davis, Anasti, 2020). They therefore may be undertaken on a local, regional (state), national (federal), or even international level.

The paper assumes that lobbying is a form of advocacy ("a specific subset of policy advocacy" [Pekkanen, Rathgeb Smith, 2016, p. 6]) aiming at influencing legislation. Out of all advocacy activities, it is characterized by the most negative connotations. There is also a distinction between direct lobbying (face-to-face communication with policymakers) and grassroots lobbying (the mobilization of the general public) (Pekkanen, Rathgeb Smith, 2016, p. 7).

The article concentrates on HA&L activities in the field of homelessness policy. This topic is well established in the literature. Regarding the actions aimed at changing the image of homeless people in developing countries, Speak and Tipple (2006, p. 185) highlight that "the activities of NGOs in lobbying to end arrests, imprisonment, and abuse of street sleepers by the police (for example, the action taken by Aashray Adhikar Abhiyan in New Delhi, and SPARC in Mumbai to improve the situation for street sleepers) are an important baseline for action". They argue that in the short term and at the individual level, advocacy is proving effective but is a constant battle against negative perceptions of homeless people (Speak, Tipple, 2006, p. 185).

In highly developed countries, it appears that HA&L practices depend on how decentralization has occurred, how NGOs are represented in service provision, and the relative size of the countries and their homeless populations (Filipovič Hrast, Somogyi, Teller, 2009, p. 101). On the other

hand, it is suggested that HA&L practices depend on the social power of the interest group representatives. Jacobs (2015, p. 697) highlights the diverse positions of the interest group representatives running for non-government organizations (e.g., Homelessness Australia) and market organizations. The NGOs are less effective in exerting influence on the shape of housing policy. Their representatives indicate that it comes from a weak position they have in the housing policy process. The NGOs are perceived by political decision-makers as demanding consumers. Furthermore, their position is complicated by their dependency on the financial means granted by public authorities. One can find that HA&L practices are influenced by the framework of public sector management. Busch-Geertsema, Edgar, O'Sullivan and Pleace (2010, p. 44) show that within the context of the development of business-oriented methods in the public sector management in EU countries, dependency on contracts might soften the voices of NGOs in respect of their lobbying activity that draws attention to policy problems. However, although HA&L activities are considered an important part of democratic decision-making in high-developed countries, one can find relatively little knowledge on these practices in France. Therefore, the article explores and analyzes this issue.

In the context of France, NGOs are defined as associations (regulated by the law of July 1, 1901) or foundations (regulated by law number 87–571 of July 23, 1987) that operate independently of the government and whose purpose is to address non-profit objectives. Furthermore, advocacy (*plaidoyer*) and lobbying are regulated by the law of 9 December 2016 relating to transparency, the fight against corruption, and the modernization of economic life (“Sapin 2”). The French High Authority for Transparency in Public Life manages a public register of lobbyists, which provides information on lobbying activities. One of the five most popular areas of lobbying and advocacy in France is housing. There are many NGOs which engage in advocacy and lobbying in housing at local, regional, and national level (e.g., Fondation Abbé Pierre, ATD Quart Monde, Les Enfants de Don Quichotte, Les petits frères de Pauvres, Fédération des acteurs de la Solidarité). Lobbyists are defined as professionals who devote less than

half their time to lobbying (Braun, Hirsch, 2021). According to Wieviorka (2003), there is a “French model” of NGO lobbying, especially in the field of antiliberalism (*altermondialiste* movement).

The research adds to the existing literature in multiple ways. Firstly, the paper contributes to the theory of deliberative democracy, broadening the scope of the applicability of the theory, and showing that the theory of deliberative democracy is useful for studying decision-making processes in housing policy. Furthermore, the article is interested in an improved exploration of the role of HA&L practices as tools for NGOs to participate in deliberative public policymaking on housing. Secondly, the research aims to provide new knowledge on the HA&L activities of French NGOs. According to Braun and Hirsch (2021), “of the 200 lobbyists most frequently invited, the number of corporate lobbyists is more than ten times greater than those of citizen associations and NGOs, which are not represented in the top 15”. One can thus see an underrepresentation of NGO advocacy and lobbying in France. Thus, hoping to contribute to academic discussions on the topic, the paper simultaneously seeks to show how NGOs define HA&L practices, investigate the strategies they use, and reveal the kinds of problems they face. The analysis also explores how NGOs (members of the Collective of United Associations) take part in the housing policymaking by advocacy and lobbying and points to the obstacles that impede their participation.

This paper aims to examine the issue of lobbying and advocacy as tools for NGOs to participate in deliberative public policymaking on housing. The study focuses on the participation of French NGOs working for the benefit of the homeless in the housing policy process. Its main sources of information consist of in-depth interviews (Gudkova, 2012, pp. 111–129) with the representatives of the Collective of United Associations. The author applies a case-study method (Strumińska-Kutra, Kołodkiewicz, 2012, pp. 1–40), complementing the achievements of Polish qualitative political science. The paper begins with a presentation of the research context. The author subsequently examines the methods and findings of the original empirical study. The article ends with a discussion section.

## Research context

Many socio-political patterns shape the environment of housing policymaking in France; however, the scope of the paper is limited to focus only on selected cases. Firstly, the policy process is very centralized. The advocacy and lobbying activities of NGOs can be found at the level of some of 36,658 communes, 101 departments, and 18 regions. However, the NGOs rather focus on influencing the policymaking at the countrywide level, considering that the most important political decisions are made in Paris. Furthermore, advocacy and lobbying activities have been seen as threats to the public interest and the “general will” for many years (Stroup, 2012; Vie publique, 2020). There is a contention that public interest consists of much more than just a sum of the interests of particular groups (Vie publique, 2020). This idea is related to the concept of the social contract of Jean-Jacques Rousseau (1712–78). It is common sense that the state (*l'État*) is only able to define the public interest (Vie publique, 2020). According to Cumming (2009, p. 9), it seems likely that there is still some mutual suspicion and residual tensions between France’s secular Jacobin state and French NGOs. However, advocacy and lobbying activities have not been forbidden and have been present in French political life. From time to time, however, certain policymakers<sup>2</sup> and organizations<sup>3</sup> ask for better regulation of these practices. The National Assembly and the Senate created their codes of conduct and registers of interest representatives who carried out lobbying activities in France as late as 2009. The associated issue of preventing conflicts of interest in public life was addressed by the law of 11 October 2013 on the transparency of public life. There were thus no legal rules on advocacy and lobbying in France until 2016 (the law “Sapin 2”). However, Transparency International France points

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<sup>2</sup> E.g. the study of Jean-Paul Charié of 2008, Nadal report of 2015, the study of Sylvain Waserman of 2020.

<sup>3</sup> E.g. the study of Transparency International France with Regards Citoyens of 2011, the study conducted by students at Sciences Po for Transparency International France of 2011 (Lobbying landscape in France, 2015), the study of Transparency International France of 2019.

out that the French regulations are not clear when it comes to defining the terms: “lobbyist”, “lobbying targets”, and “lobbying activities” (Jenkins, 2017, p. 4). Braun and Hirsch (2021) claim that many lobbyists are not included in the High Authority for the Transparency of Public Life (HATVP) register; moreover, only a few politicians make their agendas (related to meetings with lobbyists) public.

Finally, the difficult housing situation in France is an important factor accounting for the involvement of housing NGOs in policymaking. According to the 26e rapport sur l'état du mal-logement en France 2021 of the Abbé Pierre Foundation (2021), there were 27,000 homeless people and 280,000 people living in accommodation for people without housing (e.g. asylum seekers) in France in 2020. In fact, more than 4 million people in France were in a very difficult housing situation; moreover, more than 12 million people were affected by the housing crisis. Despite this, the government has been reducing the housing budget since 2017. Therefore, NGOs have attempted to influence housing policymaking, creating collaboration networks, for example, the Collective of United Associations for new housing policy for homeless (le Collectif des Associations Unies pour une nouvelle politique publique du logement des personnes sans abri et mal logées).

### Case-study overview and approach

This section focuses on selected aspects of housing (in the field of homelessness policy) to gain insight into how NGOs (members of the Collective of United Associations) participate in housing policymaking through advocacy and lobbying and what obstacles impede their participation.

The Collective of United Associations was established in 2008 to support the action of Children of Don Quixote (the installation of tents in front of the Notre Dame Cathedral aimed at steering the attention of public authorities to the problem of homelessness). It consists of 39 organizations that act in the field of housing. The Collective of United Associations aims to achieve the following goals:



- 1) No one should be forced to live on the street. The state must guarantee the application of the principles of unconditional admission for all and the continuity of care.
- 2) Housing is a right. Access to suitable housing must remain the prerequisite for all reception and accommodation arrangements.
- 3) The state guarantees access to and maintenance of decent housing for people in a situation of poor housing in an interministerial dynamic of management involving local authorities, developers, and associative actors, and in line with the decentralized authorities.
- 4) Everyone should be able to benefit from comprehensive social support if they wish.
- 5) Policies on access to housing must be developed, implemented, and evaluated with the participation of stakeholders (Collectif des Associations Unies).

In terms of relations with politicians, the group is represented by two organizations: the Abbé Pierre Foundation and the Solidarity Actors Federation. The Abbé Pierre Foundation for the Housing of the Underprivileged was established in 1987 by the Catholic priest Pierre-Henri Grouès. The Foundation is based in Paris and has nine territorial agencies (Ile-de-France, Nord Pas-de-Calais, Brittany, Rhône-Alpes, Provence Alpes Côte d'Azur, Réunion Island, Languedoc Roussillon, Alsace Lorraine, Aquitaine). The Foundation employs about 130 people and is financially independent of the state thanks to more than 240,000 generous donors. It finances around 900 projects annually, which cover such issues as the construction of social housing, improvement of the living conditions of the population, and assistance to the homeless. The projects are carried out by selected housing NGOs. Every year, the Foundation publishes a report on the housing situation in France. The second leader of the Collective of United Associations is the Solidarity Actors Federation, created in 1956 by directors of 18 shelters. Initially, the members focused on helping prostitutes and inmates leaving prisons. The cooperation aimed to represent organizations that were trying to acquire or build shelters. Gradually, new organizations have joined the federation and the supported group of people has extended

(e.g. homeless people, foreigners, and mentally ill people). It brings together more than 870 associations. The Solidarity Actors Federation encompasses a bureau in Paris and 13 independent regional federations. The goals of the Federation are the following: (1) representing and defending common positions (including advocacy and lobbying), (2) supporting the network, and (3) implementing experiments and social innovation projects. The Federation relies on public funding to carry out its projects.

The research approach consists of three key strands of activity. Firstly, the units of analysis are the non-profit homeless service providers, which are members of the Collective of United Associations. Using the membership list of the Collective of United Associations, 39 of these organizations were identified in May 2019. Two NGOs were subsequently selected for in-depth analysis: the Abbé Pierre Foundation and the Solidarity Actors Federation. The selection criteria were as follows: (1) the position of leaders of the Collective of United Associations, and (2) the experience in housing advocacy and lobbying. Subsequently, the author conducted the interviews, which were selected using purposive sampling. Two interviewees agreed to participate; they were initially contacted by email and telephone. The in-depth interviews were conducted in July 2019 and lasted between one and two hours. They solicited information on a variety of topics related to NGO advocacy and lobbying activities within the homelessness policy. The questions the author asked the NGOs representatives included: How do the housing NGOs participate in the creation of housing policy in France? What is the role of advocacy and lobbying activities in the participation of NGOs in housing policymaking? How do members of the Collective of United Associations understand advocacy and lobbying in housing? What kind of activities and strategies do NGOs apply while performing advocacy and lobbying? What examples show that advocacy and lobbying activities have been successful? What are the obstacles that impede the participation of NGOs through advocacy and lobbying in housing policymaking? The interviews were recorded digitally, with the permission of the interviewees, transcribed, and subjected to thematic analysis. An inductive coding scheme was used in the analysis; the codes reflected topics that emerged

from open coding. During the course of the research, the author adhered to the rules adopted in the Polish Sociologist’s Code of Ethics.

### **Findings: Housing NGOs’ lobbying and advocacy in France as exemplified by the Collective of United Associations**

The research findings are organized into two sections. The first focuses on the way members of the Collective of United Associations take part in housing policymaking through advocacy and lobbying. Table 1 provides a summary of this topic.

Table 1  
*Summary of NGOs’ approach to HA&L activities*

Identified key parts of the approach of NGOs to HA&L practices	Explanation
Housing NGOs delineating of advocacy and lobbying	A critical but constructive dialogue with the government.
Housing NGOs advocacy and lobbying strategies in the context of creating and changing the housing policy	<p>Concerning the creation of housing policy, the NGOs focus on compiling and sending newsletters to the members of the Collective of United Associations, organizing meetings with politicians (Ministers, Prime Minister, President), and sending e-mails to parliamentarians. Meetings with politicians can be divided into formal and informal.</p> <p>Regarding changing the housing policy, the NGOs make use of legal means such as letters to the Ombudsman and the Council of State. Other instruments include actions on the streets of Paris. This strategy is illustrated by an example of successful advocacy and lobbying strategy. NGOs jointly took action to facilitate homeless people’s registration (<i>domiciliation</i>).</p>

Source: own research.

The second section of the article describes the obstacles that impede the participation of NGOs (through advocacy and lobbying) in housing policymaking. An outline of this topic is presented in Table 2.

Table 2

*Summary of barriers that prevent achieving the participation of NGOs in housing policymaking by HA&L activities*

Identified barriers	Explanation
Financial dependence on government subsidies	<p>On the one hand, housing NGOs often compete for state funding for their projects. This is especially visible in the context of shelters, and causes conflicts.</p> <p>On the other hand, a critical approach to advocacy and lobbying by non-governmental organizations (financed by government subsidies) is very difficult. Direct participation in housing policymaking for these organizations is very troublesome. It creates a situation of uncertainty about further government funding.</p>
Weak position of the Minister of Housing in the government	Housing NGOs have the best contact with the Minister of Housing, whereas the key actors in the decision-making process are the President, Prime Minister, and Minister of Finance.
Right-wing sentiment in politics	It makes it difficult for NGOs to advocate and lobby for the housing situation of migrants and refugees.
Housing NGOs advocacy and lobbying challenges – housing innovations	<p>Innovations are the solutions that address current housing problems.</p> <p>However, innovation projects are preferred by politicians because they are cheaper than a comprehensive housing policy and easy to present to the public as a political success.</p>

Source: own research.

*How do NGOs (members of the Collective of United Associations) participate in housing policymaking through advocacy and lobbying?*

*Housing NGOs' delineation of advocacy and lobbying*

One of the most interesting findings from the interviews was the NGO representatives' perception of both advocacy and lobbying as activities that constitute a critical and constructive dialogue with the government.

*We try to be conciliatory and not become a total opposition. We are not activists. Our federation is not a fighting, activist one. It is a federation that wants the public debate to be open so that politicians become sensitive to the problems reported by non-governmental organizations and to the problems of the homeless. The point is that we should be able to have a dialogue. We are always in dialogue, although it is often not easy. (Interview 24 July 2019)*

It was also emphasized that organizations independent of state funding were in a better negotiating position.

*The foundation receives donations and is independent of the state. It may be easier to criticize the state and interpellate. (Interview 18 July 2019)*

However, organizations that receive state funding must be very careful in expressing their critical views. In the case of these organizations, one of the ways to gain more autonomy in decision-making processes is to join forces within a federation (such as Solidarity Actors Federation) or networks (such as the Collective of United Associations).

*The Solidarity Actors Federation (FAS) is financed by the state. Many local organizations are members of the FAS. The Solidarity Actors Federation as a whole has slightly more freedom in dealing with public authorities than its members alone. (Interview 18 July 2019)*

Representatives of NGOs claim to avoid conflict situations:

*We try to have a constructive dialogue with them. We try not to constantly say what they are doing wrong, but try to create something together, especially in terms of innovation.* (Interview 24 July 2019)

They also report attempts of establishing negotiating positions. Advocacy and lobbying in this way are understood as a dialogue that informs politicians about the situation on the ground, and about the problems of the homeless.

*State institutions – and this is not their fault – have little knowledge of what is happening in the field, for example, situations faced by the homeless or NGOs. Therefore, they badly need our expertise. We suggest what good solutions they could introduce. These ideas serve as innovations introduced by the state in the sphere of social policy. We consult with the state all the time, that is, I am constantly working with the state, explaining how everything works, what needs to be done.* (Interview 24 July 2019)

Advocacy and lobbying activities are thus perceived as advice to politicians, which provides them with knowledge about the problem of homelessness.

*We are often like advisers. They listen to us about technical and innovatory issues.* (Interview 24 July 2019)

Furthermore, representatives of NGOs emphasize the importance of mutual respect in relations with politicians.

*We are constructive. We never attack people by saying, for example, that the Minister is wrong or that this or that Minister is a bad one. We try to respect people and officials. They are often people of good will. They are not happy that people live on the street. It is a dialogue of mutual respect.* (Interview 18 July 2019)

*Advocacy and lobbying in the context of creating and changing housing policy*

According to an interviewee (Interview 24, July 2019), two groups of activities undertaken by housing NGOs can be distinguished. The first group regards creating a housing policy. When the state does not make decisions important for housing NGOs, then, as a part of advocacy and lobbying (to influence politicians), they use instruments such as compiling and sending newsletters to the members of the Collective of United Associations, organizing meetings with politicians (Ministers, Prime Minister, President), and sending e-mails to parliamentarians. Meetings with politicians can be divided into formal and informal, as suggested by the interviewee (Interview 18 July 2019).

*We often meet politicians. Sometimes even several times a month. We often talk to each other in the media. So, we know each other well. There are informal meetings in which, for example, my boss and I participate together with the Minister. But there are also formal meetings, officially included on the Minister's agenda, in which all members of the Collective of United Associations and representatives of the Ministry participate. (Interview 18 July 2019)*

In organizing meetings with politicians, private acquaintances of representatives of NGOs are reported to be of great importance:

*The director knows the president and has met him five or six times since the beginning of his term. This is an opportunity to win something. (Interview 18 July 2019)*

However, these meetings do not always translate into involving NGOs in legislative work.

*We cannot complain that we are not included. We meet with political decision-makers very often, but this does not always influence policy*

*implementation. There was a situation with a bill that took a year to work on in which most of the time we were unable to join the discussion. We sent emails and called, but there was no response. (Interview 18 July 2019)*

One of the organizations (Abbé Pierre Foundation) annually publishes a report on the housing situation in France, which expresses the voice of the entire community. This is the moment for an interpellation regarding the housing policy. The media and the public are involved in the discussion. The NGOs try to change the housing policy when the state does something the NGOs disagree with:

*It is about defending the interests of those represented and organizations when we believe that politicians are making bad choices. (Interview 24 July 2019)*

In such situations, NGOs use legal means such as letters to the Ombudsman and the Council of State. Other instruments include actions on the streets of Paris:

*Sometimes we put mattresses on the ground to represent the homeless. Sometimes we organize a night out on the street to draw attention to the problems of the homeless and show solidarity with them. (Interview 18 July 2019)*

As part of the Collective of United Associations, organizations contact and jointly undertake activities related to advocacy and lobbying:

*There are many bi-monthly and sometimes monthly meetings between the members of the Collective of United Associations. It is about communicating information and developing a common strategy. Finally, the discussion is about what can be done to approach the government on issues raised by organizations. (Interview 18 July 2019)*

*As soon as we have a topic that we know may be of interest to many organizations of Collective of United Associations, we send them an email with a press*



*release or a document that we want to send to the Minister. Everyone is free to sign it. No one is obliged to sign. As a result, it gives us more influence over politicians. For example, we organize a press release or a press conference together on winter assistance for the homeless. (Interview 24 July 2019)*

In the comments that follow, it was suggested that the Collective of United Associations strengthens the position of NGOs in housing policy-making:

*The best way to get a message to the government is to get organized, get together. [...] As part of the Collective of United Associations, we waste less time and less effort to conduct political advocacy together, things go faster then. This gives us more variety. We try to gather as many organizations as possible [...] It is easier that way. There are more of us, we are more important. It is also important for the Federation. Our position is partially the voice of the entire group. Due to this, we are not constantly in a confrontation with the state that finances us and is fed up with us. (Interview 24 July 2019)*

### *An example of a successful strategy of the Collective of United Associations' advocacy and lobbying*

In 2018, NGOs jointly took action to improve the access of homeless people to registration (*domiciliation*). It was important because without registration one cannot exercise certain rights (e.g. obtaining social assistance benefits, opening a bank account, using voting rights, sending a child to school, legalizing the stay of illegal immigrants). Homeless people been entitled to an administrative registration before. This was stipulated by the ALUR Act of 2014. However, in 2018, the municipalities<sup>4</sup> that dealt with it did not have the appropriate instruments (financial and human resources) to properly fulfill their obligations. As a result, the waiting time

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<sup>4</sup> Especially in the Ile-de-France region.

was significantly extended (up to several months or even longer). This deepened the destabilization of the life of the homeless. After identifying the problem, the NGOs defined the purpose of their activities:

*We wondered what we could do. [...] Our topic was financing the registration. The idea was to put it on the political agenda. [...] The idea was for the deputies and senators to adopt the amendment to the budget act. (Interview 24 July 2019)*

Subsequently, the target was specified. The NGOs concluded that:

*[...] the best way is to influence the government while working on the draft budget act (in September, October). (Interview 24 July 2019)*

The next step was to plan the advocacy and lobbying approach. Actions were taken such as meetings with senators and deputies, sending emails to all parliamentarians in France, and creating documents informing about the problem to be solved. Organizations tried to publicize the problem of insufficient funding for the registration of homeless people by publishing information about it on websites. They cooperated with the media (by writing press articles, giving interviews). Representatives of NGOs prepared special newsletters and met the Minister responsible for the registration. During the talks:

*We tried to say that financing the registration is necessary because we have collected a certain amount of data and evidence that communes cannot register. [...] We discussed this with them. We gave them some documents. Politicians were quite interested in supporting the project. We tried to convince as many of them as possible. (Interview 24 July 2019)*

The result of the activities was to make the subject of the registration of homeless people known and politically attractive. According to an interviewee:

*Politicians often look for a topic to discuss. Topics about poor people are attractive enough for them to discuss. Many politicians replied to us. (Interview 24 July 2019)*

As a result, several politicians (deputies and senators) submitted draft amendments to the budget act, considering an increase in funding for the registration of homeless people. Following:

*The government said that it was a topic that was discussed a lot and placed it on the agenda. (Interview 24 July 2019)*

The activities of the NGOs were successful. However, they required convincing the government that the changes were needed.

### **What are the obstacles that impede the participation of NGOs (by advocacy and lobbying) in housing policymaking?**

#### *Financial dependence on government subsidies*

The interviewees suggest that the most important problem is the financial dependence of many NGOs on government subsidies. On the one hand, housing NGOs often compete for state funding for their projects. This is especially visible in the context of shelters. These organizations try to stand out to increase their chances of funding. They represent various approaches to solving the problem of homelessness. This causes conflicts to arise:

*The idea was to speak with one voice, because, especially in the context of shelters, organizations often compete for the voice in policymaking. This is because these organizations compete for state funding of their projects. In the context of the advocacy and lobbying function, we wanted to avoid this conflict. (Interview 18 July 2019)*

In this context, the Collective of United Associations enables the development of one voice of NGOs in housing policymaking. This is very important because it makes it difficult for politicians to disregard the views of NGOs. The joint voice of all organizations is balanced, discussed, and thought-through; as such, it is more resilient to criticism. Advocacy and lobbying conducted by the Collective of United Associations thus have greater legitimacy in housing decision-making than the actions of individual organizations. There is no objection to the fact that the Collective of United Association represents the interests, values, and goals of only a part of the organizations and their clients. The situation is, however, different for individual organizations:

*The Solidarity Actors Federation (FAS) often demands more funding from public authorities for the organizations it represents, so it can quickly be accused of just wanting more money for itself, for its employees. (Interview 18 July 2019)*

On the other hand, a critical approach to advocacy and lobbying by non-governmental organizations (financed by government subsidies) is very difficult. Direct participation in housing policymaking for these organizations is very problematic; it creates a situation of uncertainty about further government funding. In the comments below, an interviewee describes the problematic situations to which these organizations are exposed.

*It often happens that when the Solidarity Actors Federation (FAS) strongly criticizes the government, and later on, at a meeting with a government representative, it hears that it is “financed by the state”, that it “has received a certain amount of funding in a given year”, and that “the authorities are surprised that the FAS is criticizing them”. Even though the government does not say that “Because you criticize us, we will cut your funding”, it is suggested. (Interview 18 July 2019)*

The financial dependence of NGOs on public authorities weakens their position in advocacy and lobbying, resulting in a situation when these organizations sometimes feel ignored by politicians:

*I can say that most of the time they listen to us. They stop listening to us when we ask for funding or when it comes to the topic of migrants and refugees. (Interview 24 July 2019)*

Politicians do not hesitate to use their stronger position in the decision-making process to influence the activities (including advocacy and lobbying) undertaken by NGOs:

*We, as a federation, are largely financed from public funds. We are an NGO, an association completely independent. We defend the interests of people and our members in a difficult housing situation. The state does not tell us what to do or say. But sometimes it is difficult to argue with politicians because they tell us: "Be careful, we finance you, and one day we may stop financing you." (Interview 24 July 2019)*

### *Weak position of the Minister of Housing in the government*

Apart from the financial issue, a significant problem is caused by the weak position of the Minister of Housing (the main addressee of housing NGOs' advocacy and lobbying) in the government. The key actors in the decision-making process are the President, Prime Minister, and the Minister of Finance. Housing NGOs have the best contact with the Minister of Housing. However, it is not the Minister who decides on the amount of funding that will be allocated to the housing policy:

*The problem is that the Minister of Housing often agrees with us. He says that we are right that there is no adequate funding for social housing. But the most important financial choices are not made by the Minister of Housing, but by the government, the Prime Minister, and the Minister of Finance.*

*The problem is that the Ministry of Housing is often affected by cuts in budget expenditures made by the Minister of Finance. And our interlocutor is the Minister of Housing. We do not know people in the Ministry of Finance, we do not consult them. (Interview 18 July 2019)*

The criticism of housing policy by NGOs is frequently a tool used by the Minister of Housing to build a stronger position in the government. Social discontent strengthens his arguments and helps, for example, to avoid certain budget cuts on housing:

*The Minister of Housing sometimes receives a reduced budget of his ministry from the Minister of Finance, for example, due to the policy of reducing the budget deficit, and tries to defend this budget. Sometimes, the Minister of Housing encourages NGOs to criticize the government, because it may help him in negotiating with the Minister of Finance. To an extent, such a dialogue is useless, because one can see that the Minister of Housing agrees with us. We try to contact the Prime Minister or President more and more often, but such meetings are held much less frequently. (Interview 18 July 2019)*

### *Right-wing sentiment in politics*

Throughout the discussions, the author observed that in a situation where the right-wing government is in power, it is difficult for NGOs to advocate and lobby for the housing situation of migrants and refugees:

*The politicians we talk to are people elected by citizens based on a program that has appealed to a specific group of people. Politicians and the government need a majority in the Senate and the National Assembly so that they can pass laws, move forward, and implement their agenda. To do this, politicians will continue to please their electorate. Consequently, they will make the most human decisions aimed at combating exclusion, legalizing people staying illegally, etc. But now, we have an elected government with a rather right-wing program. Therefore, if our decision-makers made such*

*decisions, the entire right-wing part of society would manifest their dissatisfaction, so the government will never risk it. (Interview 24 July 2019)*

According to an interviewee, politicians are reluctant to take care of migrants and refugees because they fear that this may reduce the chances of their reelection:

*I think the greatest difficulty in dealing with politicians is that they have been elected and that before they can make the right decision, they will first make a decision that will allow them to be reelected in five years. This is the problem of political continuation. (Interview 24 July 2019)*

In such circumstances, attempts are sometimes made to use housing policy instruments to pursue a restrictive migration policy. In 2019, the Minister of Housing and the Minister of the Interior issued a circular under which NGOs operating shelters were to send lists of homeless people residing in France illegally to the Ministry of the Interior. Such people would be at risk of deportation. NGOs opposed these solutions:

*It was scandalous for us because Integrated Reception and Orientation Services for the homeless (the SIAO) are not elements of internal policy, but housing policy. In France, one ministry cannot be delegated to institutions under the responsibility of another – it is forbidden. It was an attempt to implement a migration policy using housing policy instruments. [...] We warned our members not to send these letters because then they would enter into cooperation with the Ministry of the Interior, and this is not their mission. (Interview 24 July 2019)*

### *Housing NGOs advocacy and lobbying challenges: housing innovations*

Housing innovations are an important element of advocacy and lobbying for housing NGOs. Innovations are solutions that address current housing

problems. However, such temporary innovations are preferred by politicians as projects that are cheaper than a comprehensive housing policy and easy to present to the public as a political success. Consequently, housing innovation presents both an opportunity and a threat to housing organizations: they solve some problems, but camouflage the lack of larger measures to improve the housing situation in France. An example is the action of the government and the President on the Housing First project (Logement d'abord):

*In 2017, Emmanuel Macron returned to his campaign proposal to introduce Housing First in France, and work began on a project to implement this proposal. The Collective of United Associations was working on this with the Ministry of Housing. [...] We supported the government's project, but it was an experimental policy that cost several million euros. At that time, important tools of housing policy were severely criticized by the government, and their financing was severely cut. (Interview 18 July 2019)*

This puts NGOs in a difficult position. At the same time, they collaborate on innovations and criticize the apparent actions of the government.

### **Discussion – French NGOs' HA&L activities as a substitute for social dialogue instruments**

The issue of NGOs HA&L practices as tools to participate in public policy-making on housing is usually conceptualized with the theory of governance (Filipovič Hrast et al., 2009). Some researchers posit alternative theorizations. For instance, Speak and Tipple (2006) have drawn from a constructivist approach to examine the relations between NGO HA&L activities and the change of attitudes and perceptions towards the homeless. Jacobs (2015), in turn, relies on Marxist political economy to study the influence of various pressure groups (with different social power) to define and implement housing policy.

Many researchers argue that a housing policy is not the result of democratic deliberation between citizens but of the relations between the most



influential groups of social actors (e.g., finance industry, developers, well-off householders, and landlords). Pressure groups (using HA&L activities) affect government decisions in their interest. Concerning France, Bourdieu, and Christine (1990) claim that sometimes even unexpected alliances of groups of social actors with the appropriate social, political, and cultural power can lead to major changes in housing policy. They illustrate this observation by the case of the reform of French housing policy in the late 1970s. A new housing aid policy (fostering rental subsidies) was developed under the impact of an active minority of young civil servants (working for the Ministry of Development). Young economists and engineers criticized the focus of the housing policy on the support of the direct provision of new social dwellings by non-profit organizations (HLM). Zittoun (2001), on the other hand, proposed a view of the evolution of housing policy in France through the prism of the phenomenon of exchanging obligations and benefits between the coalitions of political actors associated with housing and representing diverse interests and visions of housing policy. Based on three elections: presidential (of 1981 and 1995) and parliamentary (of 1993), Zittoun analyzed housing as a stage for a political fight. There were two “performances” that played out simultaneously on this stage: (1) the electoral fight for political power, as well as (2) the “expert” fight for knowledge, arguments, truth, and the vision of housing policy. These “performances” affected each other. The key role in the process was played by arguments presented in political discourse. They expressed the views of conflicting coalitions of political actors, legitimized their stances, and enabled differentiation from other groups of political actors. An analysis of the exchange of arguments made it possible to grasp the mechanism of the fight for power between the actors of housing policy. An important role in formulating the arguments under analysis was played by experts whose participation required possessing adequate resources by political actors (including financial resources). Political actors, however, needed arguments that were provided by experts on the environment of housing policy. Thus, politicians incurred a political debt with social actors associated with housing. This debt was paid after winning political elections,

among others, in the form of supporting solutions consistent with the views of certain groups of experts.

However, these approaches do not help to understand how to interpret lobbying and advocacy as tools fostering the democratic and deliberative participation of NGOs in the housing policy process. This is the reason why the conceptual lens that frames the study is the theory of deliberative democracy. This theory is currently the most frequently applied method by political science researchers analyzing the involvement of social actors in policymaking (Hilmer, 2010, pp. 44–45). Deliberative democracy “is a normative project grounded in political theory” (Curato, Dryzek, Ercan, Hendriks, Niemeyer, 2017), and aims to foster a form of direct democracy that is based on deliberation. The discussion about the deliberative stance is at the center of deliberative democracy. It is “a public process of communication, oriented toward searching for adequate arguments in favor of certain assessments of and solutions to the issues in question” (Cohen, 1997, pp. 75–76, after Sroka, 2009, p. 28). Following Sroka (2009, p. 28), “deliberation [...] is characterized by: (1) a persuasive manner of choosing arguments, (2) a desire to reach a consensus, and (3) the public nature of discourse”. Deliberation, however, refers not only to the rationalist forms of discourse. It encompasses many kinds of communication which respect the plurality of speech cultures. Moreover, the deliberative stance means that the discourse is governed by “a relationship with others as equals, engaged in a mutual exchange of reasons oriented as if to reach a shared practical judgement” (Owen, Smith, 2015, p. 228). Deliberative democracy also includes and tempers elite power. Concerning power, “deliberative democrats recognize that coercive power pervades social relations but understand that certain kinds of power are needed to maintain order in a deliberative process, to address inequalities, and to implement decisions” (Curato et al., 2017, p. 31). Moreover, deliberative democracy fosters consensual but pluralistic policymaking based on participation. What is more, deliberation is time-consuming, but it helps to limit group polarization (with structured discussion). Furthermore, it also (1) induces the agreement to restrict the ability of actors to introduce new options that destabilize

the decision process, and (2) structures the preferences of participants so that they become “single-peaked along one dimension” (Curato et al., 2017, p. 29). There are many tools of deliberative democracy (e.g. citizen assembly, citizens’ juries, participatory budgeting, councils, consultation, forums). Some of them are more deliberative, whereas the others are more participative [Blondiaux, Sintomer, 2009, p. 33]).

The turn to deliberation and participation is an important characteristic of French policymaking in the last years (Chrisafis, 2020; Yeung, 2020). The representatives of underprivileged social groups have been in such a way gaining a new possibility to present a voice of their constituency in the decision-making (Bacqué, Carriou, 2011). Within this context, one can find that there is a particular tool of deliberative and participatory democracy being developed in France, and it regards the public debate (introduced by the Barnier Act of 1995 [Revel, Blatrix, Blondiaux, Fourniau, Dubreuil, Lefebvre, 2007, p. 9]). For example, the National Commission for Public Debate (CNDP) organizes a consultation on large public works proposals. Concerning housing, it seems to be legitimate to state that there is a kind of informal, bottom-up, organized “public debate on housing in France”. The national housing meetings (*assises nationales, états généraux*) of 2010 and 2012 also constituted a kind of “public debate”. Many social actors (such as developers, Abbé Pierre Foundation, the building federation, and associations of local authorities) elaborated on the most important challenges of French housing policy and asked politicians (including candidates in the presidential election) about their approach to housing. NGO HA&L activities can thus be treated as tools to include the interest and voice of the homeless in housing policymaking, in addition to national, unsystematic housing meetings. The research consequently reveals that HA&L activities are seen by NGOs as a critical and constructive dialogue with the government. This interpretation of the HA&L activities of NGOs is in line with the concept of the social contract of Jean-Jacques Rousseau. Furthermore, NGOs act in the public interest and defend the rights of the homeless in defense of the principles of the Republic. Representatives of housing NGOs seem to consider those tools as a substitute for social

dialogue instruments that exist in the field of the labor market within the French corporatist-conservative welfare regime (Esping-Andersen, 2007, pp. 73, 92–93). This deliberative instrument, therefore, performs a function similar to collective bargaining in the labor market. However, numerous obstacles that impede the participation of NGOs (by advocacy and lobbying) in housing policymaking show the weakness and deficiency of that substitution.

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## Random Selection of Participants in Deliberative Mini-public on the Example of Citizen's Assembly. Selected Issue

**Abstract:** The purpose of the paper is to present the elements of deliberative participatory governance on the example of citizens' assembly becoming more and more popular mini-public all over the world. In order to achieve this goal, I analyzed the certain aspects of two fundamental organizational standards of citizens' assemblies, namely random selection of participants and related assembly demographic representativeness. In this context I performed research on the certain methods of participant random selection referring to the issue of diversified selection algorithms, criteria of eligibility for participation in citizens' assembly and personal profiles of participants. Both indicated standards are focused on achievement of democratic equality, thus providing individuals with the chance to be selected to work within an assembly with equal probability. However, in practice, this demand is very difficult to achieve, mostly because of different participation ratios in certain subpopulations.

**Keywords:** sortition, random selection, deliberative mini-public, citizen's assembly, multi-level governance

## Introduction

As democratic innovations, citizens' assemblies are characterized by the two basic features. Firstly, they are deliberative, as participants work out final recommendations during the processes of learning and open deliberation. Secondly, they constitute a representative reflection of a given population. This happens thanks to the assumption that assembly composition reflects various demographic criteria specific for a given community. By means of inclusive participation of citizens in structured deliberation these democratic innovations can constitute an attempt to cope with some procedural deficiencies of representative democracy.

In general, demand for such initiatives is very high, as is level of discontent with representative democracy (Bedock, Pilet, 2021). As a result, community involvement in such undertakings may have positive impact on how legitimization of the decision-making process is perceived by larger audience (Boulianne, 2018; Jäske, 2019; Pow, 2021). Research on political psychology proves that a decision making method, even if analyzed without context of decisions themselves, has impact on their social legitimization. So, whether addressees of public decisions will accept them results mostly from the issue what process is used to make decisions (Pow, 2021; Tyler, 2006). In such context, citizens' assembly is a formula, a method but also a specific tool used to make transparent, open and inclusive pre-decision making deliberation (Podgórska-Rykała, 2020).

The purpose of the paper is to present the elements of deliberative participatory governance on the example of citizens' assembly becoming more and more popular mini-public all over the world. In order to achieve this goal, I analyzed the given aspects of two fundamental organizational standards of citizens' assemblies, namely random selection of participants and related assembly demographic representativeness. In this context I performed research on the given methods of participant random selection referring to the issue of diversified selection algorithms, criteria of eligibility for participation in citizens' assembly and personal profiles of participants. Both indicated standards are focused on achieving

of democratic equality, thus providing individuals with the chance to be selected to work within an assembly with equal probability. However, in practice this demand is very difficult to achieve, mostly because of different participation ratios in certain subpopulations.

The paper is based on several qualitative research methods selected in compliance with the essence of a research topic which is citizens' assembly as one of deliberative mini-publics. Firstly, I have used document examination technique within which I performed the analysis of data, materials and documents (mostly regulations and reports) collected by organizers of assemblies and made available at their websites. Within theoretical search focused on the random selection theory and the practice of using deliberative tools all over the world, I also analyzed other documents, reports and statistical data, including scientific publications and performed intensive bibliography research. These actions allowed for reinterpretation of the previously obtained research results regarding the subject of research specified in the paper. Let me say that document examination technique is both qualitative and quantitative, so various documents provided me with knowledge on ratios specifying the scale of the researched phenomenon, being also the source of more detailed knowledge on specific cases referenced herein.

The paper is classified within research on social sciences, with particular consideration of science on politics and administration.

### **Random selection as a method of inclusion of citizens into decision making processes within citizens' assembly**

The idea of including ordinary, though randomly selected citizens into the decision making processes in the name of larger communities is both well preserved and well known to most of people in the form of the Anglo-sphere jury in a court room (Hostettler, 2009; Morgan, Worsyth, 1875; Pow, 2021). Jury is an institution of the judicial power, consisting of citizens and non-professional judges, and in this context it reflects participation

of the social factor in law enforcement. However, the idea of inclusion of non-professionals into decision making processes can be also successfully applied in the political sphere by means of deliberative mini-publics to decide on important social issues (Smith, 2009). In their current form, citizens' assemblies have been organized since the second half of the 20<sup>th</sup> century, though the idea itself is derived from Classical Athenian assemblies (Hansen, 1999; Manin, 1997). As a result, random selection of representatives, the fundamental feature of citizens' assemblies, can be seen as innovative in context of contemporary political systems, though we should remember that in Classical Athens it was commonly used with purpose to popularize political equality (Owen, Smith, 2018).

For Athenians random selection was the main instrument of democracy. In the prime of Classical Attican democracy the 500-person *boule* was randomly selected annually from among all men of at least 30 years of age. The *boule* prepared all legislative proposals that were subsequently submitted to the assembly called *Ecclesia* for discussion; it also negotiated treaties with foreign powers. 50 councillors (*prytaneis*) selected in this way constituted a government and each day one *prytanis* was selected, also randomly, for its chairman. On that particular day he was honoured to hold the key to the treasure house. Aristotle thought it was a democratic way to assign people for public posts randomly and oligarchic to do it in elections (Hansen, 1999). In Archaic and Classical Greece using lots to select leaders was also based on religious aspects (Demont, 2019). Random selection also played a fundamental role in the philosophy of Plato. His proposals described in *Laws* expressly emphasized the fundamental political role of random selection. Plato thought that random selection value is of doubled importance, as it is a virtue of divine sanction and has the power to impose equality among equals (Macé, 2019).

First three experimental citizens' assemblies on political system reforms were held in 2004 in British Columbia, Canada, in 2006–07 in Ontario, Canada and in 2006 in the Netherlands (Fournier, van der Kolk, Carty, Blais, Rose, 2011). The subsequent experience regarding application of these innovative deliberative tools in many countries, e.g. Australia,

USA, Germany, Austria, Ireland, Belgium, France or United Kingdom, proves this method is not only spectacular, but also efficient. As a result, and though its organization requires significant organizational efforts and possessing certain assets, citizens' assembly currently constitutes one of the more popular forms of inclusion of stakeholders into public decision making processes, meeting the framework conditions of the idea of *multi-level governance* (Jacquet, 2019).

Currently, citizens' assemblies are used in more than 25 countries and are prepared by ca. 40 specialized organizations. Assemblies can be initiated by both public authorities of any level and civil society organizations, e.g. the Sortition Foundation in the UK that only in 2020 worked on recruitment of assembly participants for 29 various assembly processes (Flanigan, Gölz, Gupta, Hennig, Procaccia, 2021). OECD defines citizens' assemblies as a part of the larger democratic movement with purpose to provide citizens with more direct role in making public decisions they are influenced by (OECD, 2020).

Giving all citizens potentially equal chances for being selected to participate in democratic decision making process via citizens' assemblies, random selection supports the idea that all citizens are equally capable to have political judgment and are equally responsible for the common good (Jacquet, 2017). However, in context of deliberative mini-publics the more often cited justification for contemporary application of random selection is popularization of the idea of the so-called descriptive representation (Fishkin, 2009). In general, it refers to large mini-publics consisting of several dozens of participants (Setälä, Smith, 2018). In order to assure descriptive representation, the multi-stage procedure of random selection is applied in order to establish assemblies of citizens, that would generally correspond to demographical structure of greater population, as it was the case of first citizens' assemblies in British Columbia on the election reform (Fournier et al., 2011) and also in Ontario, the Netherlands (*Burgerforum Kiesstelsel*), Ireland or in case of citizens' assemblies of climate changes in the United Kingdom and France (Paw, 2021).

Assembly solutions are useful at each level power, starting from local communities, up to entire countries, intergovernmental unions (European Union) or even the global network. It is possible, because the rule of random, representative reflection of population is applied when planning assembly composition and, subsequently, it reflects various demographical criteria of a given community. As a result, it solves the problem of scale, involving admittedly small, though diversified and basically representative groups of citizens. This is one of positive aspects that gives citizens' assemblies an advantage over referendum participatory processes (Dahl, 1989; Escobar, Elstub, 2017).

Citizens' assemblies do not need to be one-time projects – for example, there is a model of permanent civic dialogue, adopted in the German-speaking Community of Belgium. Its essence is permanent decisive deliberation, which was worked out in cooperation with the international group of experts and the Belgium organization G1000. It consists of four following entities: Permanent Civic Senate (*Bürgerrat*) consisting of 24 persons randomly selected for the 18-month term; Permanent Secretary on Civic Dialogue, an employee of regional administration (*Ständige Sekretär*); citizens' assemblies (*Bürgerversammlung*), regularly held assemblies of randomly selected citizens, and the Government and Parliament of the German-speaking Community of Belgium. In this model the Senate and assemblies consist of persons randomly selected in compliance with the principles of representativeness in terms of age, sex, domicile and education. The Senate gathers once per month and decides on topics requiring agenda setting. Then each topic is discussed within a separate citizens' assembly (ca. 3 assemblies per year) in order to work out specific recommendations for the authorities. These recommendations are sent to the Parliament which holds at least 2 sessions per year to discuss them. Recommendations are not binding, as it would be against the Belgian constitution, however, there seems to be genuine will to implement them, supported by the fact the project to implement the said model in the region was unanimously approved by all 6 political parties represented in the regional parliament. Also the Brussels-Capital Region followed the

German-speaking Community of Belgium, establishing the permanent procedure on involvement of randomly selected citizens into the process of defining the public policy in cooperation with parliament members who are together members of deliberative committees (Reuchamps, 2020; Niessen, Reuchamps, 2019).

Some deliberative mini-publics adopt the mixed model of participant selection, e.g. *The Irish Constitutional Convention* (2012–2014). It was decided the assembly would consist in 2/3 (66 persons) of citizens randomly selected among the Irish population and in 1/3 (33 persons) among professional politicians assigned by political parties (proportionally to their representation in the lower chamber of the parliament). The purpose was to efficiently connect the traditional idea of selection of representatives with the innovative method of random selection in order to embed the new form based on the idea of mini-public in the traditional political system and to increase probability that Convention's recommendations would be justly implemented (Farrell, Suiter, Harris, Cunningham, 2020). However, in the two subsequent citizens' assemblies in Ireland the mixed model of participant selection was abolished. In 2016 99 participants were selected from among citizens and only the assembly chairwoman, Mary Laffoy, Justice of the Supreme Court of Ireland, was assigned.

The process of random selection of participants should meet two basic functions. Firstly, it is the selection representative for a given population and, secondly, in compliance with the idea of democratic equality, individuals should be selected to work in the assembly with equal probability. However, in practice, it is very difficult to achieve this, mostly because of diversified participation ratios in certain subpopulations. In this context very significant are (1) criteria for eligibility; (2) additional variables determined with reference to the demographic and geographic profile of a given community and related to assembly topic or other features of a given population/region/decided problem; and (3) the adopted selection algorithm. The latter is a method on the basis of which assembly participants are selected and is highly influential in terms of deciding who will be selected to represent a given population (Flanigan et al., 2021). As a result,



representativeness constitutes a fundamental organizational standard of the mini-public and is achieved by the selection criteria designing process that is adequate for needs of a given community (Brown, 2006). For the perfect model it is assumed that assembly composition should basically correspond to a demographic profile of a given population. This leads to creation of a specific "microcosm" of a given location, within which there will be no representation of a sovereign, but a sovereign "in a nutshell". Such an assembly structure creates the opportunity to enable the possibly most diversified group persons to participate in the assembly, characterized by significantly different opinions, beliefs, attitudes, knowledge and experience. Thus, participants are supposed to be representative for the population and their work is supposed to imitate a gathering of an entire population. It is assumed they should work in conditions ensuring convenient space for learning, seeking answers for their questions, deliberation, considering arguments and making decisions on the basis of diversified points of view and perspectives (Fishkin, 2018). Whether this goal will be implemented, depends on how assembly participants are selected.

### **Does a number of participants matter?**

A number of citizens' assembly participants needs to be thoroughly considered, as it is a significant factor of correct representation of a population a given problem refers to and statistical accuracy. Correct number of participants allows for consideration of a variety of individual experiences, perspectives and attitudes. Also, an assembly should be relatively small, resulting in easy and efficient management and moderation of its works and enabling constructive and relatively free and public exchange of information and arguments (Podgórska-Rykała, 2020). Considering this framework, most of assemblies consist of 50–200 persons. Usually, several "substitute" members are assigned in case a participant cannot participate in an assembly or resigns. In this context it is safe to assign as substitutes 20% of a basic number of participants, also considering the

basic demographic criteria. The number of citizens' assembly participants at the city level, recommended by experts, is 50–70 basic participants and 10 substitutes. For example, in Wrocław, Poland 75 persons were randomly selected and standard participants and 10 as substitutes, in Lublin, Poland it was respectively 60 and 12 people and in Mostar (Bosnia and Herzegovina, 2021) 40 and 8 persons. People from the main group and substitutes participate in an assembly as equals, with an exception of a final voting in which only main group members participate in. Obviously, if a main group participant is absent at a final voting, they are replaced by a substitute (a person whose demographic profile is the closest to a person being substituted).

A number of assembly participants is of significant importance. The greater the number, the more various perspectives there are, resulting in higher quality of achieved recommendations. For example, in Lublin the ca. 70-person assembly was divided into four groups and it turned out that each of them, while working separately from the other ones, reached different conclusions. Despite the existence of some common perspectives, the key effects of group negotiations did differ. Only after collecting conclusions from small groups during the entire assembly session it was possible to achieve the intended purpose (Gerwin, 2018). However, if an assembly group is too large, it blocks unlimited work and may distract participants. Usually, assemblies at the level of entire countries or their parts (e.g. state, province) consist of more participants than at the city level. The assembly held at the Canadian province of British Columbia in 2004 consisted of 161 participants. In 2006 in the Netherlands the citizens' assembly consisted of 143 people, in other Canadian province, Ontario, of 104 and in Ireland of 101 people. In case of very large groups (several hundreds of persons) significant organizational and financial issues are inevitable.

### **Criteria of eligibility and exclusion of participants**

While preparing organizational issues regarding random selection of participants, it is necessary to determine the demographic and geographic

profile of a given population and subsequently define criteria important enough to use them to perform equal and representative selection. As a result, it is necessary to determine eligibility criteria and all persons meeting them can be qualified for an assembly. However, there are some exclusions regarding this principle, which are related to either the age of potential participants (lower age limit is defined) or professional status or position held by a given inhabitant (in context of their relation to an assembly or a topic which is discussed therein). Age-related criteria result from the conclusion that participants should be mature persons aware of problems they are going to decide. Usually, an age limit is 18 years (e.g. at assemblies held in Poland at the self-governmental level), but sometimes it is 16 (e.g. in Mostar in 2021).

Social and demographic criteria are general and cover information included in public register (e.g. sex, age, domicile). Other criteria refer to specific citizens' assemblies and situation of a given population (e.g. level of education, income, nationality, involvement in a specific topic). In case of some assemblies, ethnic background or economic criteria are used (e.g. Mostar in 2021). Also, other general criteria strictly related to assembly topic can be applied. For example, in Wrocław, where the assembly was related to transport, demographic criteria were extended by information on most often used mean of transport. As a result, five criteria were considered: sex, age group, level education, the most often used mean of transport and domicile. An assembly-related criterion can be positive or negative, as all persons whose jobs somehow refer to a topic of an assembly being prepared may be excluded, in order to have a group consisting of non-professionals only. In some cases, random selection may only include persons that have something in common with a topic of an assembly. For example, *The Citizens' Assembly on Social Care* held in the United Kingdom on April 27–29 and May 18–20, 2018 at the Birmingham city centre consisted of 47 citizens who had been randomly and representatively selected, regarding age, sex, ethnical background, social and economic group, domicile and attitude towards a method of budgetary funding of tasks being discussed. These were only persons with direct

experience regarding social care, both in context of adults in working age and elderly. The assembly was organized by Involve, the leading British social organization active in the area of social inclusion.

It is assumed some groups of persons are automatically excluded from participation in an assembly as its members, in order to assure its impartiality. However, these persons usually participate in the entire process, though in different roles. Depending on regulations of a given assembly, they may be:

- employees of a public administration institution that ordered organization of an assembly (e.g. employees of city/province offices); usually only managers and persons whose jobs are directly involved in discussed topics are excluded,
- managers from other public organizational units,
- persons elected for public offices (e.g. councilors, members of parliament) and other persons assigned for political posts (e.g. representatives of governmental administration), including their advisors,
- stakeholders and members of stakeholder groups,
- lobbyists active in a topic of an assembly,
- persons directly involved in preparation and execution of an assembly, including members of the coordinating team and the monitoring team,
- experts who will participate in the assembly process in its educational phase,
- outside observers who will be officially participate in the assembly process,
- discussion facilitators and moderators.

All other persons who are not excluded from assembly works as a result of the aforementioned reasons should have equal/identical chances for selection in order to make an assembly representative. Both the lower age limit and clear guidelines regarding people who cannot participate in an assembly because of their positions should be included in regulations of given citizens' assembly.

Participation assembly members should be given an allowance, as some people cannot participate in their day-to-day activities, constituting

some type of cost reimbursement and kind of appreciation for active participation on behalf of other inhabitants. Symbolic remuneration is basically a guarantee of participation of poorer persons who could not take part in assembly, if not paid travel or babysitting costs. In Poland, such an allowance would amount to several hundred of PLN for the entire process; however it is determined specifically for a given assembly. In Gdańsk participants in all three assemblies were offered the same remuneration of 600 PLN gross (contract of mandate). At the citizens' assembly on social care, held in the United Kingdom in 2018, the participants were paid 150 GBP per weekend (every two weeks). At the citizens' assembly held at British Columbia they were offered remuneration of 150 CAD daily and support at child care (interim kindergarten).

### **Practical aspects related to organization of participant random selection**

The key element of citizens' assembly is an appropriate method of participant selection. In theory it should reflect demographic structure of a given population. Usually, random selection of participants take place in the two stages. Two selections are made in order to exclude auto-selection (random selection no. 1) and to select participants among persons who do want and can participate in the entire process (random selection no. 2).

As early as during the first stage (random selection no. 1), invitations are sent to potential participants on the basis of the basic eligibility criteria of sex, age and domicile. As a result, a relatively large group of potential participants is invited, even several hundred or several thousand of people randomly selected among a given population, in order to send them invitation letters. The rule is that only persons that are sent letters can participate in the second random selection and be subsequently chosen to participate in an assembly. Persons that are sent letters can express their will to participate in an assembly, applying at a dedicated website, by phone, e-mail or personally. They are registered within the group among which

the second random selection is performed. When registering, people usually use assigned unique ID numbers indicated in invitations and provide information on level of education (or other required data), allowing for competing all required elements of personal profiles.

An invitation can be sent to a specific individual or entire household. It should precisely specify what citizens' assembly is and information on its topic and dates of meetings. Also, an invitation should contain information on remuneration for work during an assembly, (randomly assigned) registration ID number, website address for registration and all other necessary information. Invitations should be printed in a public administration institution, so addresses of inhabitants do not need to be sent to unauthorized (Gerwin, 2018). Invitations are a good form to popularize the idea of citizens' assembly, so a total number of sent invitations is usually determined, too.

For example, in 2019 the UK government initiated *Climate Assembly UK* during which 110 citizens were going to meet at 4 weekends between January and March 2020 in order to debate on climate changes and jointly think on efficient method of limiting emissions of greenhouse gases in order to achieve net zero emission in 2050. With purpose to select participants, ca. 30,000 invitations were sent to inhabitants of England, Northern Ireland, Scotland and Wales and more than 1,800 persons replied. Among them the representative group of persons was randomly selected on the basis of age, sex, ethnic background, domicile and previous opinions on climate changes.

In Mostar (2021), 5,000 registration invitation letters were randomly delivered to selected households in the entire city, in accordance with the city population determined on the basis of the census of 2013. In order to meet the representativeness criteria, participants were selected among the database of registered persons on the basis of the following criteria: sex, age, education, domicile (district), material status and ethnic background. It was assumed maximum two persons from every household older than 16 years old can apply for participation in the assembly. Finally, 250 applications were registered. When applying for participation in the

assembly, inhabitants of Mostar entered unique verification codes in order to assure impartiality and transparency of the subsequent random selection process. 40 participants were selected among the basic group and 8 persons as substitutes.

In Gdańsk there were 10,000 invitations, in Lublin 12,000 and in Wrocław 20,000, while in British Columbia it was 20,000 for the entire province. In the United Kingdom as much as 30,000 invitations were sent to inhabitants of England, Northern Ireland, Scotland and Wales in order to select participants for the climate-related citizens' assembly.

When it comes to data on sex, age and domicile of inhabitants, in Poland they can be found in the electoral roll. Exact dates of birth and age are included in PESEL numbers, while address of domicile indicates a district. Information on education can be found at the data collected during a national census. The criteria of education or economic status can be added only after registration of all volunteers. Also in Germany resident registers are run by communes and there you can find such information as surnames, previous surnames, names, dates and places of birth, sex, legal representatives/parents of minors, nationality, affiliation to religious community, marital status and information on minors. In other countries the situation is alike, as public registers run by public administration institutions contain similar sets of personal data, enabling adequate determination of criteria accurate for first random selection.

For example, regarding the age criterion in Mostar (2021), random selection was performed on the basis of the following age groups: 16–24 years, 25–39 years, 40–64 years, over 65 years. In Gdańsk those invited to participate in assemblies were at least 18 years old. The four age groups were defined: 18–24 years; 25–39 years; 40–64 years and over 65 years. The same lower limit was adopted for the first ever assembly held in British Columbia, while other age division was adopted: 18–24, 25–39, 40–55, 56–70 and over 71 years old. There may be even more age groups, while it is important the narrower a specific age range, the lesser a number of persons sent invitations will be and less people will have a chance to register for participation in a citizens' assembly (Gerwin, 2018).

While planning random selection, an individual demographic profile is created for each participant in order to verify their representativeness. For example, in Gdańsk, where the first Polish citizens' assembly was held, profiles were created by completing the set of four criteria, e.g.: district – Osowa; sex – male; age group – 25–39 years old; education – higher. The demographic criteria to be included in a certain profile were decided by random selection transmitted live. In order to achieve this, the organizers used the Excel application and the tool from the website Random.org – it is the method developed by Dr. Mads Haahr from the Trinity College in Dublin. Using this example, only one participant was selected in Gdańsk from the district of Nowy Port. As the selected person was the 18–24 year old woman, invitations were sent only to women meeting these demographic criteria (Gerwin, 2018).

Thanks to individual profiles it is possible to determine to whom invitations should be sent. Using appropriate computer software, electoral roll data and information on a number of invitations for each profile, information is sorted out in a way informing how many persons meet the randomly selected conditions and to these particular persons invitations are sent. The exemplary individual profile in Wrocław was as follows: woman, 18–24 years old, secondary education, riding a bike to move around the city and living at the district of Jagodno. For Gdańsk it was assumed the minimum number of invitations per one profile should be 100. In Poland we can expect ca. 10% of persons to reply to invitations, giving ca. 10 persons to participate in the second random selection. At this stage random selection was performed electronically using devices belonging to public administration institutions possessing respective data because of their sensitivity. Besides the address list, individual ID numbers are generated that are necessary for subsequent registration of interested persons (Gerwin, 2018).

Besides the methods described above and applied e.g. in Gdańsk, other methods of participant selection can also be used. The so called “accommodation” method was adopted in Wrocław, as there were problems to determine who “inhabitants” really were. Of course, the civil law determines



this matter clearly, so it was assumed that even persons not entered to the electoral roll because of various reasons should also be able to participate in the random selection, if they did live in the city (e.g. the Ukrainian minority and students). The method is focused on “households” and not inhabitants during the first random selection. From a given household any number of adult persons living at an address an invitation was sent to can register for participation in the assembly. However, the first thing to do is to determine how many participants should be assigned for certain districts. A method to be selected is the one that meets the needs of a given district in the best way (e.g. the need to provide extra representation of smaller districts, etc.). It can be achieved by raising the number of persons registered at certain districts to the power of 0.9 and subsequently by summing up the numbers achieved during exponentiation. Then we calculate quotients for obtained results. For certain districts their respective quotients are multiplied by final or near final numbers of participants and then rounded. If for a given district the result is 0, then its score is 1. According to the “accommodation” method used in Wrocław, for the random selection purposes organizers used the database of inhabited apartments in residential buildings in Wrocław registered in the Statistics Poland database as of December 31, 2018 and broken down by districts (the database consists of 297,107 apartments). Then the percentage of total apartment number was calculated for each district. These proportions were calculated for 20,000 invitations. In this way it was determined that in Bieńkowice 11 addresses should be selected and 1,129 addresses in Olbin. These data were uploaded to the Oracle database and the Oracle random number generator was used to randomly select addresses from the database. The algorithm assuring randomness and incalculability of generated numbers was used. As participants are paid allowance, they were obliged to sign respective contracts, so they needed to provide personal data, as in case of any contract. At that stage it is possible to verify whether a given person really lives at a given address an invitation was sent to.

When it comes to the second random selection, it is possible to qualify only these persons who were previously invited (or live in an invited household,

if the “accommodation” method was adopted) and confirmed their will to participate in the second stage of selection. At this stage the following criteria are considered: sex, age, level of education, domicile (district, part of city/region/country) and other criteria related to an assembly topic or specificity of a given population. The purpose of the second random selection is to choose a specific previously assumed number of participants with use of a certain selection algorithm. Besides of participants, few persons (no more than a dozen or so) are selected as possible substitutes for regular members. It is assumed that such a selection path guarantees to all persons from a given population equal chances for selection and participation in an assembly (Gerwin, 2018).

The second random selection can be performed electronically, however it can also be conducted in the traditional way which is more splendid and transmitted and recorded live; it also allows to avoid any doubts. In Gdańsk a dice cube was used for selection and the special computer software called Panel helper was designed for this in order to filter the database of persons who registered for participation in the assembly, in compliance with individual demographic profiles. Only ID numbers were used during random selection, however if there were more than 6 person in the pool, the preliminary selection was conducted. Also in case of citizens’ assembly in Mostar (2021) the last stage of participant selection was based in the analogue method of casting dices and it was live broadcast and recorded. In order to avoid the situation, when a selected person immediately resign from participation in the assembly, substitutes are also selected during the same profile. In Gdańsk random selection was performed very quickly. Panel helper generated the list of e-mail addresses and phone numbers of persons who had been randomly selected and it was then possible to provide them with information on the random selection results and to call them to get confirmation of their participation (Gerwin, 2018).

Unfortunately, when analyzing the issue of random selection as a method of choosing participants of citizens’ assembly we encounter plenty of inaccuracies and questions, Though the adopted division into constituencies helps to popularize descriptive representation, there also

two significant limits. Firstly, though it helps to reduce the problem of auto-selection observed in representative bodies (Warren, 2008) to some extent, some auto-selection still occurs, as participants invited during the first stage may refuse to participate in next random selection. Secondly, random selection is based on the principle of scale with purpose to achieve representativeness of an assembly. Scale and stratification are supposed to reduce risk of some groups being overrepresented or underrepresented, but it still requires identification of respective layers.

In the case of assemblies for which the considered criteria are only sex, age and domicile, while e.g. ethnic background is omitted, this may result in some group being not represented in an assembly. Then specific representatives of such a group can be appointed at a later stage in order to correct the initial lack of balance resulting from random selection. Such a situation occurred e.g. in British Columbia during The British Columbia Citizens' Assembly on Electoral Reform held by the government in 2004. The assembly was an independent, impartial gathering consisting of 158 randomly selected inhabitants of the province, two indigenous representatives and the chairman Jack Blaney who voted only in case of a draw. In total, there were 161 persons authorized to analyze then valid electoral system in the province and to propose its fairer modifications. The similar situation occurred in case of Citizens' Assembly on Electoral Reform that was held in 2006 in Ontario. It comprised of 103 randomly selected citizens, one from each constituency in the province, and the chairman. In total, there were 104 persons, 52 from each sex, including one indigenous representative. The assembly works were moderated by George Thomson, an educator, former judge and deputy minister (Fournier et al., 2011).

### **Adopted selection algorithms in terms of non-representative “pool” in the second random selection**

The analysis of currently used diversified selection algorithms with the key feature focused on assuring fair selection allows to conclude that the “pool”

of persons among which participants are selected is non-representative at the very beginning. In particular, these groups whose members are more often willing to agree to participate in the assembly process, e.g. university graduates are usually overrepresented. As a result, in order to assure so called “descriptive representation” and in spite of pool measurement bias, selection algorithms require assemblies to meet upper and lower quotas regarding set of specified features that are approximately proportional to ratios of each of these features in a given population. For example, quotas may require a 40-person assembly to consist of 19–21 women. These quotas are assigned to specific categories of features, such as sex, age, education and other characteristics that are crucial in terms of the policy discussed (Flanigan et al., 2021).

What is also important is equal selection probability which is the main feature of discussed random selection and is referred by policy researchers as supporting such values as equal opportunities (Carson, Martin, 1999; Parker, 2011) or democratic equality (Fishkin, 2018, 2009; Parker 2011; Stone, 2016). Also, in multiple guidelines for participation practitioners the importance of equality regarding selection of representatives for deliberative decision-making bodies is emphasized. However, we will surely witness the problem, as in practice quotas almost always result in unequal probability, because persons from groups underrepresented in the pool must have been selected with disproportionately high probability in order to meet quota requirements. Though reaching perfectly equal probability is basically impossible, efforts are made with purpose to improve algorithm models in terms of the highest possible probability called “maximum fairness”. The purpose of these efforts is to prevent situations when the used selection algorithms select some population groups with nearly zero probability, practically excluding them from participation (Flanigan et al., 2021).

Most of selection algorithms currently used worldwide have such a multi-layer structure. They select persons to an assembly one by one, in accordance with a defined pattern and sequence. In each subsequent stage they randomly select a person who, because of their features, gives the best guarantee not to destabilize defined quotas in next random selection.

This results in allocation of existing algorithms becoming basically uncontrolled, so they may turn out to be significantly unfair. It should be noted that “fairness” in such selection can be measured on the basis of individual selection probability. Very advanced and practically applicable research on fair participant selection algorithms in citizens’ assemblies was conducted by the team consisting of Bailey Flanigan et al. (2021). As a result, the LEXIMIN algorithm was designed. Its authors faced the problem of some algorithms determining near zero selection probability in case of some persons. This type of unfairness was seen as especially urgent, because if it regularly affects certain pool members (as a result of a specific combination of possessed features), these persons and their separate perspectives would be systematically excluded from participation and this clashes with the key structural feature of citizens assembly. Currently, LEXIMIN has already been implemented in many organization worldwide, including Cascadia (USA), The Danish Board of Technology (Denmark), Nexus (Germany), of by for\* (USA), Particitiz (Belgium) and The Sortition Foundation (UK). Since June 2021, The Sortition Foundation itself has already used LEXIMIN to select participants of more than 40 assemblies. Research on fair and optimal algorithms to select participants of deliberative mini-publics are crucial, because recommendations they draw up have a gradually increasing impact on public decisions and their forms, including citizens’ assemblies becoming more and more common and popular. Within said research values different than “equality” and “fairness” of selection are also underlined. One of them is better transparency of selection processes. By implementing a mathematical structure, increasing fairness and better transparency in terms of sorting practices, research on this topic leads to use of more stable scientific grounds, when designing methods of random selection of deliberative mini-public participants. This helps to popularize the fundamental mission of citizens’ assemblies, which is to give ordinary citizens more influence on the public decision making process (Flanigan et al., 2021).

## Conclusions

Random selection and the maximum possible representativeness help to popularize political equality, fairness and deliberative inclusion. In contrary to elections, when candidates are often individuals selected on the basis of high social capital or are professional politicians, assembly participants are randomly selected from among casual people. Each time the purpose of these efforts is to choose the best matching representation of a given population in a small scale. Related diversification of assembly participants is of key importance to maintain cognitive variety in the long-term perspective. In opposition to various types of collective elected bodies, task-oriented assemblies and random, though not accidental selection of participants allow to avoid occurrence of elite or oligarchy that may subsequently transform in a homogenous gathering without an appropriate perspective in terms of discussed issues. Random selection of deliberative mini-public participants is the feature defining this type of democratic innovations (Farrell et al., 2019). In theory, all assembly participants should be “typical” citizens randomly selected from among a given population. Also, all members of a given population have equal chances for participation in a mini-public and final assembly composition should significantly reflect a demographic and geographic profile of a given population. One of possible implications is the fact that assembly organizers are really flexible when designing mini-public selection procedures. Most of all, they can define eligibility criteria as they wish, including formal exclusions, and adopt any selection algorithm and, subsequently, a selection method. Also, they can, if justified by e.g. assembly topic, political situation or social moods, decide to have a mixed composition of an assembly, i.e. random selected citizens and politicians elected in official elections (Suiter, Farrell, Harris, 2016). However, as indicated in research, if organization of a specific mini-public is motivated by an attempt to enhance a democratic decision-making process via the procedure of representatives to a deliberative decision making body, popularizing such principles as political equality and descriptive representation in a way different from democratic

institutions, it should adopt a model focused on random selection of an entire assembly (Pow, 2021). Random selection gives anticipated results; if the procedure of random sampling is performed rigorously and transparently, the result is only a function of adopted mathematical procedure. As a result, we have a population sample constituting a group of people representative for some parameters (within approved margin of error) and selected for an assembly.

Random selection of participants has multiple advantages. Many authors think that random selection of deliberative mini-public participants allows (to maximum possible extent) to avoid typical traps occurring during public decision-making processes, most of all the problem of auto-selection (Warren, 2008). As a result, it guarantees equality and impartiality of selection, assuring better inclusion of public decision-making processes. It is emphasized that elections are a representative selection method only from the formal point of view, while in fact they lead to a significant disturbance of representativeness of selected representatives regarding their voters. During citizens' assemblies, diversified quotas are used, with purpose to equalize chances for selection even more on behalf of marginalized groups and communities. Such criteria are also applied in terms of multiple electoral procedures, though in the worldwide scale they are rather good practices than common standards. Random selection of assembly participants ensures integration and diversity, constituting the grounds to conduct fair and efficient deliberations. It also eliminates such negative elements of the traditional electoral system as elitism and related privileges available only for some group of persons (e.g. access to education, material status, social capital, race, sexual orientation or sex). As persons regularly participating in electoral rivalry, politicians are a qualified group of people who are usually more experienced or competent in governance than casual persons, however they represent only a small fraction of population. As a result, elected permanent political bodies (parliaments, councils) usually do not meet the criterion of representativeness at all, neither in terms of sex, nor age or other demographic, social and economic criteria.

Sortition makes sense only when it is related to the deliberative process. It means that a group of persons selected this way will not be left alone, but it will be provided with sufficient information on an issue it is going to decide (during the learning phase). Moreover, mini-public deliberation works needs to be moderated by independent, objective and professional moderators, enabling participants an open discussion on the basis of equal rights and reasonable expression of arguments, because, in practice, leaving the decision to a group of non-professional people selected by chance would be counterproductive, as power structures and group dynamics consolidate quickly.

There is a reason why random selection of participants and demographic representativeness of an assembly are among the most popular citizens' assembly organizational standards in the worldwide context. Research indicates that mini-publics consisting only of randomly selected citizens are perceived as equally strongly legitimized as those in which participants are elected by citizens or comprising of combination of casual randomly selected citizens and officially elected politicians. When compared to other models, the pure selection method is seen as particularly appropriate by persons for which political equality is of great importance (Pow, 2021).

However, when analyzing the issue of random selection, we can also notice some of its weaknesses (Fourniau, 2019). Depending on the adopted method, selection algorithm or eligibility criteria, the recruitment process of mini-public participants, called "sortition" may be in fact selection of persons who *de facto* constitute a group of involved "volunteers". Moreover, differences among persons participating in an assembly and those who will not participate may be significant enough to have influence of dynamics and final effects of the whole process of deliberation. Selection is performed in a way assuring mini-public representativeness. In order to achieve this, the selection process merges preliminary random sampling with subsequent voluntary participation. Motivations of volunteers can be very different, for example, interest in the subject of the assembly, being available on planned dates of works and individual personal features. As a whole, all these activities constitute the hybrid combination of random



recruitment and sortition among persons with certain motivation and will of active participation.

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## Mostar Citizens' Assembly. The First Deliberative Process in Southeast Europe. Case Study

**Abstract:** The purpose of this paper is to present the elements of deliberative participatory governance using the example of citizens' assembly that has become more and more popular world-wide example of mini-public. My analysis is based on exemplification of the process performed in 2021 in the city of Mostar in Bosnia and Herzegovina. It was the first citizens' assembly held in Southeast Europe and it focused on cleanliness and public space maintenance in the city. The paper takes the form of a case study and it does not aim to provide the comprehensive analysis of deliberative processes occurring during citizens' assemblies. The paper consists of the five following parts: (I) introduction; (II) presentation of methodological assumptions the analysis was based on; (III) theory-oriented reflections on deliberative democratic institutions, particularly citizens' assembly; (IV) case study for the City of Mostar; and (V) my conclusions.

**Keywords:** citizens' assembly, deliberation, participation, Bosnia and Herzegovina, governance, Council of Europe

### Introduction

Citizens' assembly is the more and more popular world-wide method of pre-decisional deliberation, constituting grounds for important, and often controversial, decisions in the public space. This process is characterized

by transparency and inclusiveness, while its purpose is effective and measurable participation of citizens, taking the form of increased involvement of citizens in decision-making processes at all levels of governance. The process starts with drawing a representative groups of participants, then an assembly gets acquainted with a certain problem as a group, supported by experts. Also, persons and institutions interested in a problem present their approach, acting as parties to the process. An assembly creates a convenient space for sharing experience, information and expertise and for hearing out opinions of all interested parties. After completing the educational phase, the deliberative stage begins, during which participants confer and share arguments with each other. The last part of the process is voting on specific recommendations that are subsequently passed to decision makers, namely formal public authority institutions.

Members of a citizens' assembly reflect various demographic criteria of a given society. As a result, assemblies are much more representative than social consultations and solve the scale-related problem by involving small but still diversified and representative groups of citizens. It is one of assets providing them with democratic advantage over referendum participatory processes (Dahl, 1989; Escobar, Elstub, 2017). Such developed deliberative processes enable reliable, transparent and the most detailed analysis available for a given problem, resulting in high-quality solutions. The idea is associated with the opinion that if citizens have time, assets and proper support, they will be eager to get involved in public decision-making processes and collectively will be able to make thoughtful, reliable and just decisions.

Citizens' assemblies took their current form in the mid 20<sup>th</sup> century, though this idea derives from popular assemblies in classical Athens (Hansen, 1999). First three unprecedented and experimental citizens' assemblies referring to the electoral system reform took place in British Columbia (2004), Ontario (2006–07) and the Netherlands (2006) (Fournier, van der Kolk, Carty, Blais, Rose, 2011). Subsequent experience gained in relation with using these innovative deliberative tools by multiple countries, e.g. Australia, USA, Germany, Austria, Ireland, Belgium, France

and United Kingdom, proves this method not only to be spectacular, but also effective, while recommendations provided by citizens turn out to be practical. As shown by examples of world-wide application of citizens' assemblies, they are used to solve problems the electoral policy is not able to cope with in an effective way (Podgórska-Rykała, 2020).

The Mostar Citizens' Assembly, discussed in this paper, was organized within the project called "Building democratic participation in the City of Mostar" performed by the Congress of Local and Regional Authorities of the Council of Europe within the Action Plan for Bosnia and Herzegovina 2018–2021 and in compliance with the rules specified in the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207). Since 2002, as a member state of the Council of Europe, Bosnia and Herzegovina, its authorities and citizens can gain profits coming from strong partnership aiming at consolidation of protection of human rights, rule of law and democracy in this country. Action Plan for Bosnia and Herzegovina 2018–2021 is a strategic programming tool with purpose to apply legal order, institutions and practices to the EU standards regarding human rights, rule of law and democracy, as well as to support this country in the fulfilling its obligations as a member state of the Council of Europe. Within the said plan the Council of Europe and the authorities of Bosnia and Herzegovina agreed the scope of actions regarding quicker introduction of reforms and improved efficiency and quality of such elements like the justice system or the electoral procedures.

Great significance has been given to discrimination counteracting issues, including fighting ethnic segregation and enhancement of national minority rights. Thanks to gradual democratization processes, currently there is no ethnic conflict characterized by the occurrence continuous or large-scale violence in Bosnia and Herzegovina. However, we should remember that the Yugoslav Wars started in times of destabilized cultural identity and gradually increasing economic crisis (Altermatt, 1998). The ethnic identity category was (especially during the final phase of the conflict) the most important factor deciding on collective identity. As the aftermath of these

events, we have active ethnic conflicts that still result in ethnic segregation and discrimination of some segments of the society, though they started during the breakup of Yugoslavia in 1991 (Stanisławski, 2002).

Within actions undertaken by the Council of Europe in Bosnia and Herzegovina, an important role is given to decentralization reforms, including actions aiming at the enhancement of interethnic dialogue among political decision makers, civil society leaders and other parties on the local level. Strengthening of public administration, especially on the municipal level, also seems important in such fields like strategic planning, provision of public services or civil participation. Let us underline that Mostar is a very specific case, as organization of citizens' assembly in this city was a great event. For the preceding 12 years there had been no local election held as a result of the legal loophole. It occurred as a result of the decision made by the Constitutional Court of Bosnia and Herzegovina in 2010 in which it recognized the appeal of Croatian town councilors and found unconstitutional the regulations on the basis of which the City Council had previously been elected. The court supported the said appeal and stated that the elections held in Mostar had not been equal, because constituencies were assigned the same number of town councilors, but significantly different numbers of voters.

Though interethnic incidents have become increasingly rare and the city is becoming an integrated organism in its various aspects, the imposed electoral system, whose purpose is to limit the predominant role of Croats in city management, has become politically controversial, culminating in its abolition and questioning the city statute. Unsuccessful political negotiations lasted for years, while Mostar was governed on the basis of the "technical" limited mandate by mayor Ljubo Bešlić (he was appointed mayor in December 2004 and had held the post for 16 years). Finally, the local elections were held on December 20, 2020 and the turnout was 55%. Citizens of Mostar elected 35 town councilors. In compliance with special electoral regulations for Mostar, it was decided all ethnic groups (Bosnians, Serbs and Croats) must have at least 4 councilors each and neither of them can have more than 15. Additionally, one seat in the council is reserved

for those who do not declare as Bosnians, Croats or Serbs. The mayor of Mostar is elected by the 2/3 qualified majority by 35 town councilors. The final election results were approved the Central Electoral Commission of Bosnia and Herzegovina in January 2021. As a result, the largest amount of seats in the Mostar City Council was given to the Croatian Democratic Union of Bosnia and Herzegovina. In mid-January 2021 councilors elected the new mayor, Dr. Mario Kordić, Eng., by the majority of one vote.

Considering the aforesaid conditions, the project implementing the citizens' assembly in Mostar gave its inhabitants the real chance to get involved in the deliberative process and participate in the decision-making process on the local level, with the final goal being restoration of trust among citizens to public institutions. The assembly provided the convenient space for unlimited dialogue between inhabitants of Mostar and new local decision makers, also on the interethnic level.

## Methodology

The first step of the research procedure is specifying the research goal. In general, my goal is to enhance scientific knowledge in democratic deliberative processes discussed in this paper, while in the strict sense my research mostly focuses on the descriptive goal regarding the discussed matter, however it does not exclude predictive, explanatory or evaluative goals, as I tried to achieve them by forecasting the nearest future development of the deliberative innovations being discussed and rapidly growing since the 1980s and by explaining what citizens' assemblies are and whence their phenomenal ability to bring together diversified and divided societies comes from. The third way to achieve these goals was an attempt to evaluate efficiency of citizens' assemblies in the area of enhancement and popularization of the idea of democracy itself, especially in the deliberative form.

The subject of my research, seen as an object being investigated is the deliberative mini-public, namely citizens' assembly. This case study



was based on the specific citizens' assembly held in Mostar, Bosnia and Herzegovina in July 2021.

The paper is based on qualitative research methods selected according to the research subject. The research method is a code of conduct and scientific cognition, as it allows not only for collecting materials, but also for clarifying and grouping them. A highly detailed method narrowing the field of its use becomes a technique. In this paper several such techniques were used. The first one was the document investigation technique used to analyze data, materials and documents gathered by the assembly organizers and made available at its website (<https://mostargradimo.ba>) and other websites, inter alia media portals and the official website of the City of Mostar. Within searching theoretical deliberative tools focused on the theory of deliberation and practical application, other documents, reports and statistical data were analyzed, including academic papers. I also attempted to perform the more detailed query of available literature. These actions allowed for reinterpreting previous research results in the context limited to the scope defined in this paper. Let me also mention that document investigation technique is both qualitative and quantitative, so documents of various types provided me with expertise on indicators determining the scale of the phenomenon being investigated, they also constituted a source of in-depth knowledge on the specific investigated case, thus enabling to develop arguments. The versatile research technique used in the research process was the participant (online) observation of the assembly, allowing for gathering the significant amount of research materials in a relatively easy and natural way. Also, I interviewed one of OECD experts working during organization of the assembly in Mostar and participating in its sessions as a member of the Design Team. This natural conversation provided me with important guidelines and information on attitudes and opinions of persons involved in this event.

The scope of the paper can be classified within research on social sciences, with particular consideration given to the discipline of the politics and administration.

## Citizens' assembly as the method of decision-making deliberation

Citizens' assembly is a type of deliberative mini-public. This term is related to participatory democratic innovations designed with the purpose to increase civil involvement in the public governance processes (Dahl, 1989). An assembly designed in such a way, generally a collective gathering, consists of participants, i.e. inhabitants drawn in compliance with strict criteria of representativeness. As a "sovereign in a nutshell", the assembly constitutes the representative part of a given society, but is not its representation. Individuals involved in the process are "like us", leading to intensification of the feeling in a given society that persons participating in the event are its trusted plenipotentiaries (Chwalisz, 2017).

Representativeness of the drawn group is decided by various demographic and geographic features, such as age, sex, ethnic background, education, material status or domicile (Escobar, Elstub, 2017). These variables can be modified, if need be as a result of assembly topic or local conditions. For example, when an assembly refers to public transport, it is necessary to include the representation of both private vehicle drivers and bus or tram users (e.g. the assembly held in Wrocław in 2020). Regarding the assembly held in Mostar, among the adopted criteria there was ethnic background that was strictly related to the political and social situation in Bosnia and Herzegovina. Additionally, several other individuals and organizations, including experts and other interested stakeholders take part in the assembly process. The process is conducted by a coordinating committee and monitored by an independent monitoring committee, while possible arguments can be settled by an arbitrary court (Gerwin, 2018; Podgórska-Rykała, 2020).

Citizens' assembly faces the task of multidimensional analysis of a given problem, to discuss possible solutions and then to recommend selected proposals to be implemented to public authorities. In the decision-making process performed by citizens' assembly the key element is reliable and complete information on each or proposed solutions. Influenced by new facts and arguments of co-participants and experts, original preferences

of assembly members can be changed and they can become gradually more open for solutions less obvious from the point of individual interests (Cohen, 2009; Elster, 1998).

Within such designed processes, assembly's right is not to make a decision in an official way, but to have a consultation debate resulting in presenting specific recommendation to respective authorities (Elstub, 2014; Elstub, McLaverty, 2014; Grönlund, Bächtiger, Setälä, 2014). It is assumed that prior to joining an assembly public authorities capable to make decisions on matters considered during an assembly determine the rules of subsequent implementations of developed recommendations. It can be a percentage threshold (most often 80%, like in Mostar) of support for a given recommendation. When such a threshold is reached, a given proposal is assigned the status of official recommendation. Sometimes, authorities declare that a recommendation will be implemented, when a certain level of support is reached.

Deliberative gatherings are used in processes of settlement of various problems, such as constitutional and electoral reforms (these issues were discussed during first ever assemblies), social problems (social policy, health, penalization of abortion; issues popular mostly in the United Kingdom and Ireland) and climate changes. However, the list of possible issues is open and already performed assemblies prove that its framework does not need to be limited in any way (Escobar, Elstub, 2017). This method allows to make decisions not only on the level of a city, but also region, country/province or even international community, e.g. the European Union. Also, there are even proposals to hold the world-wide assembly on climate changes, etc. (Vlerick, 2020).

Deliberation is a key element of the decision-making process performed by citizens' assemblies. As the process of collective thinking and confrontation with arguments, it is the basic method and tool of citizens' assembly modus operandi (Dryzek, 2009; Owen, Smith, 2015). In the form of planned and moderated debate participants consider diversified attitudes and arguments, jointly searching for the best solutions for defined problems (Sroka, 2009).

Deliberation results in overcoming limitations characteristic for individual opinions and interests, helping its participants to develop new quality. The process of deliberative debate also leads to solving the problem of conflicting interests constantly faced by institutional decision-making bodies. In relation to this goal, deliberative methods focus on cooperation and sharing arguments, recognizing both expertise and common knowledge. Also, person involved in the deliberation process have the right to express their emotions and individual beliefs (Krzewińska, 2016; Sroka, 2009; Zabdyr-Jamróz, 2020). Popular, though often unjustified, division for objective (eagerly permitted during debate) and subjective (avoided, at least in theory) information is rejected. As a result, deliberation accepts all attitudes, opinions and emotions, while professional moderators and facilitators take care of quality and substantive correctness of debate (Sroka, Podgórska, 2020a, 2020b). Moreover, deliberative processes occurring within mini-publics are characterized by high quality of intergroup interactions and communication-related rationality, both regarding internal and external communication (Habermas, 1984, 2005). This allows to avoid problems typical for official public meetings and forums, i.e. ineffective confrontations, intended manipulations, domination by individuals, lack of time for reflection over a given problem or memorized monologues. Regarding communication methods typical for deliberative debates, importance of deliberate reflection is underlined, as it allows people to work out more balanced opinions and more just and effective decision-related compromises. Deliberation is the process characterized by procedural (Cohen, 2009; Habermas, 1984, 2005; Rawls, 1997) and high-quality substantive results in the field of decision making. A correctly conducted debate results in better transparency and quality of the process of public decision-making, as it becomes inclusive. Open and transparent decision-making processes lead to better effectiveness of public interventions, thus to choosing efficient, reasonable and socially approved solutions.

Undoubtedly, deliberative democracy is an usually broad trend of political thought developed both within philosophy or sociology of politics

or law, as well as within other scientific disciplines and diversified and multi-dimensional empirical research (Dryzek, 2010; Elstub, Escobar, 2019; Fishkin, 2011; Fishkin, Laslett, 2003; Gutmann, Thompson, 1996; Leibj, 2006; Parkinson, Mansbridge, 2012).

## **Citizens' assembly in Mostar**

The first stage of the project within which the citizens' assembly in Mostar was held were social consultations with inhabitants. City authorities, in cooperation with the professional social research and public opinion agency Prism Research & Consulting, conducted the online survey available for all inhabitants of the city of Mostar who turned 16. They could propose topics they found crucial for their city. The target group of the survey were citizens of Mostar living in one of 6 areas the city was divided into: South, South East, South West, North, Old Town and West. Respondents not meeting the aforesaid conditions or who refused to provide information on their domicile were excluded from the survey (41 persons). The part of the survey in which participants could propose a topic was prepared as an open question. Though the instruction limited each respondent to propose only one topic, some of them proposed more than five. As a result, the total number of votes was determined on the level of proposed topic and not on the level of survey participant number. Answers were grouped according to topics. The total number of survey participants was 1068 who proposed 68 topics, while the total number of votes was 1826. Considering all proposed topics, the following categories were determined: ecology, infrastructure, healthy lifestyle, sport and culture, economy and tourism, support for youth, social policy, urban landscaping, safety of citizens and Police operations, law, politics and administration topics. The most popular ones were: cleaning and keeping the city tidy, solving the problem of the "Uborak" landfill (closing or relocation) and construction, renovation and development of parks, green spaces and parks with playgrounds. Also, the promotional campaign "gradiMO" was organized online with purpose to

invite inhabitants of Mostar to participate in the event. The campaign was conducted via various online advertising channels and platforms, including social media and web portals. These actions were performed from April 13 to April 26, 2021.

Considering the results of social survey and subsequent consultations on proposed topics with NGOs and city authorities, it was decided that inhabitants could choose the final topic from the three following: (1) urban tidiness, cleanliness and public space maintenance, (2) creating new jobs and fighting unemployment and (3) support of youth employment and assistance in starting own business. These topics were voted simultaneously with registration for participation in the assembly.

The next step was selection of assembly members. Citizens' assemblies are innovative, because they are based on the large representative sample of the population indicated. The member selection process starts with inviting inhabitants to participate in the assembly. In Mostar registration invitation letters were delivered to randomly drawn households in the entire city. On June 7, 2021, with support of the aforesaid public opinion agency, 5,000 such letters were sent to the addressees selected according to the determined city population on the basis of the census of 2013. The goal was to make it easier for the Design Team to select members on the basis of the criteria assuring representativeness on the city level. In order to meet the condition of representativeness, members were selected from the database of registered participants on the basis of the following criteria: sex, age, education, domicile (district), material status and ethnic background. These criteria were established on the basis of the actual situation of the city, considering various communities and social groups of interests. Also, the draw of assembly members included the ethnic criterion that is not considered everywhere in global context. The single group of members was supposed to consist of Bosnians, Serbs and Croats whose task was to find together the solutions for the pressing problems of their city. In order to assure impartiality, the regulations defined who could not participate in the assembly. These were some persons employed in the Town Hall and working at senior posts in public organizational

units in Mostar or the Herzegovina-Neretva Canton. Also, politicians and political nominees, including their advisors, were excluded, as well as members of group interests and lobbyists active in the subject matter of the assembly. Additionally, the assembly members could not be members of the Design Team, the Coordinating Team and the Oversight Team, as well as experts, observers and facilitators.

The letters contained two-part surveys regarding selection of the final topic of the assembly and participation itself. The inhabitants of Mostar who received the letters could vote for a specific assembly topic. Additionally, no more than two persons from a single household being more than 16 years old could register for participation in the assembly. Answers could be provided via the online form, by phone, using the Viber application or by voting personally at the Town Hall. Also, letter delivering pollsters conducted the informative survey with purpose to get the invitation addressees acquainted with the tool of deliberative democracy, which is citizens' assembly.

When the period of collecting feedback information ended on June 20, 2021, the total number of applications was 250. On this basis the final topic of the first Mostar citizens' assembly was selected and it turned out to be urban tidiness, cleanliness and public space maintenance (97 votes).

When applying for participation in the assembly, inhabitants of Mostar entered unique verification codes used to identify them with purpose to assure impartiality and transparency of the subsequent draw. Then assembly members were drawn on June 29, 2021 from 250 inhabitants who had previously agreed for this. 40 people were drawn as assembly members and 8 as substitutes.

The citizens' assembly in Mostar was officially inaugurated on July 10, 2021 and closed on July 31. During this period, on four consecutive weekends 48 drawn inhabitants (one member died during the assembly) were working together on the problem of maintaining cleanliness of the public space in the city. The 32 recommendations were developed, which constituted the guidelines for the city authorities how to address the following question: "How can the City of Mostar improve the cleanliness of public

space to make it more pleasant for its citizens?" The first assembly session took place on July 10–11, 2021, when the members got acquainted with the idea of deliberative democracy and the topic of the assembly. It all started with speeches made by the organizers, i.e. authorities of the City of Mostar and the representatives of the Congress of Local and Regional Authorities of the Council of Europe. The meeting was initiated by Bernd Vöhringer, President of the Chamber of Local Authorities. The meeting was also attended by Bojana Urumova, Head of the Office of the Council of Europe in Bosnia Herzegovina, who underlined that Mostar could be seen as a leader competing with other cities where the process of deliberative democracy and promotion of inclusiveness and transparency policy have been extensively introduced. Salem Marić, Chairman of the Mostar City Council declared it would take assembly recommendations seriously. Then the experts, practitioners and academicians from the University of Sarajevo introduced the members to the topic of the citizens' assembly, describing good practices from Poland and the United Kingdom. After this introduction members and moderators passed their own cooperation code. The second day of the assembly started with introducing the members to the situation of the City of Mostar by paying attention to the topic of the assembly, i.e. cleanliness and maintaining the public space. The Head of the Department of Economy, Communal and Inspectoral Affairs gave his lecture followed by officers responsible for environmental protection and urban gardening. Introductory lectures were followed by the discussion and questions. In the second part good practices were shared and experts from the University of Mostar gave their lectures. The entire opening session and presentations of interested parties and experts were broadcast online at the dedicated website (<https://mostargradimo.ba/>) and available in the ZOOM application (with translation into English).

The second session took place on July 17–18, 2021, when the members had an opportunity to get expertise from local and international specialists and to listen to opinions of the interested parties on specific issues included in the assembly. Also, development of recommendations was started. Experts from Italy and Austria gave their lectures and shared



good practices with the members. Also, experts from Ljubljana in Slovenia and Veles in North Macedonia and local stakeholders produced their presentations.

On July 24, 2021, during the third assembly meeting, the mayor of Mostar, Mario Kordić, gave his speech. Then the 26 recommendations were prepared, grouped in the five following categories: landscaping and use of public spaces and creating new ones; raising awareness and education of citizens; re-organization of public utility institutions; waste management; and institutionalization of citizens' assembly. The preliminary voting took place and all recommendations were passed by the majority of 80% of votes.

The last meeting of the citizens' assembly took place on July 31, 2021. On the basis of opinions of the councilors on recommendations and the analysis of comments and suggestions regarding preliminary recommendations, the members developed the final 32 recommendations that were then sent to the Mostar City Council, the mayor and the city institutions to be considered and proceeded. It should be underlined that most of the developed recommendations (all but two) were passed by the majority of more than 90%, though the threshold was 80% of members. Interestingly, 8 recommendations were approved by all assemble members, for example:

- reviving, maintaining and enlarging the existing green areas in the city in a planned manner (topic: landscaping and use of public spaces and creating new ones),
- setting up warning signs about the waste disposal in all public and green areas, next to devastated buildings, at picnic sites and all the other places where the disposal of waste is not allowed (topic: landscaping and use of public spaces and creating new ones),
- landscaping all swimming and picnic areas based on the needs of citizens and their regular maintenance (topic: landscaping and use of public spaces and creating new ones),
- landscaping all the public areas which are not necessarily green spaces (squares, public toilets etc.) and re-examine the decisions

- on their use (topic: landscaping and use of public spaces and creating new ones),
- creating a new job structure which would decrease the numbers of staff in administration and increase these working on the ground (topic: re-organisation of the public utility companies),
  - localising, recording, and recultivating all the illegal landfills (collection of waste, cleaning up and returning the locations back to their primary state); setting up warning signs about the interdiction of waste disposal and sanction the violators of the rule; introducing video surveillance, if interdiction is still not respected; task the Service for Communal and Inspectoral Affairs of the City of Mostar to continuously visit and monitor the situation in the illegal landfills (topic: waste management),
  - holding a thematic session of the City Council of the City of Mostar in which the recommendations of the Citizens' Assembly would be presented by its delegated members; recommendation to the City Council to approve and implement these recommendations (topic: institutionalization of the Citizens' Assembly as a legal framework for further action),
  - developing an action plan on implementation of the aforesaid recommendation and inclusion of co(financing) of the citizens' assembly and its recommendations, when preparing the budget for 2022 (topic: institutionalization of the Citizens' Assembly as a legal framework for further action).

In turn, the weakest support (85%) was given to the recommendation to finalize the construction of the sports hall as soon as possible.

The Mostar Citizens' Assembly was organized in compliance with specifically developed methodology assuring its transparency and inclusiveness and enabling citizens to understand the topic thanks to assistance of highly qualified experts and with consideration of good practices and experience from other cities all over the world. Also, diversified opinions of local stakeholders and decision-makers were heard. The stakeholders were inhabitants of Mostar, city administration, representatives of local

political parties, respective state officials of various administration levels, civic organizations and media. They were given the possibility to watch the assembly, as all sessions were recorded. Links to the sessions were available at the assembly website and the official Youtube channel. Professionals and academics related to the issue of citizens' assemblies and persons interested in organization of such an assembly could participate in plenary sessions as observers.

In compliance with the best standards (prepared in Poland, e.g. Poznań Citizens' Assembly), implemented in multiple processes worldwide and highlighted by the Council of Europe, the Mostar Citizens' Assembly was prepared on the basis of the following rules: democracy is for everyone; the process should be organized in a fair and credible way; in a democracy people are the sovereign; the aim of democracy is to improve the quality of life; the purpose of a citizens' assembly is to achieve well thought-out decisions of high quality.

There organizational rules were as follows. Firstly, there was random selection of assembly members. The draw was performed in two phases: (i) invitation of randomly selected inhabitants to participate in the event; and (ii) final draw of members and their substitutes. Each Mostar inhabitant who met the conditions of participation in the assembly could be potentially invited. Secondly, demographic representativeness of the assembly. Generally, its members were supposed to match the demographic profile of Mostar in order to create its "microcosm". The size of the group gave enough space for various opinions. In order to enable participation for all interested persons, allowance was provided for assembly members (reimbursement of costs of participation in the event). The next rule was independence of the Coordinating Team regarding supervision and management of the assembly. Also, in order to assure transparency and fair access to expertise, the members were given the right to appoint experts and witnesses. This was very important, because during the learning phase the members should be provided with all information and experience all available perspectives in a possible manner. Learning phase presentations could include videos, written notes, etc. The next assembly rule was its

inclusiveness, as each organization, public authority body, institution and even informal group whose scope of activity and expertise is adequate to the assembly topic had the right to provide the assembly members with its opinion. The Coordinating Team was only supposed to verify whether stakeholders met the conditions specified in the regulations and if it was the case, the willing parties were automatically approved. Inclusiveness is also related to openness, as all inhabitants could present their own opinions before the assembly in writing or in the form of a comment or a proposal. The next rule was transparency. All presentations made during the learning phase were made public and recorded, while materials presented before the assembly were made publically available. After the assembly works finished, the Coordinating Team is supposed to publish the report containing detailed information on the assembly work methodology. The next adopted rule was inclusion of the form of deliberative debate into assembly works. The planned discussions gave the space for cautious listening to various options and their consideration. It was decided that deliberation was supposed to be a key element of the assembly works. As a result, the program included both working in small groups and plenary sessions. The deliberative phase was prepared and conducted by experienced moderators. The next rule used during the Mostar Citizens' Assembly was providing its members with sufficient time for thinking over their work as an element necessary to make informed decisions. The last of the adopted rules was visibility. It was declared that the inhabitants of Mostar would be informed on the assembly on the ongoing basis and on the possibilities to involve and monitor its works.

Also, the assembly management structure was developed on the basis of rules, procedures and the best practices regarding citizens' assemblies all over the world. This reflects the process details in the local political context and considering the fact the process was initiated by the Council of Europe. The detailed description of the management structure and its tasks can be found in the Mostar Citizens' Assembly Rulebook.

The Design Team consisted of representatives of the Council of Europe, three international experts (including 2 persons from G1000) and one local

expert. Its tasks were as follows: designing the schedule of the citizens' assembly and the rules of its organization; development of the topic and assembly member selection methodology; and selection of facilitators. The Design Team, in cooperation with the facilitators, created the assembly framework, including the phases of learning and deliberation.

The Coordinating Team was responsible for organization of the assembly and consisted of the two following groups: the Core Team and the Support Team. They consisted of experts of the Council of Europe and representatives of the Mostar City administration. The Coordinating team was responsible for random selection of assembly members, recruitment of stakeholders, selection of experts, preparation of the education phase program (in cooperation with the Design Team), organization of assembly meetings, organization of voting on recommendation proposals, publication of all necessary information and assembly-related materials on the website and preparation of the final report.

The conduct of works was supervised by the Oversight Team consisting of 20 people. It was established to assure observance of the standards specified in the rulebook. It consisted of one representative of the mayor (appointed directly by him), representatives of all political groups in the Mostar City Council (1 seat for each political party/ coalition, appointed by respective parties), two academicians (appointed by rectors of Mostar universities), representatives of NGOs (the same number as government representatives, 2/3 of which were elected in the preference voting from registered candidates and 1/3 were drawn) and five representatives of the Congress of Local and Regional Authorities (1 representative of the Secretary General and 4 delegates of the Congress). The Team was ordered to agree on internal decision-related and communication procedures prior to commencement of the assembly.

In case of violating the assembly standards, the Arbitrary Team was established. It consisted of representatives of the Association of Municipalities and Towns of Bosnia and Herzegovina, two Bosnian academics, experts in the field of deliberation and two international experts in the field of deliberative democracy.

## Conclusions

Citizens' assembly, the issue discussed in this paper, is process of debate consisting of four consecutive and expressly separated phases. These are: random selection of citizens, learning phase, deliberation phase and decision-making phase. In Mostar there was an additional review phase. At each stage of this comprehensive process participation of different stakeholders is assured, including inhabitants (addressees of future decisions), representatives of formal public institutions of certain levels, groups of interests, NGOs, political parties, informal groups and media. Such a process, if well prepared, leads to better and more just decisions and creating awareness among inhabitants. It also leads to increased trust to public authorities, allowing to develop pro-democratic attitude of citizens.

Each single example of a citizens' assembly is a significant undertaking. Not only does it require involvement, time and assets, but also guarantees that developed recommendations will be delivered to decision-makers who will treat them seriously, as these are the public voice on a certain issue and must not be ignored as such. Worldwide research on various deliberative mini-publics, including more and more popular citizens' assemblies or deliberative polls, prove that citizens, regardless of status, sex, age, material conditions or origin, want to be active and are active, if provided with respective technical support and expertise and involved in a transparent and just co-decision process. If this involvement is specific and goal-oriented and drawn society members know their work will lead to recommendations subsequently considered in public decisions, it turns out that people do like "politics" and are eager to get involved in it (Roberts, Escobar, 2015).

The Mostar Citizens' Assembly is an evident and clear example of realization of strategic assumptions specified in the Council of Europe Action Plan for Bosnia and Herzegovina, as its purpose was to provide citizens with the opportunity to get involved in the deliberation process and increase their contribution into the decision-making process on the local level. This process was supposed to encourage to dialogue within

the local community and to revive democratic processes in the City of Mostar. In order to counteract ethnic segregation and discrimination, the demographic criteria used to draw the assembly members included ethnic background. Also, this assembly became the symbol of momentous democratic transition, as it was organized shortly after the 12<sup>th</sup> anniversary of the first free, democratic local elections.

The recommendations approved by the assembly were the result of great involvement and effort performed by Mostar inhabitants who wanted to contribute to solve key problems in their city by means of mechanisms of deliberative and participatory democracy. The synergy effect was achieved, proven by the fact the majority of the recommendations were approved by over 90% of the assembly members. In its final statement the assembly concluded that participatory and deliberative democracy could not exist without transparent and inclusive political citizen-oriented institutions and its purpose is not to replace traditional representation-based bodies, but to be their social supplementation. It was explicitly underlined that involvement of citizens in decision-making processes enhance legitimacy of formal authority institutions, resulting in focusing on more effective public policy. Transparency and openness are the basic rules of good governance and the basic preliminary condition to enhance democratic development of the society.

The Mostar Citizens' Assembly of July 2021 was not only an example of interesting deliberative process, the first and until now the only one in Southeast Europe. It is also the set of good practices that could be a guidepost for other local and state authorities; however, most of all, it is the symbol of changes occurring in this part of the world, the changes that, though of various intensity and changeable dynamics, have been present worldwide since the end of the 20<sup>th</sup> century. As we can read in the OECD report called *Innovative Citizen Participation and New Democratic Institutions. Catching the Deliberative Wave*, published in June 2020, public authorities at all governance levels use deliberative mini-publics more and more often to solve sophisticated political problems. This “wave of deliberation” has been growing since the 1980s, becoming stronger since

ca. 2010. The report consists of and describes almost 300 representative practices implemented globally, in order to investigate trends, identify substantial features of certain models and analyze pros and cons of deliberative processes. Research covered processes that met the three following conditions. Firstly, they included the elements of debate and analysis being necessary for deliberation. Secondly, they were performed collectively within the group of randomly drawn society members in compliance with representativeness rules for a certain group. Thirdly, they had impact on development of politics, thus they were initiated by a public institution, while decision-makers agreed to respond to recommendations or to act in accordance with them. Also, the authors of the report investigate reasons and methods of inclusion of deliberative activities into operation of public institutions.

The data represented in the report were collected by OECD in cooperation with representatives of governments, civil society institutions and academia. It is first empirical comparative research describing representative deliberative processes in context of public decision-making, it also contains significant arguments for their institutionalization. As it can be concluded from the provided data, deliberative processes take various forms and are performed at all governance levels: local (52%), regional (30%), national (15%) and international/ transnational (3%). They refer to various topics, such as urban planning (43 processes), health (32), natural environment (29), infrastructure (28) or strategic planning (26). They are a very good solution in case of dilemmas related to values and worldview matters and problems that are sophisticated, long-term or require the parties to meet half way. It was concluded that demanded institutionalization of deliberative processes enables governments to make more difficult decisions with lower costs and increased quality of processes being realized. The expected results are as follows: structural enhancement of civil awareness, increased trust to public institutions and enhancement of democracy and democratic competences of the society.

Research conducted by OECD clearly indicates that many public institutions, after having decided to organize one deliberative process, have



continued implementation of the already developed practices, proving that deliberative processes are successful and bring the anticipated effects. This fact explains the large number of examples of deliberative gatherings in the short period, especially in countries where this method was checked and included into participatory methods thanks to its efficiency. As a result of efforts commonly performed by the authorities of the City of Mostar and the Council of Europe, the process that occurred in Bosnia and Herzegovina was included into the worldwide wave of deliberative democracy, currently involving representatives of all levels of authorities and which purpose is participatory devolution of authority regarding the decision-making process to the society. The example of Mostar proves that a citizens' assembly can be successful even in very divided societies.

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## “Fit for 55” and Electromobility and Environmentally Friendly Transport in Poland – Deliberation about the Problem, or Another Utopical Vision of Brussels

**Abstract:** Climate change causes the European Union to propose radical measures to its citizens to stop it. The “Fit for 55” package proposed by the European Commission will be the subject of difficult negotiations in Brussels in the coming months. It turns out to be particularly difficult for the future of the European automotive industry and the transport sector, directing it towards compulsory electromobility. There are many voices that this is another utopian concept of European Union officials, which requires in-depth deliberation with the European Commission, especially in countries such as Poland. The aim of the article is to present the solutions of the “Fit for 55” package for transport in relation to the contemporary conditions for the functioning of electromobility and environmentally friendly transport in Poland. It assesses the condition and pace of its development in the electromobility sector in Poland and indicates barriers for the coming years. Its main hypothesis assumes that the solutions proposed by the European Union may become a mechanism of discrimination against entrepreneurs and the inhabitants of the continent, civilizational regression and even restriction of freedom of movement. In its structure, the article uses the method of analyzing legal acts regulating the issues of electromobility in Poland, data on trends in the automotive market and the condition of electric vehicle charging infrastructure

in Poland, as well as the already undertaken discussion on the implementation of the “Fit for 55” package in the country.

**Keywords:** electromobility, “Fit for 55”, climate package, charging infrastructure, environmentally friendly transport

## Introduction

The fight to contain climate change in the world seems to be reaching the tipping point. After many years of debates on counteracting the phenomenon of global warming, undertaken at climate conferences in Paris or Katowice, the pace of global climate polluters such as USA and China in leaving fossil fuels is still insufficient. Meanwhile, environmentalists are sounding the alarm that failure to take radical action will now end in a climate catastrophe. Soon we will see another installment of the climate discussion at a conference in Glasgow, Scotland, where the 26 key emitters of CO<sub>2</sub> into the atmosphere will debate about this problem (Winięcki, 2021).

The European Union (EU) seems to have the least doubts as to the rightness of actions to stop climate change. Its politicians propose to the citizens of EU ambitious measures to reduce greenhouse gas emissions. An independent goal on this path is the “Fit for 55” package presented in July this year by the European Commission (EC) (*W najbliższych...*, 2021). The foundation for its creation was the conviction of European leaders about the need to accelerate actions to protect the climate, as well as setting an ambitious goal under which the EU is to become a climate neutral area by 2050. This goal was formally confirmed at the European Council summit in December 2020 (Zamorowska, 2020).

The six months following the December summit of the European Council were devoted to the work of the EC aimed at translating its decisions into a specific path of goals to be achieved by 2030. One of the first documents trying to present a new climate goal was the impact assessment benefits of the “European green deal”. Brussels officials mentioned about 110 billion euros in savings on health care costs and 100 billion euros in

savings on costs of importing fuels. According to EC, the new climate target should have a positive effect on the GDP of EU countries, as well as on cleanliness of the air, the pollution of which is to decrease by 60% (Zamorowska, 2020).

Meanwhile, one of reports presented by Climate and Ecologic, an organization independent of the EC, indicates less positive consequences of plans of Brussels officials. The target of 55% reduction in carbon dioxide emissions by 2030 will in practice bring almost complete decarbonisation the energy sector, reduce the consumption of natural gas and crude oil, and the end of production and sale of cars with internal combustion engines (Zamorowska, 2020). This means serious problems for many countries with a large role of fossil fuels in energy, industrial production and transport.

Especially the end of combustion motorization announced in “Fit for 55” for 2035 is important from the perspective of this article. There are many voices that claim that the vision of such a rapid transition to full electromobility is another utopian concept of EU officials. Among the opponents of concept of abandoning internal combustion motorization is the Czech Prime Minister – Andrej Babisz – who in September 2021 indicated that from the moment the Czech Republic took over the presidency of the EU in the second half of the following year, issue of banning internal combustion cars will be a priority topic. He emphasized that he is not opposed to development of the infrastructure for electromobility itself, but does not see possibility of subsidizing production of electric cars. He is also against the resignation from internal combustion motorization in EU countries by 2035 (Druś, 2021).

Similar doubts seem to be raised by concept of a quick transformation to electromobility in Poland. Our power industry, still strongly based on a carbon foundation does not seem to be ready for the transition, and the condition of charging infrastructure for electric vehicles leaves much to be desired. Also, the interest of Poles in electric cars is negligible so far. The aim of the article is therefore to present solutions of “Fit for 55” package for transport in relation to contemporary conditions for functioning of electromobility in Poland. It is also important to assess the

feasibility of its introduction in the version proposed by EC. The main hypothesis of work assumes that the solutions for transport proposed in “Fit for 55” may become a mechanism of discrimination against Polish entrepreneurs, and even cause restrictions on freedom of movement. As regards its structure, the article refers to legal acts regulating issues of electromobility in Poland. It also discusses data on trends on automotive market in Poland in field of electromobility and raises issue of the condition of electric vehicle charging infrastructure in Poland. The dominant research method used is theoretical and comparative analysis of legal acts and discourse in relation to issue of electromobility in Poland, supplemented with inference based on the available statistical data.

### **“Fit for 55” as a proposal to meet the climate goals under fiscal pressure**

“Fit for 55” package targets carbon dioxide reduction in many European sectors as well as national public policies. For many of them, it suggests radically high reference rates, which will be difficult to obtain in next decade, especially for countries such as Poland. In the area of broadly understood energy policy, the EC in “Fit for 55” proposes that by 2030 the share of energy from renewable sources in energy mix of the entire EU should be 40%. Although the proposed indicator is to be weighted, its reference value by 2030 will be difficult to achieve for economies where the energy mix shows the dominance of fossil fuels. On one hand, the EC encourages the member states to set up their own paths to reach final goal as part of their energy policy. On other hand, it proposes to adapt the minimum tax rates for heating and transport to climate goals. In practice, therefore, it proposes the use of fiscal tools for citizens whose elections will not fit into the implementation of the “Fit for 55” program (*Realizacja Europejskiego Zielonego Ładu, 2021*).

“Fit for 55” is qually interesting in the area of proposed detailed solutions for transport. According to the EC, it is to become cleaner, more

accessible and affordable, and to reach the farthest corners of EU. The main goal, however, remains to achieve a 55% reduction in CO<sub>2</sub> emissions for passenger cars and 50% for vans by 2030, and zero CO<sub>2</sub> emissions for both categories of new vehicles sold in Europe after 2035. The exclusion of the possibility of selling low-emission passenger cars and vans (type HEV or PHEV) in the absence of any regulation on their aftermarket trading is particularly questionable. The idea of trading CO<sub>2</sub> emissions allowances also in road transport, starting from 2026 (*Realizacja Europejskiego Zielonego Ładu*, 2021) seems even more controversial. Within this proposal, the EC explicitly states that trading in emission allowances in transport will involve imposing charges on polluters, which is to translate into use of cleaner fuels and investments in clean technologies. It is therefore a harbinger of fiscal pressure on CO<sub>2</sub> emitters in transport.

These proposals seem to be particularly harmful to road transport in those EU countries where the pace of electromobility development, if only because of the income of the inhabitants, turns out to be slower than in countries with high per capita incomes. Adopting the “polluter pays” principle will increase costs of transporting goods and moving citizens in those countries, which will contribute to increasing inflationary pressure. For car owners, this may even lead to resigning from this type of transport, without the possibility of buying an electric car. In the absence of properly developed public transport based on clean technologies, this will cause problem of communication exclusion, especially of people with low incomes. Doubts are also raised by current CO<sub>2</sub> emissions trading system, which is struggling with speculation issues. This speculation lead to an increase in prices for emission permits, the costs of which not so much serve energy transformation of producers of “dirty” energy, but allow countries whose energy sector uses clean energy to become richer, at the expense of higher prices for enterprises and households in places where the energy sector is just transforming (*Energochłonni boją się spekulacji...*, 2021). The introduction of a similar system for transport may bring similar effects. Investors selling free emission allowances at the expense of users of combustion means of transport in less affluent countries will benefit.



## Electromobility in the Polish legal system

The basis for creating regulations in field of electromobility in Poland are the EU regulations regarding the development of alternative fuels infrastructure. The leading one in this case is Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the development of alternative fuels infrastructure (Journal of Laws, L 307). Its implementation into Polish legal system is in this case “The national framework for the alternative fuels infrastructure development policy” adopted by a resolution of the Council of Ministers in March 2017. They specify general and specific objectives for expansion of electric vehicle charging infrastructure and LNG and CNG gas refueling points in Poland, along with a map of networks of public charging points for electric vehicles and CNG refueling (*Rząd przyjął Plan...*, 2018).

According to the provisions of this plan, by the end of 2020, 6000 electric car charging points, 400 fast charging stations and 70 CNG refueling points are to appear in 32 largest Polish cities. By end of 2025 the plan also provides for the construction of 32 publicly accessible compressed natural gas (CNG) and 14 liquefied natural gas (LNG) points (Zaniewska-Zielińska, 2018). The stages of the development of electromobility in Poland in next decade are also defined by the Strategy for Responsible Development (SRD) adopted by the Council of Ministers in March 2017 (Zaniewska-Zielińska, 2018). It aims to organize activities of public authorities for development of sustainable transport throughout the country. One of main tools to achieve this goal is Electromobility Development Program (*Strategia na rzecz...*, 2017). Its role was focused on achieving three goals. The first is to create conditions for development of electric vehicle charging infrastructure and incentives for consumers and enterprises to purchase them. The second goal of program is to develop industry for electromobility. The third is – the stabilization of the power grid, enabling integration of electric vehicles with it (Zawieska, 2018).

Integrated actions in five areas are to be the way to achieve the above goals. One of the most important aspects here seems to be the change in

awareness of future electric vehicle users. The remaining ones assume the development of a system of benefits for electric vehicle users, development of producers in electromobility segment, as well as regulatory changes in electromobility and adaptation of power grid to higher energy demand (Zawieska, 2018).

Electromobility Development Program in Poland assumes that the transformation to electromobility will happen in three stages. By the end of 2018, measures were to be taken to make the public interested in electromobility, including the creation of legal regulations for it and the indication of specific sources and methods of financing. By the end of 2020, infrastructure for use of electric and gas-powered vehicles was to be expanded. The ambition of the plan's creators was also to launch short-series production of electric cars and to implement incentives for purchase of this type of vehicle. In last stage of activities, by 2025, plan assumes achieving a relative maturity of market and a gradual phasing out of support instruments for electromobility (*Rząd przyjął Plan...*, 2018).

Third component of electromobility organization system in Poland is the recently amended act of June 6, 2018, amending the act on biocomponents and liquid biofuels and some other acts (Journal of Laws 2020: 1565). It established The Low-Emission Transport Fund (LETF), whose task is to financially support producers and users of electric cars, including through subsidies for purchase of this type of vehicle. LETF is to finance projects to expand the infrastructure of alternative fuels such as hydrogen, biofuels, CNG, LNG and electricity from renewable sources (*Autostrada do elektromobilności...*, 2017). Looking at the documents implementing the EU regulations into Polish legal order at end of 2021, we may see a good direction of proposed changes, but also its slight impact on transformation of the market (more on this later). It is certain, however, that Polish legal solutions are not enough compared to the proposals for transport sector in the “Fit for 55”.

## The development of electromobility in Poland and the “Fit for 55” standard

The current state of development of automotive market in Poland seems to support the thesis about the failure of the program of rapid transition of Polish enterprises and households to widely developed electromobility. This state of affairs will persist not only in the coming years, but even in entire decade. This is shown, for example, by the current data from new electric car sales market. It seems unrealistic to reach the number of 1 million electric cars at the end of 2025, as provided for in the Electromobility Development Strategy (Zaniewska-Zielińska, 2018).

Nevertheless, the electric car market in Poland is slowly evolving, and the sales of electric cars (BEV) and plug-in hybrids (PHEV) have seen significant increases in sales in last two years. Due to legal solutions and transformation of product offer for consumers, this state of affairs will continue in coming years. Acceleration of the pace of electrification of car transport in Poland should be expected especially after 2025, when the new emission standards in EU will virtually eliminate cars other than electric or plug-in hybrids from the market. Before this happens, however, the first step will be to increase the prices of new combustion-powered cars aimed at equalizing their value with the prices of hybrid cars, and ultimately fully electric ones. The product offer of combustion-powered cars will also be gradually reduced (Wiśniewski, 2020).

The aforementioned activities are not yet fully visible on Polish automotive market. At the same time, sale and number of electric cars moving on road is much lower than in Western European countries. In Germany 1 088 839 electric cars (BEVs) were registered in 2019. Norway is the next country on the list – 79 640, Great Britain – 72 834, France – 61 419 and Sweden – 40 406. Meanwhile, at the end of May 2020, only 11 658 electric cars were registered in Poland, of which only 56% (6551) are fully electric cars (Wiśniewski, 2020). Throughout 2018, Polish car dealers sold 638 electric cars, while in Norway it was over 46 000 (Zawieska, 2018). Indeed, the fact of high sales of zero-emission cars in Western European

countries is mainly due to extensive system of government subsidies for consumers, but it seems that problem of development electromobility in Poland is more complex. It can be seen on the secondary market, which has experienced a real boom in car imports in recent years.

The Polish consumer is looking for an affordable car, with a relatively simple structure, low maintenance and service costs, and a wide range of cheap spare parts. Electric cars are currently unable to offer him such a solution. Their price remains high in relation to earnings of most Poles. Low costs of an electric car are eliminated by the fact of high maintenance costs, limited range, or problems with the availability of charging points. Another problem will arise soon, which seems to be a surge in electricity prices, which is the result of speculation in the energy markets and trading in CO<sub>2</sub> emission allowances. At the end of 2018, as much as 75% of electric cars in Poland were purchased by corporate customers using lease or long-term rental. This shows that individual customers are still not convinced as regards this type of product (Zawieska, 2018).

Problems of car dealers in Poland testify to the continuing limited interest in electromobility among Poles. They are sold by car manufacturers to customers of electric cars, on the other hand, the demand for them among Poles remains negligible. The phenomenon is becoming more and more common in the context of which electric cars are bought at Polish dealerships by dealers from abroad – Sweden, Denmark and the Netherlands. As a result, sales of electric cars in Poland are growing faster than their number on the road. At the end of June 2021, there were 13.1 thousand people registered in Poland with electric cars (BEV) and 55 fuel cell cars (FCHV) (Frączyk, 2021).

The weak interest in electromobility among consumers is accompanied by an equally weak interest in government subsidies for purchase of electric cars. The pilot version of program, Green Car, conducted by the National Fund for Environmental Protection and Water Management in June and July 2020, brought only 344 applications for subsidies, including only 262 from individual clients. Out of amount of 37.5 million PLN, slightly over 4.5 million PLN was spent under the program (Sewastianowicz, 2021).

The new edition of program, known as My Electrician for 2021–2025, has a pool of 500 million PLN, of which 100 million PLN will go to individual customers, and the remaining 400 million PLN to companies, local governments and institutions. In the first half of 2021, the program enjoyed moderate interest. 401 applications were submitted for the amount of 8 162 250 PLN. The price of vehicle eligible for funding was set at no more than 225 000 PLN. An exception are the holders of the Large Family Card for whom no amount limit has been established. The procedures for submitting applications and receiving subsidies were simplified, and the increase in the price of the subsidized vehicle expanded the range of manufacturers and vehicles eligible for the program (Krzyczkowska, 2021).

The example of central authorities, supreme state bodies and local government units, which have a legal obligation to invest in creation of emission-free transport fleets or construction of charging infrastructure, is also to convince to electromobility. Only the fleet of central government administration from January 2022 should use zero-emission vehicles in 10%, and their share in 2025 should reach 50% (Wiśniewski, 2020). Solutions for local governments have also been prepared. One of them is the E-bus program, the aim of which is to stimulate the market for the design, production and sale of Polish electric vehicles for public transport (Program E-bus, 2021). Thanks to it, electric buses are starting to boldly enter the streets of Polish cities. In February 2017, there were only 30 of them in Polish cities. In January 2019 there were already 178. At the same time, their fleet was growing not only in large agglomerations. Most of them then traveled along the streets of Zielona Góra (45), Warsaw (31), Kraków (26), Jaworzno (24) and Stalowa Wola (10). By the end of 2020, Polish cities submitted another 274 applications for co-financing the purchases of electric buses under the E-bus program. At the end of 2021, at least 452 vehicles of this type should be operating on the streets of Polish cities (Program E-bus, 2021). Details are presented in Table 1.

Table 1

*The number of electric buses in Polish cities purchased from the “E-bus”*

program in the first half of 2021

<b>City</b>	<b>Number of electric buses in 2019</b>	<b>Vehicles ordered and financed from the program until December 2020</b>	<b>Total – a fleet of electric buses co-financed by the E-bus program in the first half of 2021</b>
Zielona Góra	45	2 (2020)	47
Warszawa	31	131 (2019)	162
Kraków	26	0	26
Jaworzno	24	20 (2019)	44
Stalowa Wola	10	0	10
Szczecinek	10	0	10
Inowrocław	8	2 (2020)	10
Ostrów Wielkopolski	4	0	4
Sosnowiec	3	0	3
Środa Śląska	3	0	3
Katowice	3	9 (2019) +4 (2020)	16
Ostrołęka	2	5 (2019)	7
Polkowice	2	0	2
Lublin	2	32 (2019)	34
Chodzież	1	0	1
Ciechanów	1	0	1
Poznań	1	21 (2019)	22
Wągrowiec	1	0	1
Września	1	0	1
Szczecin	0	11 (2019) + 5 (2020)	16
Rzeszów	0	10 (2019)	10
Gdynia	0	6 (2019)	6
Nysa	0	3 (2020)	3
Włocławek	0	3 (2020)	3
Świdnica	0	2 (2020)	2

City	Number of electric buses in 2019	Vehicles ordered and financed from the program until December 2020	Total – a fleet of electric buses co-financed by the E-bus program in the first half of 2021
Główno	0	2 (2020)	2
Miechów	0	2 (2020)	2
Łomianki	0	2 (2020)	2
Nowy Sącz	0	2 (2020)	2
Tychy	0	2 (2020)	2
Ostróda	0	2 (2020)	2

Source: Program E-bus, 2021.

Table 1 shows that investments of local governments in environmentally friendly public transport are increasing. Electric buses are purchased by both large and small Polish cities, and the size of orders is determined by their financial capabilities and scale of communication needs. At the end of September 2021, 619 electric buses were registered in Poland (*Infrastruktura ładowania...*, 2021).

Their purchases under the E-bus program are complemented by subsidies for battery and traction trolleybuses. Currently, co-financing covers 249 vehicles of this type in the Lublin (125), Pomeranian (100) and Silesian (24) provinces. Lublin (65 in 2019), Gdynia (17 in 2019 and 20 in 2020) and Tychy (3 in 2019) ordered more vehicles of this type (Program E-bus, 2021). All this shows that the development of environmentally friendly public urban transport in Poland is much faster than in case of individual customers and enterprises.

Nevertheless, looking at the proposals of “Fit for 55” plan in relation to data presented above, its implementation in the shape proposed by the EC in Polish transport in fact seems to be a utopian concept, at least in the perspective of the dates proposed by the European Commission. Therefore, it seems all the more important, as part of the discussion on the final shape of the provisions of “Fit for 55”, Poland’s efforts to modify this package

towards introducing individual paths and periods for full implementation of the assumptions of “Fit for 55” for the road transport and road public transport sector.

## Infrastructure for electromobility in Poland and the “Fit for 55” standard

Also, it is currently not ready for such a radical transformation to electromobility as proposed by the “Fit for 55” package. The surge in electrification of transport should be preceded by its earlier development. Directive of the European Parliament and of the Council No. 2014/94UE, cited earlier in the work, requires one public charging point for every 10 registered electric cars (Zaniewska-Zielińska, 2018). In September 2021, this coefficient in Poland was 9.1 per one charging point, which is only for 15 255 electric cars driving on Polish roads (*Infrastruktura ładowania...*, 2021). There were only 1675 public electric vehicle charging stations operating throughout the country. Only 31% offered the possibility of fast charging with direct current (DC). Therefore, it is far from the government plans assuming the creation of 6000 charging stations by the end of 2020. Their number of stations in large Polish cities also shows that the infrastructure also requires much larger investments. These data are presented in Table 2.

Table 2  
*Number of charging points in voivodeship cities in Poland in September 2021*

City	Number of Charging Points
Szczecin	21
Gdańsk	43
Bydgoszcz	11
Olsztyn	7
Białystok	11



City	Number of Charging Points
Warszawa	67
Łódź	18
Poznań	20
Zielona Góra	4
Lublin	12
Rzeszów	20
Kielce	9
Kraków	57
Katowice	64
Opole	12
Wrocław	27

Source: Program E-bus, 2021.

Table 2 shows that even in large Polish cities it may be difficult to use a public charging station. The situation is even worse outside urban area, where in many small towns and villages there is no infrastructure for mobility in practice, which significantly affects the sense of purchasing electric cars, and even makes it difficult to travel in a zero-emission way. Problems with the development of the charging station network are also confirmed by the fact that none of the 12 largest network operators in Poland has implemented its plans for 2020 (*Ranking sieci...*, 2021). Their planned investments in 2021 are presented in Table 3.

Table 3

*Number of charging points by their operators and investment plans in September 2021*

<b>Operator</b>	<b>Charging points at the end of 2020</b>	<b>Charging points network development plans for 2021</b>	<b>Expected network charging points condition in January 2022</b>
GreenWay	451	289	740
Orlen + Energa	299	763	1062
Tauron	189	310	499
Revnet	114	142	256
EV+	100	217	317
PGE	98	16	114
Innogy	82	80	162
Lotos	48	0	48
Elocity + Noxo	45	349	394
GO +	44	54	98
Zepto	35	20	55
Ekonoenergetyka	7	16	23
Enea	0	441	441
Ionity	0	24	24

Source: own study based on data obtained from operators.

Table 3 presents the long-awaited revival of investments in electric car charging stations in Poland and the planned changes in strategy for the development of this type of activity at operators. If the investment plans are successfully implemented, Orlen, Greenway, Tauron and Enea will become the leaders among operators on electromobility infrastructure market. The planned improvement in the pace of infrastructure development for electromobility in Poland in 2021 is also related to private sector initiatives.

Charging infrastructure is appearing more and more often with new investments in the hotel and restaurant industry, as well as among developers

and office property managers who want to emphasize the ecological and innovative nature of their investments (*Infrastruktura ładowania...*, 2021). Looking at the condition of the infrastructure for electromobility in Poland from the perspective of the “Fit for 55” program, bringing it to a state similar to that of Western European countries can be treated as a long-term goal that requires large investment outlays.

## Conclusions

The review of the issues related to development of electromobility and environmentally friendly transport in the context of the “Fit for 55” package proposed in the article leads to several final conclusions. Vehicles with alternative drives are the future of the development of individual and collective transport. They are slowly gaining the European market. However, the transformation to electromobility is not even and fair, and its pace strongly determine the level of economic development, the wealth of the society, or well-established consumption patterns. More than 80% of electric cars in Europe are sold in just 6 EU countries (*Infrastruktura ładowania...*, 2021).

The development of electromobility is therefore not only a problem for countries such as Poland, but also for many other EU countries. Sales of electric cars in Poland in September 2021 accounted for less than 1% of total new cars market. At the same time, the EC, in the name of the ambition to make Europe a climate neutral continent, within the framework of “Fit for 55”, offers EU countries solutions for transport, the radicalism and pace of implementation of which seem to completely ignore the specificity of the functioning of the transport markets of individual countries. What’s more, its assumptions do not take into account the opinions of EU citizens on this subject, who in many countries do not perceive electromobility as a way to save the Earth from a climate catastrophe. The economies of many EU countries, including Poland require energy transformation, so that electric motorization and transport can benefit from clean and

environmentally friendly electricity, and they are not ready for such a move. Now, the EC seems to avoid discussing “Fit for 55” and its proposals for transport, with both automotive manufacturers and governments pointing to the need for more flexible shaping of its provisions. However, it does not guarantee that the implementation of “Fit for 55” will not result in energy poverty in many countries, a decrease in the quality of life or an increase in anti-European moods.

Until the provisions of “Fit for 55” are accepted by the Council and the European Parliament, there is still time to refine its radical and even utopian proposals, which currently have nothing to do with electromobility and environmentally friendly transport in Poland. This process of community deliberation must not be complete without the position of Poland, the society and economy of which in the present shape of “Fit for 55” may suffer the most.

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## Petition as an Instrument of Deliberative Democracy in Shaping Public Policies in Poland

**Abstract:** The right to petition is one of the crucial rights reflected in many of the currently binding constitutions of democratic countries. That alone indicates the significance attached to this issue, notwithstanding the differences that exist in the constitutional regulation of the right to petition (it is the scope and nature of this institution), it is the most common and the most accessible form of pursuing rights and protection of interests by individuals and groups (as well as other legal entities), not only for their own sake, but also for others or the overall general interest. In a broader sense, the right to petition is identified with the right of an individual, group of individuals, or any other legal entity to provide public authorities with certain information that intends to influence the relevant authorities to follow up and take action desirable from the applicant's point of view. In the Polish legal system, the right to petition has been confirmed in art. 63 of the Constitution of the Republic of Poland of 1997, which states: "Everyone has the right to submit petitions, motions, and complaints in the public interest, for oneself or another person, with their consent, to public authorities and social organizations and institutions in connection with their tasks commissioned in the field of public administration. The procedure for considering petitions, applications and complaints is specified by law (in a separate normative act)". Therefore, the fundamental question is whether the adopted statutory regulations contribute to the increased importance of the right to petition, and in particular, do they guarantee an appropriate manner of its enforcement? How does the petition addressee verify the essence of the claim contained in a specific letter, especially distinguishing it from the mechanism for identifying the content of complaints and



requests, defined by many years of practice? What is the procedure to be followed concerning the submission of a petition to a specific authority? Bearing the above in mind, the author has prepared an article that aims to present the theoretical and practical aspects of implementing the right to petition in Poland. Presenting the most comprehensive analysis of the current constitutional solutions, the related practice of submitting and examining petitions, and legal solutions that have been in force since the entry into force of the Act on Petitions on September 6, 2015.

**Keywords:** petition, deliberations, public policies, law-making

## Introduction

The right to petition is one of the crucial rights reflected in many of the currently binding constitutions of democratic countries. That alone indicates the significance attached to this issue, notwithstanding the differences that exist in the constitutional regulation of the right to petition (it is the scope and nature of this institution (B. Banaszak, 2003; Wójcicka, 2008), it is the most common and the most accessible form of pursuing rights and protection of interests by individuals and groups (as well as other legal entities), not only for their own sake, but also for the others or the overall general interest (Banaszak, 1997; Boć, Jabłoński, 1998). In a broader sense, the right to petition is identified with the right of an individual, group of individuals, or any other legal entity to provide public authorities with certain information that intends to influence the relevant authorities to follow up and take action desirable from the applicant's point of view (Jabłoński, Węgrzyn, 2015). A petition is a legal measure by which an individual activates state authorities to perform a specific action (Wójcicka, 2015). It aims not only to draw their attention to the problems that arise or to familiarize them with the moods and opinions of society, which may play a significant role in the legislative or jurisprudence process but also to mobilize the individual to participate in political and social life actively. It is a kind of foundation of civil society (Wójcicka, 2008). Indeed, the activity of an individual affects the quality of the activities of public authorities at all levels, including the

standards that they follow in creating laws. Furthermore, it serves as both an “opinion-making” and control center, which in turn mobilizes to search for solutions that would enable goal-achievement in a consistent manner with the expectations of the community, and often even necessary from the point of view of the interests of an individual, region or even the state (Jaworska, 2015).

The institution of petition, being a means of drawing the authorities’ attention to specific problems and thus shaping the relationship between the state and the individual, is rooted in history in the development of parliamentarism in England (Balicki, 2015). In the fourteenth century, the redress of grievances was shaped, i.e., a legal means by which an individual could refer to the parliament in a manner consistent with common law. Apart from them, the creation of private petitions followed and aimed at initiating the legislative activity to the parliament. Further, there were no obstacles to petitioning the king. Ultimately, the right to petition the king as a measure free from repression was guaranteed in the Bill of Rights of 1689. Parallel to the limitation of royal power and the shaping of measures to protect individual rights in administrative proceedings, petitions to the ruler lost their importance, and the role of petitions submitted to parliament increased. However, along with the development of political parties and the democratization of the electoral law, these were depreciated over time (Banaszak, 1997). Less frequent use of petitions has not marginalized their role to ensure access to the public authority and create the right to formulate critical comments. The institution of petition appears in the first texts of the constitutions of the eighteenth and nineteenth centuries. It was envisaged in the First Amendment to the Constitution of the United States of America as the right of the people to seek redress and defined in the basic laws of France of 1791, 1793, 1799 (Balicki, 2015). It also found its place in the constitutions of states created after the disintegration due to the Great War and modern constitutions (Sokolewicz, 2006). The right to petition was also guaranteed in the Optional Protocol to the 1966 International Covenant on Civil and Political Rights and the 1950 Convention for the Protection of Human Rights and Fundamental

Freedoms. In addition, the right to petition is also ensured in the system of protection of the rights of the European Union, more specifically in Art. 44 of the Charter of Fundamental Rights grants every citizen of the Union and any natural or legal person residing or having its registered office in a Member State the right to petition the European Parliament (Jaworska, 2015).

In the Polish legal system, the right to petition has been confirmed in art. 63 of the Constitution of the Republic of Poland of 1997<sup>1</sup>, which states: “Everyone has the right to submit petitions, motions, and complaints in the public interest, for oneself or another person, with their consent, to public authorities and social organizations and institutions in connection with their tasks commissioned in the field of public administration. The procedure for considering petitions, applications and complaints is specified by law (in a separate normative act)”<sup>2</sup>.

Therefore, the fundamental question is whether the adopted statutory regulations contribute to the increased importance of the right to petition, and in particular, do they guarantee an appropriate manner of its enforcement? How does addressee of the petition verify the essence of the claim contained in a specific letter, especially distinguishing it from the mechanism for identifying the content of complaints and requests, defined by

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<sup>1</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz. U. Nr 78, poz. 483), further in text as: Constitution of the Republic of Poland.

<sup>2</sup> The inclusion of this right in the Constitution was determined by the solutions adopted under the March Constitution, which in Art. 107 granted citizens acting individually or collectively the right to submit petitions to any representative bodies and public, state and local authorities. It was in this act that the term “petition” was used for the first and last time until 1997. In the later constitutional regulations, i.e. in the April Constitution, the Small Constitution of 1947, the Constitution of the Polish People’s Republic, and the Small Constitution of 1992, it is in vain to look for any reference to the petition. The Constitution of 1952 in Art. 86 created the possibility of addressing all state organs, but only with complaints and grievances (section 2). Appeals, complaints and grievances should be dealt with both promptly and fairly. Persons guilty of protracting or showing a soulless and bureaucratic attitude to appeals, complaints and grievances of citizens, in accordance with paragraph 3 were to be held accountable.

many years of practice? What is the procedure to be followed concerning the submission of a petition to a specific authority?

Bearing the above in mind, the author has prepared an article that aims to present the theoretical and practical aspects of implementing the right to petition in Poland, presenting the most comprehensive analysis of the current constitutional solutions, the related practice of submitting and examining petitions, and legal solutions that have been in force since the entry into force of the Act on Petitions on September 6, 2015<sup>3</sup>.

## The issues of mutual relation between petitions and complaints and motions

The Constitution of the Republic of Poland in Art. 63 does not define the concept of a petition, nor does it define its relation to the requests and complaints mentioned in the cited provision (Jaworska, 2015). For nearly two decades, petitions, complaints, and motions were treated collectively (Kostetska, Kuchciak, 2015), with no indication of the difference between them, and their consideration was additionally governed by the provisions of one procedure (the provisions of Article 221 et seq. Chapter VIII of the Code of Administrative Procedure<sup>4</sup>). This situation significantly led to the identification of the petitioner with complaints and requests, making it impossible to establish the inherent nature of the former (Lipski, 2004; Zięba-Załucka, 2010; ). In the wording of the Code of Administrative Procedure, in force until the entry into force of the Act on Petitions, the issue of petitions was limited solely to the provisions in art. 221 of the Code of Administrative Procedure (Matan, 2010; Wójciechowska, 2015) that the right to submit petitions, complaints, and applications (to state bodies, local government units, local government bodies, organizational units,

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<sup>3</sup> Ustawa z dnia 11 lipca 2014 r. o petycjach (t.j. Dz. U. 2018, p. 870), further in the text as: Act on Petitions.

<sup>4</sup> Ustawa z dnia 14 czerwca 1960 r. kodeks postępowania administracyjnego (Dz. U. z 2013 r., poz. 267), further in the text as: Code of Administrative Procedure.

and to social organizations and institutions, guaranteed in the Constitution of the Republic of Poland) is implemented on the principles set out in the provisions of this chapter, and that they can be submitted to social organizations and institutions in connection with the tasks they perform and commissioned in the field of public administration. Following provisions of this section consistently bypassed the petition institution, limiting itself only to regulating the issues of complaints and motions. As a result, the legislator did not specify the subject of the petition in the Code of Administrative Procedure, nor did they specify how petitions could be submitted and examined, which in the literature on the subject also resulted in the development of a position according to which submitting a letter marked as a petition was associated with an obligation – depending on the content – of its appropriate qualification as a complaint or application (request) (Borkowski, 2006). Against the background of this provision, it was emphasized that due to the systemic interpretation, it is necessary to assume that a petition is not something qualitatively distinct from a complaint or motion, but it may be distinguished as regards the entity it comes from or by the type of the complaint or motion. In other words, a petition is a complaint or a motion of a more solemn form, which was filed on behalf of a larger number of entities – a collective application (Banaszak, 2012; Winczorek, 2000). Thus, depending on its subject matter, it will be examined in the manner provided for considering a complaint or request (Kostetska, Kuchciak, 2015). Despite doubts as to the qualification of the petition, complaint, and application, i.e., (which are competing measures), it was accepted, recognizing the possibility of their independent functioning, that the complaint was a manifestation of dissatisfaction, the application was a proposal for improvement, and the petition was attributed a postulated nature, emphasizing its social or at least collective character (Grabowska, 2015). Therefore, it seems legitimate to say that the function of a petition until the effective date of the Act on Petitions was fulfilled by complaints and requests. Thus, in the previous legal status (after the entry into force of the Constitution of the Republic of Poland [1997], before the adoption of the Petitions Act [2015]), depending on its nature – complaints

or postulates, a petition was examined in the manner provided for complaints or requests, respectively, under Art. 222 of the Code of Administrative Procedure (Piotrowski, 2008). It was only the Senate's initiative taken in 2013 that finally led to the adoption by the Polish Parliament of the Act on Petitions, which, as indicated in the justification to the draft, was aimed at fulfilling the obligation to adapt ordinary legislation to the provisions of the Polish Constitution, that is to that specified in Art. 63 of the statutory obligation to regulate the procedure for examining petitions (Balicki, Jabłoński, 2015). By adopting the Act on Petitions, the legislator decided to separate petitions from complaints and applications. Today, given the deletion of the petition from the content of Art. 222 of the Code of Administrative Procedure and regulating it in a separate Act, it should be assumed that this is a form of social participation (cooperation with public administration), separate and independent from the complaint or application. Its inclusion in a separate Act undoubtedly emphasizes the importance of the right to petition in a democratic state ruled by law and serves to disseminate it (Jaworska, 2015). The independence of a petition in the face of complaints and motions manifests itself in a separate regulation of the rules for its submission and examination in a separate Act and in delineating its subject. Thus, it is an independent legal measure serving everyone, guaranteeing the individual the possibility of active participation in governing the state, shaping its policy, and exercising civic control over the public sphere. Under the amended Code of Administrative Procedure, according to art. 227 of the Code of Administrative Procedure, the subject of the complaint may be, in particular, negligence or improper performance of tasks by the competent authorities or their employees, violation of the lawfulness or interests of the complainant, as well as lengthy or bureaucratic handling of cases. It is an open catalogue, so the subject of a complaint may also be other circumstances, not specified by the legislator, any matter concerning the performance of tasks by competent authorities, the implementation of which the complainant considers negative (Lang, 2003a). In its decision of April 4, 2012 (I OSK 717/12), the Supreme Administrative Court assumed that the subject of

the complaint may therefore be any negative assessment of the activity of an entity appointed to perform the tasks of the state or another entity. The complaint procedure aims to remedy errors and omissions and not to issue decisions in administrative proceedings. The scope of matters covered by the possibility of submitting applications under the discussed procedure is also extensive. The catalogue of matters listed in Art. 241 of the Code of Civil Procedure, similar to art. 227 of the Code of Administrative Procedure, has an open character. Within the meaning of the code, applications play the role of a carrier and qualifier for cases referred by specific entities to the bodies indicated in the code, including in particular to public administration bodies, and they are to provide a guarantee of their implementation when possible and expedient (Sulikowski, 2015). The legislator only, for example, indicated in art. 241 of the Code of Civil Procedure that the subject of the application may, in particular, be matters of improving the organization, strengthening the rule of law, improving work and preventing abuses, protection of property, better satisfaction of the needs of the population (Stankiewicz, 2017). Therefore, the subject of the application may be any individualized circumstance, situation, or event that is of interest to public administration authorities due to their goals. The application itself may refer to an action or inaction. However, the action is always future and therefore not yet completed, and it will contain a positive assessment of the expected behavior of the public administration body (Wyporska-Frankiewicz, Tarno, Stahl, 2014).

## **Entitled to submit petitions**

The subject of the right to petition (these entitled to submit it) is anyone (Grabowska, Kapusta, 2015), which in constitutional terminology means many subjects that are not precisely defined (Działocha, 2008). Therefore, there is no doubt that this category includes not only natural persons but also “social collective entities regardless of having legal personality” (e.g., associations, companies, foundations, etc.), which, however, does not

mean that a petition cannot be brought individually (Jabłoński, Węgrzyn, 2015). If this were the case, the legislator would specify that petitions may only be submitted collectively. These doubts seem to be dispelled by the law on petitions. The content of its Art. 2, clause 1 shows that the petition may be submitted by a natural person, legal person, an organizational unit that is not a legal person or a group of these entities, which proves that the subjective scope of Art. 63 of the Constitution – with regard to the petition - has not been limited to a collective entity. For the exercise of this right by an individual, having Polish citizenship is also irrelevant (Kuczma, 2014). This right applies to all persons subject to the authority of the Republic of Poland, including foreigners. Public law entities that exercise their rights to perform public tasks should be excluded from the circle of entities entitled to petition. It follows from the above that a legal person of public law, exercising public authority in the scope of the public tasks entrusted to it, is not directly or indirectly entitled to any of the human and citizen's rights and freedoms specified in Chapter II of the Constitution. Public authorities are not addressees of rights under the petition right, but addressees of obligations related to implementing the law in question (Masternak-Kubiak, Kuczma, 2015; Wójcicka, 2015).

### **Addressees of the petition**

Pursuant to Art. 63 of the Constitution of the Republic of Poland, the entities which may be the addressees of petitions are public authorities as well as social organizations and institutions, provided that they perform tasks commissioned in the field of public administration, which somehow confirms that the right to petition in material terms is an element of the broader right to socially controlled power, exercised under stable and predictable conditions. Referring to the first group of addressees, i.e., organs of public authority, it should be noted that it includes all organs functioning within the legislative, executive, and judiciary powers and local self-government bodies. However, in the judiciary's case, the right



to petitions, requests, and complaints are subject to certain restrictions. This was pointed out by the Constitutional Tribunal, according to which the law referred to in Art. 63 “does not include the possibility of initiating court proceedings”<sup>5</sup>. Therefore, situations that could interfere with the independence of judges and the independence of the judiciary are excluded from the institution of petitions. The second group of addressees includes social organizations and institutions, but only when they perform tasks commissioned from the scope of public administration. The adoption of such a solution proves the broad understanding of this category of entities and the inclusion of, for example, professional self-government bodies, as well as “other” (apart from territorial and professional) within the meaning of art. 17 of the Constitution (Jabłoński, Węgrzyn, 2015; Lang, 2003b).

### The issue of “interest” in exercising the right to petition

The admissibility of exercising the right to petition depends on whether the petition was submitted in the public interest, in one’s interest, or the interest of another person with their consent (article 63 of the Constitution). Therefore, if the competent authority decides that the conditions mentioned above, i.e., self-interest, public interest, or the interest of another person, are not met – the petition will not be considered. Only when these prerequisites are present, is it necessary to consider whether and, if so, how to consider the application (Wójcicka, 2008). It follows that the petition should be structured so that its content can be used to decode the interest constituting the subject of the petitioner’s submission. The concept of “interest” should be understood as the relationship between the objective, current, or future state and the assessment of this state from the perspective of the benefits it brings or may bring (Stankiewicz, 2017). The public interest belongs to individuals insofar as they are

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<sup>5</sup> Wyrok Trybunału Konstytucyjnego z dnia 16 listopada 2004 r., P 19/03 [Judgment of the Constitutional Tribunal of 16 November 2004, P 19/03].

members of a larger united community. In other words, acting in the public interest is synonymous with undertaking activity for the benefit of the public, nation, or a given universality and not for a particular (partial) interest. Today, the concept of public interest has a superior position over the individual interest has been rejected. The “mathematical” concept, which assumed that the public interest was the sum of private interests, has also lost supporters (Modliński, 1932). According to the most commonly approved theory of unity, the concept of public interest is based on the rivalry of competing claims, however, on specific common values recognized in society and constituting the basis for the decisions of public authorities (Nawrot, 2009). Therefore, “public interest” can be equated with the so-called common good and recognized as a kind of compromise between values that are important from the state’s perspective and the individual’s perspective (Michalska, 2015b). As it cannot a priori be assumed that public interest overrides the individual interest, the legislator decided to use the right to petition in the “self-interest” (art. 63 of the Constitution) or the “interest of the petitioner” (art. 2 (2) of the Petitions Act). Petitions may therefore be brought in the interests of the individual relating to an individual. Petitions may also be submitted in the interest of another person (third party) with their consent. The adopted solution is an exception to the solutions in force in other countries and raised doubts even during parliamentary debates on the adoption of the Constitution. The requirement to obtain the consent of a third party was supposed to reduce monastic attitudes and prevent violations of the right to privacy of third parties. However, it is pointed out that this restricts the right to petition as there is no possibility of acting in the general interest and on behalf of persons who cannot themselves consent to the submission of a petition. It also raises problems related to the consent to the exercise of the right to petition, the procedure for submitting and revoking consent, and verifying the correct performance of these activities (Masternak-Kubiak, Kuczma, 2015).

## The subject of the right to petition

Neither the Constitution nor the statutory provisions have exhaustively and unequivocally defined the scope of the subject matter of the right to petition. The science of law expresses the opinion that the content of Article 63 of the Constitution of the Republic of Poland and the fact that it was placed among the provisions guaranteeing political rights and freedoms indicate that petitions are to concern the broadly understood activities of public authorities<sup>6</sup> (Jackowski, 2015). The Constitution has not unequivocally defined the concept of an organ of authority, although the authors of the constitution often use it. The jurisprudence is consistent with the view that the term action should be interpreted as broadly as possible. The behavior defined in this way may consist of active (acting *sensu stricto*) and passive behavior (omission) if there was a legal obligation to undertake a specific activity. The concept of failure to act by public authority applies to situations in which the obligation of a specific action by the public authority is specified in a legal provision. It is possible to determine what exactly the conduct of the public authority would consist of. Omission is understood as a failure to take any action to which the entity was obliged due to its function. The concept of the activity of public authority in relation to Art. 63 of the Constitution cannot be limited solely to the sphere of strictly exercising the concept of this empire. The doctrine and jurisprudence of the Constitutional Tribunal indicate the need to cover all forms of the so-called public tasks without an element of authority to influence an individual's legal situation. Therefore, it also covers those entities that are not state bodies but which act on behalf of the state, performing tasks commissioned in the field of public administration (Wójcicka, 2015). It was determined by the legislators themselves, pointing to Art. 63 of the Constitution that petitions may be submitted to social organizations and institutions in connection with the performance of tasks assigned to them in the field of public administration. Although

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<sup>6</sup> Judgment of the Constitutional Tribunal of 23 April 2008, SK 16/07, OTK-A 2008/3/45.

a social organization can perform the tasks assigned both in the imperial and non-imperative forms, a social institution may only act within non-imperative forms, which do not have the value of an empire. This means that the material scope of the right to petition concerns matters related to the tasks of public authorities. There is no statutory definition of public tasks, although the definition of those tasks that should be treated as public can be found in the provisions of many acts, e.g., local government acts. Most often, it is assumed that public tasks serve to meet the collective needs of society. A public task is also recognized as a legal obligation imposed by the legislator on the competent authority and performed in the public interest. The legislator made an example of calculating the subject of the petition in the Act on Petitions. Pursuant to Art. 2 clause 3 of the Act, the subject of a petition may be a request, in particular a change of law, a decision or other action in the matter concerning the petitioner, collective life or values requiring special protection for the common good, falling within the scope of tasks and competences of the petitioner. This catalog is open because of the provisions of the article. Listing 3 is only an example. Due to the use of vague terms, the material scope of these speeches is still vast and may often intersect with complaints and conclusions (Jackowski, 2015). According to the Dictionary of the Polish Language, “to demand” means “to demand something categorically”. Therefore, the request may take the form of an application as well as a complaint (Gajewski, 2014, p. 165). Therefore, it may concern the improvement of the functioning of the organization to which it is addressed and constitute an inspiration for the improvement of the addressee’s activity, most often by introducing changes in the applicable law, which corresponds to the characteristics of the application regulated by the provisions of the Code of Administrative Procedure. It is also possible to demand that public authority employees be punished for improper performance of tasks or for their inactivity or lengthy handling of an administrative case that violates the core principle of the speed of proceedings. The latter understanding corresponds to a complaint as regulated in the Code of Administrative Procedure. Thus, in practice it is often still challenging to distinguish a petition

from a complaint or request. The authorities are forced to make the decision whether to apply the procedure provided for in the Petitions Act or the Code of Administrative Procedure on a case-to-case basis. The fact that petitions should concern matters of public importance may be certain facilitation in choosing the appropriate procedure. This is evidenced by both the statutory definition of the addressees of petitions, which are public authorities or entities performing tasks commissioned in the field of public administration, and the positioning of the petition in the constitutional system, which determines the political nature of this right, and the general treatment of the right to petition as an institution supporting the activities of civil society because it increases the participation of individuals in public life. There may or may not be a public interest in submitting a petition. One can also submit a petition in their own interest or the interest of another person with their consent. Hence, the element that differentiates it cannot be solely the fact that it has a wider social context in terms of its subject matter in comparison with the application or complaint. However, this aspect constitutes an important element of the petitioning institution (Masternak-Kubiak, Kuczma, 2015). The list of matters that may be the subject of the petition is provided by way of example. The Act mentions only two specific forms of activity of the petitioner: requesting a change of law (by establishing or changing the applicable provisions), which is the classic, although at present not very effective, form of influencing the law-making process requesting a decision in the matter. In the latter case, it should be remembered that petitions may not violate the constitutional principle of independence of courts and judges. The matter which is the subject of the petition should either concern the petitioner or concern collective life issues or values which require special protection in the interests of the common good. The legislator does not specify what kind of “collective life” is meant. Determining its meaning is difficult because this phrase does not belong to the concepts of legal language. It seems that a petition can certainly concern all spheres of collective life, i.e., family, work, or religion-related matters, as long as the settlement of the petition as requested would result in repercussions for other entities

in an identical or similar situation to the petitioner. The phrase “collective life” is so broad that it includes all forms of individual activity in “social” and “public” life. In principle, any matter that concerns a certain group of people can be classified as relating to collective life. A value that requires special protection in the name of the common good is striving for sustainable development of the level and quality of life in each social and political group, depending on the goals it sets. These activities are intended to ensure the welfare of the whole and, therefore, contribute to social justice. “The common good” which is the most important social law, should define the limits of economic activity and private initiative. Other values protected by petitions include, for example, activities aimed at ensuring the functioning of a democratic civil society and its institutions, the well-being of human society, and respect for the rights and freedoms of other individuals (Masternak-Kubiak, Kuczma, 2015).

### **Petition as an instrument of deliberative (semi-direct) democracy**

The lack of specific material limitations regarding the areas that may be addressed through the petition (the legislator uses the term “demand” which may be the subject of the petition, and then indicates its specific subjects, which, however, does not constitute an exhaustive list) proves “universality” of the right to petition and its decidedly democratic character, enabling the participation of community participants at various levels, in the process of exercising power, presenting their positions, agreeing on decisions and making them in the process of shaping public policies (Uziębło, 2009). Moreover, a petition may be filed at any time, and its use is not subject to time limits that would invalidate the petition or the necessity to re-submit it if one of the conditions specified in the applicable provisions is not met (within a given time limit). An additional element directly influencing the “penness” of this institution is also the possibility of submitting petitions by electronic means, which proves a relatively low degree of petition

formalization (even at the statutory level), which makes this instrument more “accessible” and easy to use by citizens in practice (Żak, 2015). The exercise of the right to petition does not lead directly to decisions with legal effect and does not directly affect any public authority decision. It is merely a request to take the actions provided for in the provisions governing the handling of petitions. Applying to a public authority or a social organization (institution) performing tasks commissioned in the field of public administration means starting the petition examination procedure (Wójcicka, 2015). Submitting a petition results in the initiation of a single-instance procedure; however, its author does not become a party and thus does not acquire party’s rights. The proceedings end with notifying the author about the method of settling the petition, which is not subject to appeal in the Administrative Course of the instance or a complaint to the Provincial Administrative Court. Therefore, the right to petition does not have an imperative character, consisting of an imperative to comply with the demands of the individual. Due to the lack of binding force, but only the obligation of the public authority to accept and consider the submitted petition, it should be considered an indirect form and thus classified as an institution of semi-direct democracy (Uziębło, 2009). Although the “demands” formulated in the collective petition are not binding, petitions still have a decision-shaping potential in the area it covers. The information obtained is a valuable source of knowledge about the expectations and problems of society. By examining a specific petition, competent authorities have the opportunity to familiarize themselves with the difficulties arising from the application of the legal provisions. In exercising the right to petition, an individual may draw attention to violations or incorrect implementation of legislation so that action can be taken to remedy cases or areas where legislation may require revision, thus ensuring the necessary response to the consequences of the decisions taken. The views expressed in petitions allow public authorities to get acquainted with the opinions of the public, and the information obtained in this way may play a prominent role in the decision-making process. When the subject of the petition is political matters, they stimulate political activity, raise the level of political

awareness and involve citizens in the co-government of the state. Thus, the idea that the shaping of the political will is to take place through the influence of society on the organs of public authority, and not the other way round, can be fully realized. Therefore, the petitioner should be seen as an essential component of what is currently considered a participatory (deliberative) democracy (Bartnicki, 2014; Źak, 2015).

### **Petition as the foundation of civil society**

Petitions also are a form of social dialogue of individuals (society) with public authorities, particularly the broadly understood participation of society in making decisions concerning public matters (Blicharz, 2009). This law activates society, which increases the sense of responsibility of every citizen for public affairs (for some part of social life manifested in the activity of members of civil society in the political, economic or cultural field) and shapes the political culture. The right to petition encourages active participation and desire to shape the political life and the legal system. Thanks to petitions, a citizen can make proposals for legislation. A petition, which also enables residents to influence local decisions, is part of the model of modern administration. Thanks to the petition law, the inhabitants identify with their self-governing community and participate in its development, thus contributing to the development of civil society (Dyś, 2015).

### **The law of petition as a political law**

The inclusion of the right to petition in the sub-section of the Constitution entitled “Political rights and freedoms” allows to state that the legislator treated the petition as a political right, the essence of which is to enable influence over public affairs (Jabłoński, Węgrzyn, 2015; Komarnicki, 2008; Masternak-Kubiak, Kuczma, 2015; Orłowski, 2008). Political rights



guarantee the effective participation of individuals in the exercise of public authority. They enable it to actively participate in governing (co-deciding) the state (Lathrop, Ruma, 2010), i.e., participate in various types of direct or indirect processes of making or influencing the content of the final state (public) decisions. They ensure the possibility of cooperation in creating state organs and access to its institutions and procedures. By their nature, political freedoms guarantee and involve citizens in the political decision-making process. Therefore, they enable active participation in shaping the state's policy and allow control of the exercise of power. They are, therefore, a means of democracy and political pluralism (Sokolewicz, 2006). Therefore, the political nature of the right to petition results from the "equipping" of the entitled entity to actively participate in making or influencing decisions in the public sphere (B. Banaszak, 2003; Banaszak, 2001; Wójcicka, 2008). Therefore, the right to petition is a political right, as it enables everyone to actively influence the exercise of public authority by presenting petitions that correct the conduct of the authorities or even adopting completely new solutions. Utilizing petitions, an individual provides public authorities with information about problems, needs, preferences, essential both for himself and society. Using the right of petition, citizens can participate in the public debate and, consequently, exercise power (Orłowski, 2002).

### **The right to petition as a public subjective law of a claim and guarantee nature**

Finally, the right to petition is a public and independent subjective right (Błachut, 2002; Boć, Błaś, 2007) of claim which is a guarantee against other civil rights and freedoms (Masternak-Kubiak, Kuczma, 2015). As a public subject law of a claim nature (Jakimowicz, 2002), it gives rise to the addressees of petitions specified in art. 63 of the Polish Constitution, the obligation to investigate (consider) the case, thus taking a position and answering the petitioner (Działocha, 2008, Kuczma, 2015). As a result of

submitting the petition, its addressee is obliged to consider it, respond to it, and notify the applicant of their position (Rytel-Warzocho, 2012). Such an effect of exercising the right to petition has not been explicitly indicated in the Constitution, but it results from the essence of this right (Masternak-Kubiak, Kuczma, 2015). A feature of public subjective law is the inadmissibility of waiving this right, although its exercise is a subjective matter of the legal subject.

The guaranteed nature of the right to petition is closely related to its essence, which is the possibility of applying to state and local government bodies primarily in all situations where the law does not formulate directly or indirectly appropriate procedures for the exercise of its rights (Preisner, Kuczma, 2015). The right to petition complements, in a way, all those institutions are serving the protection of human rights that an individual may use (e.g., submitting as part of the so-called people's initiative, submitting a preliminary draft resolution to order a referendum, application to the Human Rights Defender, constitutional complaint). All these measures are considered in particular procedures. Petitions cannot replace other remedies granted to the individual but may be of help where other remedies fail or are applied in an inappropriate way (Działocha, 2008). The material scope of the petition is therefore limited by the material scope of the other remedies granted to the individual (Kuczma, 2014). The guaranteed nature of the petition is also manifested in the fact that once submitted, a petition can be submitted again. However, the effectiveness of the re-petition may be limited (see article 12 of the Petitions Act), and in addition, the petitioner receives information from the addressee about its handling along with the justification. A critical function of a petition is its law-making function. Although the correct legislative initiative is assigned to the subjects of the legislative initiative, the petition's content may become a source of inspiration for creating new legal acts or making necessary changes to the existing ones. Protection of the right under Art. 63, granted in the provisions of Art. 233 paragraph. 1 and 3 of the Constitution additionally strengthens the guaranteed nature of the right to petition. This regulation is important because it concerns one of the

fundamental substances of emergency states, namely limitations of human and civil liberties and rights in emergency states. The importance of this right is emphasized by the fact that it may be limited neither for the duration of martial law and a state of emergency (Article 233 (1) of the Constitution) nor for the duration of a natural disaster (Article 233 (3) of the Constitution) (Grabowska, Kapusta, 2015; Michalska, 2015a).

## **The libertarian aspect of the right to petition**

Freedom is also an attribute of the right to petition (Wójcicka, 2015). The libertarian nature of the right to petition implies the content of the behavior undertaken both by authorized entities and public authorities. By accepting the so-called positive aspect of freedom, it should be stated that the exercise of the right to petition has been left to the discretion of the individual, which means that the entitled entity may perform this type of action or refrain from performing it. The libertarian nature of the right to petition is the area of activity of an individual in which he or she may, individually or jointly with others, submit complaints and express their opinions and postulates on various matters of public life. Emphasizing the public nature of cases is a consequence of recognizing the right to petition as a political right. The second aspect of freedom, the so-called negative freedom, means freedom from broadly understood pressures. The libertarian aspect of the right to petition is gaining importance, especially when confronted with the provision that petitions, complaints, and applications may be submitted in the interest of another person, but only with their consent. This creates an obligation on the part of the authorized entity to obtain consent, as failure to do so will result in the inability to exercise the right to petition. A legally protected freedom includes not only the right to demand that the state refrains from interfering with the performance of a specific action but also the right to demand that the state take certain positive actions consisting in the protection of entities against unlawful actions of other individuals that may disturb and hinder the exercise of

freedom and the right to require the state to take positive action by creating an environment in which the individual can exercise his rights as fully as possible (Bernaczyk, 2015ab). The libertarian nature of the right to petition gives rise to certain obligations and behavior on public authorities. It manifests itself primarily in ensuring that the entitled persons do not apply negative consequences (sanctions, penalties) to them, as long as the petition's content does not constitute a crime, e.g., insult or defamation (Jaworska, 2015). An important condition for the exercise of the right to petition is to ensure the safety of the individual against possible harassment, especially by persons or bodies who have been subjected to criticism, as widely as possible (Szydło, 2009). The libertarian nature of the petition right in the modern state is not limited only to ensuring that authorized entities do not apply negative consequences to them. Apart from the obligation of the state to refrain from interfering with the sphere of exercising this right, a positive obligation is imposed to protect it. The libertarian nature of the right to petition imposes on the state the obligation to create conditions conducive to exercising this right by an individual while taking into account the autonomy and freedom of making choices. The role of the state and the law should be active in this respect, not passive. The legislator included this obligation in Art. 225 § 2 of the Criminal Code, which stipulates that state bodies, local government bodies, and other local government bodies and bodies of social organizations are obliged to counteract activities restricting the right to submit complaints and applications. The right to petition strengthens the freedom of expression by creating a platform enabling an individual to participate in public life, including often expressing critical remarks towards the keepers of public authorities. On the other hand, freedom of expression affects the right to petition. Persons exercising the right to petition are protected by the protection guaranteed by the Constitution in connection with the freedom of expression and dissemination of information, which everyone belongs to. Thus, the freedom of expression contributes to a fuller political and supervisory function of the right to petition. In a democratic system, it is an indispensable condition for the effective control of power by citizens.

Actions and omissions of the authorities must be the subject of scrupulous control not only of legislative bodies, courts, and other state protection and control bodies but also of the public. In this way, civic control exercised by the right of petition enables the public to draw the attention of public authorities to matters that outrage, disturb and raise objections. Freedom of speech is of particular importance for shaping attitudes and opinions on matters of public interest and concern. This applies to all areas of activity in which the individual has chosen to express his view. There is no doubt that petitions often raise sensitive issues. The freedom of speech favors the process of identifying interests by citizens and their representatives and supporting the shaping of proper relations between the ruled and the ruling. In this sense, the freedom of expression exercised by the right of petition is an important element of the principle of national supremacy, as it allows citizens to consciously and actively participate in the exercise of public authority (Wójcicka, 2015).

### **Petition as an instrument of information and social control**

There is no doubt that petitions also play an informative role in the state. Through this measure, certain information is transferred to public authorities to provoke the addressee's reflection and, consequently, taking the actions desired by the entity submitting the petition. The views of the individual expressed in the petition also allow public authorities to get to know the public's opinion, and the information obtained in this way can play a significant role in the decision-making process. A unique role in this function can be assigned to collective petitions. The number of signatures of support for such a speech shows the scale of interest in a particular issue. Therefore, petitions are an excellent source of information about the mood of citizens, their needs, assessment of the state of the law in force, or the activities of state and local government bodies. In addition, the content of the petition may include elements of criticism of the phenomena in question, proposed changes, reforms, information aimed at causing the addressee

to take actions desired from the point of view of the person applying to him or actions that are in the interest of third parties or the public interest (Jabłoński, Węgrzyn, 2015; Michalska, 2015a; Wójcicka, 2015; Żak, 2015). A petition may also include a question to a public authority. If a negative assessment concerns the authorities, the petitions may be assigned a control function (Banaszak, 2001; N. Banaszak, 2003). The formulation of accusations is to protect the interests of certain social groups or the general interest and stimulate changes in the required scope. Besides, if their subject matter is political, petitions serve to stimulate political activity and raise the level of civic awareness or attract citizens to rule the state. They are also of great importance as a means of achieving the full realization of the remaining rights and freedoms specified in the Constitution (Wójcicka, 2015).

Summing up, it seems that the essence of the right to petition boils down to enabling each interested party to express opinions, views, demands, and postulates (also negatively related to the actions or inactivity of organs and institutions), i.e., transferring information and influencing the attitude of the authorities and their representative bodies and public officials. In this approach, the right to petition is a means of communication (as well as dialogue) between an individual (s) in the public and private sphere and then a specific form of participation in the public debate. Consequently, it becomes a component of a separate procedure enabling the interested parties to actively influence (influence) the exercise of power in a democratic society and shaping public policies. Therefore, the interests of individuals and the interests of society are at the heart of the exercise of the right to petition. In such an approach, the right to petition is a fundamental element of democracy, and it is the duty of public authorities (and other public institutions) to respect and ensure this right when used to criticize their activities. This right is one of the fundamental elements of constitutional regulation that forms the foundations of civil society, i.e., one in which an individual is aware of one's ties with a particular statehood, aware of one's freedoms and rights, but also one's obligation towards it, one pursues them not under the threat of specific sanctions, but from an apparent, heartfelt need (Jabłoński, Węgrzyn, 2015).

## Conclusions

When assessing the implementation of the right to petition in Poland to date, it is necessary, first of all, to point out the apparent inconsistency in the behavior of public authorities in respecting the law of petition, as well as indicate specific problems and possible threats in this area (Halicki, 2018). For example, the text of the Act on Petitions is rarely posted on the offices' websites, even though it consists of only 17 articles. If the text has been published, it is usually out of date because it does not contain information about subsequent amendments. Moreover, not all institutions provide comprehensive information on acceptable forms of submitting petitions, e.g., no information on petitions submitted by fax, no e-mail address. There are cases of disclosure of personal data of petitioners even though they have not consented to it. This applies to a flawed process of anonymizing petitions on websites and including personal data in other documents related to the exercise of the right to petition, e.g., letters sending a petition to another authority, as appropriate. This is particularly important when the same person is submitting a petition to several authorities and most of them correctly deleting his data. In such a case, an insightful observer may obtain access, for example, to the petitioner's address and telephone number indirectly, i.e., by obtaining it from the entity's website that has improperly anonymized the scan of the petition. In addition, there are exceptions to websites where a petition record has been posted, containing information about the date of receipt of the petition at the office, the date of publication of the petition's scan on the website, the date of the reply, and the person responsible for these activities. There is a significant lack of uniformity in placing scans of responses to petitions on the institutions' websites. Some bodies (e.g., ministries) make their position available to the public, while others do not.

Another problem is the low level of citizens' interest in the country and local affairs (low number of petitions received). In contrast, the petition should be an effective tool to legally influence the city authorities and participate in cold weather on issues that are important to every citizen,

such as the condition of streets, sidewalks, bicycle paths, the quality of public transport and air, housing conditions, construction of kindergartens, playgrounds, etc. One of the reasons for this may be the lack of identification of residents with the affairs of the state and the city, or the lack of a sense of influence on changes, as well as weaker promotion of the petition institution in the local community, low level of legal awareness of societies, the level of development of legal culture, the activity of individuals through the presence of various forms of institutions civil society and traditions regarding the validity and understanding of the law of petition in our country. The material scope of the petition right at the national, regional, and local level also differs (to the detriment of) from the scope presented by international and European law.

However, regardless of the number of petitions submitted, their effectiveness remains very limited. Their addressees are not legally obliged to consider the comments made in their content. Therefore, it can be pointed out that petitions and hearings perform a persuasive function, which takes the form of a “soft” impact. The role of the authors of the speeches is limited only to presenting their position and arguments, and the way of using the arguments raised remains solely at the discretion of the addressee (Kuczma, 2015). There are no procedures that would require any special treatment of the material resulting from the petition’s content. In the event of exercising the right to petition, the addressee is obliged to inform the petitioner about the manner of its settlement and justification of the position but is not obliged to take into account the comments contained therein. The significance of the petition is also weakened by the fact that the manner of dealing with the petition may not be the subject of a complaint (Article 13 (2) of the Act on Petitions). In the absence of a supervisory measure capable of verifying the correctness of the position taken by the addressee of the petition, petitions are dealt with sloppily without giving them due attention and reflection.

Additionally, the right to petition, despite the vital role of the tool of social participation, may sometimes be used contrary to its purpose, and thus it may be abused (Piskorz-Ryń, Wyporska-Frankiewicz, 2017).



First, one entity may submit a large number of petitions. Submitting many petitions to protect the public interest may indicate an active civic attitude and interest in public affairs. Second, a petition can be used to make specific facts or events public by publishing a mapping of the petition on a website and then processing it. Pursuant to Art. 8 sec. 1 of the Act on Petitions, the website of the entity examining the petition or the office serving it shall immediately publish information containing a digital representation (scan) of the petition, the date of its submission, and, in the event of consent, referred to in Art. 4 sec. 3 – the name or surname or name of the petitioner or entity in the interest of which the petition is being submitted. The decision of the legislator to publish the image of the petition allows for the publication of any content on the website of the subject in a freely chosen manner within limits specified by law. Therefore, considering the definition of a petition adopted by the legislator, it should be considered that it gives the possibility to formulate a request in such a way as to include various kinds of information on the website. In this case, it is not the legislator who regulates the material scope of matters which should be published on the website by a public authority, and neither does the authority itself, but the petitioner. However, the content of the petition may be structured in such a way that the entity's website publishes information that violates the public interest or deserves the protection of private interests. Firstly, the petition may contain information that is legally protected, secondly, relating to privacy or the disclosure of which may infringe personal rights, thirdly, related to ideas that are prohibited by law, and fourthly, containing vulgar or offensive words. Therefore, there are no legal instruments to limit the publication of digital images of petitions on the website.

## Recommendations

In order to increase the transparency of the process of submitting petitions, it is advisable to that on the website of all governmental authorities

information on the procedure for dealing with petitions received by the institution is published, in particular in the form of a graphical diagram of the consideration of petitions (Halicki, 2018). Each website should contain a “petition record” containing such data as the date of its arrival at the office, the date of publication of the scan on the website, the date of handling the matter (answering), and the date of introducing changes (history of changes). This will allow for social control over the petition management process, in particular in terms of compliance by public authorities with the deadlines provided for in the Petitions Act. It may also be suggested that the office’s website contains relevant information about the elements that should be met by the petition, as well as the tasks and competences of the public authority, to avoid sending petitions to other authorities, according to their competence. It is proposed to post an interactive electronic petition form on the office’s website, as well as provide templates for petitions. This solution would be helpful for people who are not aware of the petition process. It would also convey a clear message to citizens that public authorities are committed to being in touch with them. It could be beneficial to post a scan of the anonymized response to the petition on the office’s website. This solution will allow everyone to familiarize themselves with the position of the public authority, which is essential, particularly in the case of petitions submitted in the public interest. Information on the possibility of submitting a petition should be written in a language understandable to the general public, and questionable statutory wording should be explained in an accessible form. It is also necessary to exercise particular care when publishing scans of the petition on the website. If the person did not expressly express consent to the disclosure of their data, it is the subject’s responsibility to anonymize the petition carefully. This also applies to the publication of letters and opinions of other entities taking a position in the case or submitting a petition according to their jurisdiction. The information posted on the websites should be updated on an ongoing basis, particularly with the data on the opinions consulted and the expected date of settling the petition. Allowing the interested parties to express their support for a petition is also helpful. It is at last

necessary to promote the right of petition, especially in local communities. This applies to both the information campaign and the modification of websites so that the tab devoted to petitions is visible, and the graphic design encourages the use of the portal. It is also necessary to create an effective control and supervision system over the receipt, examination, and processing of petitions so that the law is not illusory. What is important is the structure and nature of the entities responsible for dealing with petitions, the procedures they operate, and whether a system supervises the petition addressees' functioning in terms of their recognition. The Act on Petitions adopts a single-instance procedure model. The processing of the petition takes the form of a notification, which is not subject to any appeal in the Administrative Course of the instance, or a complaint to the Administrative Court, although in this case, the applicant has the right to obtain a reply and the corresponding obligation of the authority to provide it. In this state of affairs, there is a problem of the effective exercise of the right to petition without judicial control of the activities of public authorities. Practice proves that the lack of adequate legal remedies contributes to the authorities' sluggish, arbitrary, and unreliable actions in this regard. For this institution to be able to fulfil its functions (political, control, and extrajudicial means of protection of rights and freedoms, shaping public policies), it is necessary to create a system of protection of the right to petition. Extending the competence of Administrative Courts to consider complaints in the event of inadmissibility (rejection) of the petition and failure to notify the way of settling the petition of the components determining its correctness should be considered a contribution to further research in this regard.

## Summary

The new statutory regulation regulating the procedure of considering petitions, in principle, strengthens the importance of this institution. However, the law of petition does not radically solve a specific crisis of

democracy and the problem of the increasingly diminished involvement of citizens in public affairs. This situation is influenced by incomprehensible and inappropriate legal solutions and other factors related, in particular, to the low legal awareness of citizens and the lack of confidence in the effectiveness of the actions taken. If skilfully used, it can become an accurate tool of dialogue and communication with representatives of public authorities. Therefore, educational and information activities are vital, allowing individuals to understand the meaning and significance of petitions and encouraging them to use this privilege of democracy. It should be remembered that through active measures – aimed at increasing the participation of citizens in decision-making – they contribute to the formation of an informed civil society. The experience of democratic countries with a long tradition of petitioning law, where citizens are aware of and actively use their rights, shows that this right is not obsolete but an institution of universal importance. In this respect, it is worth emphasizing the growing interest in this law among Polish citizens who, defending their rights under EU regulations, more and more often submit petitions to the European Parliament. The correct shaping of the petition institution in the Polish legal order will undoubtedly increase its attractiveness and contribute to strengthening this form of social activity and control. Moreover, it may bring more significant progress on the road to democratization and the creation of civil society than the multiplication of judicial institutions. Since it constitutes an expression of an individual's participation in public activity, it should be shaped comprehensively, i.e., covering all areas of state activity. In addition, it should be informal enough not to limit the actual possibility of occurrence, but at the same time, defined precisely enough to prevent the blurring of its boundaries.

Otherwise, it is difficult to talk about the effectiveness of petitioning.

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## Petition as an Instrument of Deliberative Democracy...

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. [Constitution of the Republic of Poland of April 2, 1997] (Dz. U. Nr 78, poz. 483) .

Ustawa z dnia 14 czerwca 1960 r. kodeks postępowania administracyjnego [The Act of June 14, 1960, Code of Administrative Procedure] (Dz. U. z 2013 r., poz. 267).

Ustawa z dnia 11 lipca 2014 r. o petycjach [The Act of 11 July 2014 on Petitions] (t.j. Dz. U z 2018 r., poz. 870).

Wyrok Trybunału Konstytucyjnego z dnia 23 kwietnia 2008 r. [Judgment of the Constitutional Tribunal of 23 April 2008] SK 16/07.

Wyrok Trybunału Konstytucyjnego z dnia 16 listopada 2004 r. [Judgment of the Constitutional Tribunal of 16 November 2004] P 19/03.



Over the last decades much has been written about the role of deliberation in public life, and much is still being written. This does not mean that the idea of deliberation is no longer a flickering mirage, and the deliberative recommendations and the results of practices can be fully satisfied. In the literature on deliberation, as well as in the sphere of deliberative practices, there are examples more and less valuable. [...]

When we started working on the book, we tried to compose a work at a good academic level, which would not lack bolder theoretical interpretations, and at the same time it would be as free as possible from reproducing empty words. We leave the readers to judge the extent to which we have managed to do so. And we do so (as we hope) without self-righteousness, but also without anxiety, because we managed to gather a precisely selected group of authors which in our opinion guarantees academic reliability as well as practical awareness.

The study consists of ten texts. The first three chapters focus on theoretical issues and the remaining seven take a more practical and functional approach.

*From Introduction*

