



Received: 23 April 2018  
Revised: 30 April 2018  
Accepted: 15 May 2018  
Published: 30 June 2018

**STRUKTURA ORGANIZACYJNA ORGANÓW  
STANOWIĄCYCH W POLSKIM I FRANCUSKIM  
SAMORZĄDZIE TERYTORIALNYM -  
W STRONĘ DEMOKRACJI KONSULTACYJNEJ**

**THE ORGANIZATIONAL STRUCTURE  
OF LEGISLATIVE BODIES IN THE POLISH  
AND FRENCH TERRITORIAL SELF-  
GOVERNMENT – TOWARDS A  
CONSULTATIVE DEMOCRACY**

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*Research project carried out at the Faculty of Law, Administration and International Relations at Andrzej Frycz Modrzewski Krakow University financed from funds for statutory activities on the basis of the decision no. WPAiSM/DS/3/2016-KON.*

**Streszczenie**

Struktura wewnętrzna organów stanowiących jednostek samorządu terytorialnego/wspólnot terytorialnych oraz konstrukcje normatywne komisji i ciał konsultacyjnych (zwłaszcza te we francuskim porządku prawnym) umożliwiają aktywne wyrażanie opinii i stanowisk mieszkańców wspólnot samorządowych. Multiplikacja francuskich komisji i komitetów, uregulowanych na mocy ustawy, wzbogajających dialog konsultacyjny we wspólnocie terytorialnej, stanowiąc może dobry wzorzec nowych i pożądaných rozwiązań w tym zakresie w polskim porządku prawnym. Wypowiadanie się mieszkańców danej wspólnoty przez szeroką gamę ciał konsultacyjnych uznać należy za właściwy kierunek demokracji pośredniej, która w sposób jednoznaczny przybliżyła się do demokracji uczestniczącej, pozwalając współuczestniczyć mieszkańcom w podejmowaniu decyzji w ich własnych sprawach.

**Słowa kluczowe:** dialog konsultacyjny, struktura wewnętrzna organu stanowiącego w samorządzie terytorialnym, komisje tematyczne, ciała konsultacyjne we wspólnotach samorządowych, partycypacja, partycypacja społeczna

ISSN 2543-7097 / E-ISSN 2544-9478

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[DOI 10.5604/01.3001.0012.2127](https://doi.org/10.5604/01.3001.0012.2127)

## **Abstract**

The internal structure of legislative bodies of territorial self-government units/territorial communities and normative constructions of commissions and consultative bodies (especially those in the French legal order) enable active expression of opinions and positions of residents of self-government communities. Multiplication of French commissions and committees, regulated by the Act, enriching the consultative dialogue in the territorial community, may constitute a good model of new and desirable solutions in this area in the Polish legal order. Expressing opinions by residents of a given community through a wide range of consultative bodies should be considered the right direction of indirect democracy, which unambiguously approaches participatory democracy, allowing residents to participate in making decisions on their own matters.

**Keywords:** consultative dialogue, internal structure of the legislative body in territorial self-government, thematic commissions, consultative bodies in self-government communities, participation, social participation

## **Introduction**

The existence of the territorial self-government of the Republic of Poland, in addition to the legislation introducing the three-tier territorial division, is reflected in the most important normative act of the Republic of Poland - of the Constitution of 2 April 1997 (Chapter VII of the Basic Law "Local self-government"). If it results from the justified needs of the state, the Act may delegate to other local government units other public tasks - commissioned tasks (Gwoździwicz S., p.9). In the Polish and French right order the territorial self-government participates in the exercise of public authority. It performs an important part of public tasks assigned to it under the Acts, on its own behalf and on its own responsibility. Pursuant to Article 169 par. 1 of the Constitution of the Republic of Poland ( Constitution of the Republic of Poland of 2 April 1997, Journal of Laws, item 483, as amended – hereinafter referred to as the Constitution of the RP): "Units of local government shall perform their duties through constitutive and executive organs." According to Article 72 par. 3 of the French Constitution (Constitution of the French Republic of 4 October 1958), the French legislator has determined that under the conditions provided for in the Act the territorial communities may freely exercise their power through elected councils and have the right to issue legal acts in order to exercise their powers. Provisions of the

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General Code of Territorial Communities (CGCT- General Code of Territorial Communities) specify in detail the catalogue of authorities, their organization and rules of operation. Participatory democracy (Participatory democracy is focused on the forms and values of active participation of a citizen in "self-governing" or co-management of the territorial community. This process should cover the widest possible range of matters in various forms, including the most modern methods, e.g. e-democracy. D. Megard, B. Deljarrie, p. 86) is one of the types of democracy that has key significance for the proper functioning of territorial self-government in the Polish and French legal order. Therefore, the issues concerning participatory democracy, based on a wide range of commissions and consultative bodies, are a desirable element in the contemporary territorial division of the state. Instruments of participative democracy, skilfully, normatively connected with the authorities in the self-government community, guarantee the proper exercise of power, understood as co-management by residents of territorial self-government units of matters in the municipality (Polish "gmina"), district (Polish "powiat") /department and voivodeship/region. The subject of this article is the analysis of issues regarding the organizational structure of legislative (i.e. constitutive) bodies in the Polish and French territorial self-government in the light of consultative regulations as those which guarantee active participation of residents in the life of the self-government community, constituting foundations of a democratic state based on the rule of law.

### **Internal structure of the legislative body – selected systemic and legal elements**

In accordance with the provisions of Code général des collectivités territoriales each municipality, department and region has been equipped by the legislator with legislative (or constitutive) bodies – councils established by elections (see Article L1111-1 CGCT). CGCT regulations define the principles and mode of operation of individual territorial communities. Similarly, in the Polish legal order, the legislator has equipped all territorial self-government units, pursuant to the provisions of the Constitution of the Republic of Poland and systemic self-government acts, with bodies, including legislative bodies, i.e. the municipal council, district council and sejmik of voivodeship.

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In Poland and in France the organizational structure of legislative bodies (the legislative function is a function of programming the activities of the self-government, creating a general self-government policy, which is to lead to deciding by the legislative body on fundamental matters, which are then settled through the creation of general and abstract norms – J. Bucińska, D. Struc, R. Stec, Warsaw 2009, p. 69) is based on the bodies indicated *expressis verbis* by the legislator in systemic self-government acts (systemic self-government acts should be understood to mean: the Act of 8 March 1990 on municipal self-government (consolidated text Journal of Laws of 2017 item 1875 as amended) – hereinafter referred to as AMSG; the Act of 5 June 1998 on district self-government (consolidated text Journal of Laws of 2017 item 1868 as amended) – hereinafter referred to as ADSG; and the Act of 5 June 1998 on voivodeship self-government (consolidated text Journal of Laws item 2096 as amended) – hereinafter referred to as AVSG) and regulations of the General Code of Territorial Communities. This catalogue is closed and its extension can only take place at the level of the statutory norm. In addition to the structure clearly indicating the role and significance of resolutions-passing bodies in territorial self-government units/territorial communities, the legislator and the local resolution-passing body provide for a large range of various commissions and consultative bodies operating within the municipality, district/department and voivodeship/region. The aim of these consultative and advisory as well as often initiative bodies is to strengthen the efficiency of activities of the authorities of indirect democracy and to facilitate their efficient performance of tasks which gain through the consultative democracy acceptance of residents of the self-government community and thus strengthen the legitimacy of the authorities' activities. It serves not only good governance of the self-government community, but also strengthens the information policy, creates a solid guarantee of openness in the field of activities of representatives of the authorities, elected in democratic self-government elections.

## **Municipal council**

In the French legal order the municipal council decides on local matters (French municipalities have the presumption of competence in matters of local sig-

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nificance. This competence covers all local matters not reserved for the department and region or government administration – See S. Creusot, Une nouvelle organisation décentralisée de la République, Paris 2012, p. 54. In the Polish legal order, as T. Moll emphasizes, for determination of the scope of activity of the municipality the legislator used the general clause constituting guidelines the boundaries of which should include tasks transferred to the municipality – see T. Moll, (in:) B. Dolnicki (ed.), Act on the municipal self-government. Commentary, Warsaw 2016 ) at meetings of the council (Conseil municipal), which is a legislative body elected in general and direct elections for the term of 6 years (J. Waline, Paris 2016, p. 132). The number of councillors depends on the number of residents and amounts to 7 councillors in municipalities with less than 100 inhabitants, and in municipalities with at least 300,000 residents the maximum number of councillors is 69 (see Article L. 2121-2 CGCT) (Three cities constitute some exception: Lyon (73 councillors), Marseille (101 councillors) and Paris (163 councillors). These cities have been divided into districts called arrondissements). In France the municipal council meets at sessions and adopts resolutions. At the first meeting of *conseil municipal* the council elects a chairperson, who at the same time becomes the mayor of the municipality – the executive body in the municipality (J. Waline, Paris 2016, p. 143). Then the council determines the number of deputies of the mayor and elects them in a secret ballot. The number of deputies may be freely defined by the municipal council (without formal vote in the event of an obvious consensus), but it can not exceed 30% of the council members (This border is strictly controlled by the court in the event of a case being recognized as a result of the so-called *déféré-préfectoral*- that is a prefect's appeal against a legal act of a territorial community before an administrative court, and not at the request of citizens). It is possible to create one or more additional positions of special deputies, however, only in the case of joining municipalities ( article L. 2113-6 CGCT) or in a situation where communication between the capital of the municipality and part of this municipality is difficult (article L. 2122-3 CGCT). It is worth emphasizing that in cities with at least 80,000 inhabitants, it is possible to create positions of deputies responsible for one or several neighbourhoods. These deputies deal with all matters related to the activities of neighbourhoods functioning

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in the municipality. Their tasks include informing residents and undertaking activities aimed at facilitating their participation in the life of the neighbourhood, in various consultative and opinion-giving processes ( article L. 2122-18-1 CGCT).

Meetings of the council are convened by the mayor at least once a quarter and in the event the mayor deems it necessary (see article L. 2121-7 CGCT i art. L. 2121-9 CGCT). The mayor is obliged to convene the session on a justified request of the prefect or at the request of 1/3 of the council members in municipalities with at least 3,500 residents, and in municipalities with less than 3,500 residents a request supported by the majority of councillors is required within 30 days. This term may be shortened in emergency situations (Ph. Lacaïle, L'élú municipal. Statut de l'élú et fonctionnement du conseil municipal, Paris 2014, p. 168). The competence in this respect belongs to the prefect as a representative of the state in the department. Mayor informs all councillors about the meeting of the council (Failure to notify or notifying incorrectly even one councillor invalidates the proceedings of the meeting – see CAA Nancy, 2 févr. 2006, Commune d'Amnéville, no 03NC0090, AJDA, 2006, p. 948.). In accordance with article L. 2121-10 CGCT convocation of the meeting should include the agenda which is indicated in the agenda of the session and announced on the board of announcements of the town council and made public. At the first meeting of the council (immediately after the election of the mayor and his/her deputies), the mayor reads the Councillor's Charter (*la Charte de l'élú local*) in accordance with article L. 1111-1-1 CGCT (In accordance with the Councillor's Charter the councillor undertakes to perform his/her duties in an impartial, eager, honest and dignified manner – see) and provides a copy thereof to councillors. In accordance with article L. 2121-18 CGCT meetings of the council are public. At the request of three councillors or the mayor the council may decide, with the absolute majority of councillors present at the session, to debate in camera (J. Morand-Deviller, Paris 2015, p. 163). Sessions can also be broadcast using audiovisual means.

In the Polish legal order, the municipal council is a legislative body, elected by universal and direct election for the term of office indicated in article 16 AMSG ( According to this provision the term of the council is 5 years from the date of election (article 16 AMSG was amended by article 1 point 3 of the Act of 11 January

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2018 - Journal of Laws 2018.130 amending this Act on 31 January 2018. The introduced amendments apply to terms of territorial self-government units falling after the term during which the said Act came into force. The council is composed of councilors in the number specified in article 17 AMSG. The municipal council meets at sessions convened as needed but at least once a quarter. Competencies of the chairperson of the council include organizing its work and conducting meetings. The chairperson is elected by an absolute majority of votes in the presence of at least half of the statutory composition of the council, by secret ballot. The same procedure applies in the event of dismissal of the chairperson. The municipal council may appoint from one to three deputies in a secret ballot with an absolute majority of votes (the notion of an absolute majority of votes should be understood as obtaining at least one vote more than the sum of all validly cast votes, i.e. votes against and abstaining – see judgement of the Voivodeship Administrative Court in Poznań of 11.05.2011, II SA/Po 188/11, LEX no. 795690), in the presence of at least half of the statutory composition of the council. The chairperson of the council, *a contrario* to the French legal order, is not the body of the municipality (legislative body) (the chairperson of the council is an internal body of the municipal council – see J. Zimmermann, Administrative law, Warsaw 2014, p. 236) as this body is not included in the scope of entities listed in article 11a AMSG, whose catalogue is closed (A. Szewc, 2010, p. 157 et seq). Tasks of the chairperson include only organizing the work of the council and conducting the council's meetings (judgement of the Supreme Administrative Court in Warsaw of 10 March 2009- II OSK 344/09, LEX no. 532198: "In a situation where the municipal council adopts a resolution on appealing against supervisory decision to an administrative court and authorizes the council chairperson to lodge a complaint to the court, this entity becomes *sui generis* plenipotentiary of the council. In such a situation, it can not be effectively argued that the complaint lodged by the chairperson of the municipal council is therefore unacceptable. The municipal council itself can effectively file a complaint to the administrative court, in particular when the complaint is to concern the municipal executive body, i.e. the head of the municipality). The chairperson may designate a deputy chairperson to perform his/her duties. If the chairperson is absent and no deputy chairperson has been ap-

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pointed, the tasks of the chairperson are performed by the eldest deputy chairperson. The chairperson convenes the council's meetings. Convocation of the session consists of two elements: formal and material (the formal element includes appointment of: the place, date and time of convening the session, while the material element includes the agenda along with draft resolutions to be delivered to the councillors in the form indicated in the statutes - M. Augustyniak, 2012, p. 203 et seq.). Minutes are drawn up of meetings of the council which are included in the public information bulletin. In accordance with article 20 par. 2b AMMSG meetings of the municipal council are broadcast and recorded using video and audio recording devices. Whereas recordings of the meetings are made available in the Public Information Bulletin and on the municipal website and in another way customarily accepted (this provision shall apply as from the new term of the municipal authorities). It is worth noting that convening the extraordinary session takes place at the request of the head of the municipality or at least 1/4 of the statutory composition of the municipal council. Then, the chairperson of the council is obliged to convene the session on a day falling within 7 days (in judgement of the Supreme Administrative Court in Warsaw of 13 March 2012- I OSK 2296/11, LEX no. 1136675 it was indicated that the 7-day period referred to in article 20 AMMSG is indicative, the Act on municipal self-government does not provide for any legal consequences in the event of a session being convened at a later date) from the date of submitting the request, which should contain the above mentioned formal and material element of the convocation.

Both in the Polish and French legal order councillors have the obligation to participate in meetings of **thematic commissions: permanent and ad hoc** (P. Nicolle, J.P. Muret, 2014, p. 170; see article 24 AMMSG and article L. 2121-22 CGCT). The municipal council/conseil municipal may decide to set up a commission at any of its meetings, specifying its composition and scope of activity. In both legal orders, the thematic commissions have not been equipped with decision-making competencies but with auxiliary competencies. They function as internal bodies of the municipal council. They constitute a place for discussion of councillors who, analysing the problems presented at commission meetings and expressing opinions on matters falling within their competence, prepare draft resolutions that are then

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subject to the council's deliberations. The list of permanent commissions is either the regulation of statutes/internal regulations of a given council or is specified in the resolution of the council regarding the appointment of a specific commission. The rules and mode of operation of commissions are defined in the statutes of the municipality/internal regulations of *conseil municipal*, respectively In the French municipal council municipal commissions (*les commissions municipales*) are appointed composed of: the mayor, mayor's deputies and councillors. The commission is chaired by the mayor. Commissions meet within 8 days from the decision on their appointment. At the first meeting of the commission its members elect a deputy chairperson (*vice-président*) who is entitled to convene next meetings and chair them in the absence of the mayor or inability to perform these duties by the mayor ( P. Nicolle, J.P. Muret, 2014, p. 22 i 23). In the Polish legal order, the permanent and ad hoc commissions consist exclusively of municipal councillors. At the first meeting of the commission, convened by the chairperson of the council, the commission elects candidates for the chairperson of the commission and his/her deputies. These candidatures are then voted at a meeting of the municipal council, by a simple majority, in the presence of at least half of the statutory composition of the council in an open vote, unless the Act provides otherwise. In accordance with article 14 par. 2–4 AMSG open voting at council sessions is held with the help of devices enabling to draw up and record a list of councillors' voting by name. If it is not possible to vote in the above-mentioned manner, roll-call voting takes place. List of councillors' voting by name are public and made available in the Public Information Bulletin and on the municipal website and in another way customarily accepted within the municipality (article 14 AMSG was amended by article 1 point 2 of the Act of 11 January 2018 on amending certain acts to increase the participation of citizens in the process of electing, operating and controlling certain public bodies - Journal of Laws 2018.130) amending this *Act* on 31 January 2018. In accordance with article 15 of the said amending *Act* the introduced changes apply to territorial *self-government* units after the term during which the said *Act* entered into force). Tasks of the chairperson of the commission include conducting and chairing meetings of the commission and representing these bodies in relations with municipal bodies.

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### **Legislative body in the district/department and in the voivodeship/region.**

In the French legal order, the resolution-passing body, with legislative competencies in the department is the departmental council and in the region – the regional council (in accordance with article L. 4111-1 CGCT regions are territorial communities). The councils adopt resolutions on matters falling within the competence of a given community, indicated by the act. The departmental/regional council meets at least once every quarter (see article L. 3121-9 CGCT). It is convened by the chairperson of the council. It may also be convened at the request of a permanent commission or 1/3 of the departmental/regional council members. At the first meeting of the council, immediately after the election of the chairperson, deputy chairpersons and other members of the permanent commission, the chairperson reads the Councillors' Charter (see article L. 1111-1-1 CGCT) and then submits a copy of this document to the councillors. The chairperson of the council is an executive body of the department/region ( on the subject of the legal position and tasks of the executive body in the department and region, see M. Lombard, G. Dumont, J. Sirinelli, Paris 2015, p.184-188). In the French department and region a permanent commission (*commission permanente*) functions, whose structure and subjective scope are specified in the provisions of CGCT. This commission is composed of the chairperson of the council, deputy chairpersons (4 to 15) and other members, with reservation that the number of members does not exceed 1/3 of the composition of the department/region council. Members of the permanent commission (in addition to its chairperson) are elected by vote from lists of candidates (of both sexes) presented by councillors of the department/region for a period of 6 years (J. Ferstenbert, F. Priet, P. Quilichini, 2016, p. 265). Supplementing the composition of the permanent commission is governed by the provisions of CGCT. The election of commission members may be challenged in terms of the rules, forms and dates of its performance as part of the election of the department councillors (article L. 3122-6-1 CGCT). The powers of the permanent commission expire with the commencement of the first meeting of the elected council. Meetings of this commission are held if the absolute majority of councillors or their representatives is present at the meeting. If this quorum condition can not be met, the commission meeting will be rescheduled three days later, no longer subject

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to the quorum requirement (relevant provisions of par. 2 article L. 3121-14 CGCT - shall apply here). This commission plays a fundamental role in the French territorial self-government, because it is a body in functional terms. The departmental/regional council has the competence to entrust a permanent commission with a part of its powers in accordance with the provisions of article L. 3211-2 CGCT and article L. 4133-4 CGCT. This does not apply to matters related to, among others, budget and discharge. This commission replaces the council and deliberates between its meetings. In the French administrative law doctrine it is indicated that this commission is not the controlling body of the chairperson of the council as the executive body of the department/region. It is a collegial plane, being an emanation of legislative competencies of the resolution-passing body, although it is headed by the executive body of the department/region (J.B. Auby, J.F. Auby, R. Noguellou, p. 164; it is worth emphasizing that this commission analyses reports submitted to it by the executive body of the department/region – see J. Girardon, 2014, p. 64 p. 75). The powers entrusted to the permanent commission can not be subdelegated. The permanent commission (*commission permanente*) has been equipped *ex lege* with the right to convene a session of the council, after submitting a request in this matter ( article L. 3121-9 CGCT). This commission is not a regular thematic commission. Other thematic commissions appointed as internal bodies of the departmental council and the region do not differ in their structure and tasks from thematic commissions appointed in the French municipality.

In the Polish legal order, the election of the chairperson of the council/sejmik is the first action carried out immediately after the newly elected councillors took their oath. The act of election alone does not trigger the exercise of the mandate. Only after making the oath, the councillor can effectively make decisions in the form of an act of voting at sessions and commissions of the council (judgement of the Voivodeship Administrative Court in Białystok of 12 April 2010 - II SA/Bk 160/07, LEX no. 661870). At the first session of the council/sejmik, immediately after the councillors took their oath, the body elects a chairperson from among its members and no more than three deputy chairpersons of the council of the district/voivodeship sejmik. It does so by way of a resolution adopted by secret ballot,

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[DOI 10.5604/01.3001.0012.2127](https://doi.org/10.5604/01.3001.0012.2127)

by an absolute majority of votes, in the presence of at least half of the statutory composition of the council/sejmik. There is a statutory prohibition on joining the functions of a board member with the function of the chairperson of the council and his/her deputies (judgement of the Voivodeship Administrative Court in Wrocław of 29.01.2016, III SA/Wr 694/15, LEX no. 2034824).

The task of the chairperson of the council/sejmik is to organize the work of the legislative body and conduct the deliberations of this body. The chairperson convenes the meeting of the council/sejmik as needed (but not less frequently than once a quarter). The agenda and draft resolutions are attached to the notice on convocation of the session. The chairperson of the council/sejmik convenes a session also on request submitted by at least 1/4 of the statutory composition of the legislative body or at the request of the board. Such a session is convened on a day falling within 7 days from the date of submitting the request (see article 15 par. 7 and 9 AD SG and article 21 par. 7 and 9 AV SG). From the next term of office, the right to convene an extraordinary session will additionally be vested in councillors' clubs, whereas the legislator stipulates that the chairperson of the council/sejmik is obliged to put on the agenda of the next session of the district council draft resolution submitted by the councillors' club, if it has entered the legislative body at least 7 days before the beginning of the session of the council/sejmik. In the above-mentioned procedure, each club of councillors may submit no more than one draft resolution for each subsequent session of the council of the district/voivodeship sejmik (these regulations were added pursuant to the Act of 11 January 2018 on amending certain acts to increase the participation of citizens in the process of electing, operating and controlling certain public bodies - Journal of Laws 2018.130). In the Polish legal system, the council of the district/voivodeship sejmik are entitled to establish permanent and ad hoc commissions. The commissions have a function consisting in giving opinions and submitting requests, subject to the control functions of the audit committee. A certain novelty in the territorial self-government is the establishment of an obligatory permanent commission for complaints, requests and petitions (these provisions apply to the next term of the bodies of territorial *self-government* units - see article 18b AM SG, article 16a AD SG and article 30a AV SG), whose competences (granted *ex lege*) include

ISSN 2543-7097 / E-ISSN 2544-9478

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handling complaints about the activities of the legislative body of the district/voivodship and their organizational units, requests and petitions submitted by citizens. Membership in the commission for complaints, requests and petitions can not be combined with the functions of the voivodeship marshal, chairperson and deputy chairpersons of the council of the district/voivodeship sejmik and councillors who are members of the board. Rules and mode of operation of the commission for complaints, requests and petitions are specified in the statutes of the district/voivodeship. The district council also appoints an obligatory committee for public safety and order, which performs functions in the area of public order and security of citizens. However, it is not an internal commission of the district council (pursuant to art. 38a of the AD SG. See W. Kisiel, 2014, p. 110 et seq. Czapska points out, this commission "is neither a district body nor a commission within the meaning of Article 17 of the AD SG, therefore it is not an internal body of the district council. Its creation is obligatory, whereas the president of the city with district rights and governor of the district bordering on such a city, may establish, by agreement, a joint commission for the city with district rights and a district bordering on that city (article 38a par. 3)" – Cz. Martysz, 2007 Lex/el). This commission is not *sensu stricto* a commission of the district council due to the subject of its operation and its composition.

### **Selected consultative bodies in self-government communities – systemic and legal elements – towards social participation**

In the French legal system, in order to continuously improve public services in the territorial community and ensure transparency of management of these services ( M. Thoumelou, 2016. p. 131 et seq). Consultative Commission on Local Public Services (Commission consultative des services publics locaux) is appointed which functions as obligatory consultative bodies in municipalities with more than 10 000 residents. This commission gives opinions on the quality of services, price or other aspects pertaining to the comfort and price of transport services on the territory of the municipality. The commission allows for participation of residents or users of services through local associations (e.g. tenant associations), (J. Ferstenbert, F. Priet, P.

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Quilichini, 2016, p. 279). It provides a forum for exchanging views on issues relevant to the proper management of public services and allows for the submission of requests and proposals for solutions to issues requiring improvement of public activities. It is a body directed towards participatory and consultative democracy, guaranteed by the French legislator with the statutory norm (see article L. 1413-1 CGCT). This commission is chaired by the mayor and is composed of members of the legislative body – councillors on the basis of proportional representation, representatives of local associations appointed by the council of the municipality (M. Verpeaux, Ch. Rimbault, F. Waserman, 2016, p. 85). Due to the subject matter of the debates, the commission may invite all persons whose presence it deems necessary to participate in its work. Therefore, this commission constitutes a certain consultative and advisory overture between residents and authorities in the territorial community. The commission's tasks include annual analysis of reports submitted by entities implementing public service obligations in a given community. The municipal council submits to the commission for opinions all projects whose subject matter concerns the transfer of public service obligations and partnership projects (J. Ferstenbert, F. Priet, P. Quilichini, 2016, p. 279). The commission, when it is requested by the majority of its members, has the right to ask to put on the agenda of the municipal council suggestions on improving local public services (B. Faure, 2014, p. 208). Thus, the French legislator provided it with the right of a resolution initiative, but subjectively limited only to the scope of the commission's activities. It should be noted that in the Polish legal order such commission has not been provided by the legislator. Whereas statutory regulations may stipulate that in a given legislative body a permanent or ad hoc commission is appointed (which depends on the local needs of residents and *de facto* decision of the municipal council) whose subject matter corresponds to the scope of the French commission, thus the commission will deal widely understood issues of public services in a given municipality. According to art. 21 AMSG internal commissions only include councillors, thus the personal scope will be limited only to members of the legislative body of a given territorial self-government unit. This does not mean, however, that the residents will not have access to commission's meetings and the results of its work, for example, the minutes of the meeting, draft resolutions,

ISSN 2543-7097 / E-ISSN 2544-9478

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proposals addressed to the authorities or commission's correspondence. These commissions have the nature of internal bodies of the municipal council and are regulated by virtue of the statutes of the municipality or by means of separate resolutions (in the scope of indicating the composition of a given commission and the scope of subjects). This does not exclude the possibility of appointing by the monocratic executive body of the municipality teams, commissions or consultative committees in the scope of the presented issues, which will function as advisory bodies of an optional nature. Another consultative structure in France is the **Municipal Commission for Accessibility** (Commission communale pour l'accessibilité), appointed pursuant to article L. 2143-3 CGCT. It is obligatory in municipalities with at least 5000 residents. Below this number of residents councillors of the municipality decide about possible optional appointment of this commission in the structure of a given municipality. This commission in the municipality is chaired by the mayor. Since entry into force of the Act no. 2014-1090 of 26 September 2014 the commission deals not only with the matters regarding people with disabilities (regardless of the type of disability) but also elderly people. Hence, its subject scope has been broadened (this also applies to the change of the name of the commission, which until now included only people with disabilities). The commission is composed of representatives of a community as well as representatives of associations, bodies, economic entities and interested users. The commission meets at meetings, scheduled several times a year, depending on local needs. This commission does not have the status of municipal council commission but it constitutes a platform for cooperation between councillors and residents in terms of meeting the needs of local residents. The commission task is to give opinions on and submit proposals for projects or other documents in matters concerning the accessibility of the architectural environment, public space, transport. These commissions deal with projects and documents regarding the accessibility of spatial infrastructure and prepare an annual report on its activities, presented to the municipal council and other entities indicated by the legislator and the local resolution-passing body ( P. J. Quillien, 2017, p. 116).

Polish legislator has not provided for a municipal commission on the model of the French **commission for accessibility**. However, it is possible to appoint a

ISSN 2543-7097 / E-ISSN 2544-9478

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commission as a commission for dealing with the issues of spatial development and the elimination of architectural barriers for the disabled, taking also into account the problems of elderly people. This commission can also function as a permanent commission, appointed for the term of office or ad hoc (e.g. for the preparation of a specific development plan that takes into account the infrastructural needs of the aforementioned groups of residents of a given municipality). In the Polish legal order, it is possible to set up social councils for the disabled (see article 44b of the Act of 27 August 1997 on vocational and social rehabilitation and employment of people with disabilities (i.e. Journal of Laws of 2016, item 2046, as amended), hereinafter referred to as the AVSR) at district governor's offices, which were also equipped with consultative and advisory competences. The scope of activities of these councils includes giving opinions on draft resolutions and programmes adopted by the district council in terms of their effects on the disabled, inspiring ventures aimed at professional and social integration of disabled persons and the implementation of their rights. These councils also give their opinion on the draft district programmes for disabled people. District councils consist of 5 people, appointed from among representatives of non-governmental organizations operating in a given district, foundations and representatives of territorial self-government units (districts and municipalities) (see article 44c par. 2 AVSR). Members of district councils are appointed and dismissed by the district governor (Polish "starosta"), from candidates proposed by the organizations and bodies referred to above. These bodies constitute a broad forum for debate on the problems of people with disabilities also in the area of a given territorial self-government community. In each neighbourhood (arrondissement) of Paris, Lyon and Marseille the **Neighbourhood Initiative and Consultation Committee** (Comité d'initiative et de consultation d'arrondissement are appointed on the basis of article L. 2511-24 CGCT), (**hereinafter referred to as CICA**) is appointed. It is composed of representatives of local associations and members of national federations active in the area of a given neighbourhood who express willingness to join this body. The Neighbourhood Council makes available to this committee all information needed to prepare debates organized at least quarterly as part of the neighbourhood council together with representatives of associations represented in CICA (J. Fer-

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stenbert, F. Priet, P. Quilichini, 2016, p. 284). This committee has exclusively opinion-giving competencies. It brings the resident closer, through a consultative and advisory process, to co-management of the local community. This structure does not exist in Polish auxiliary units, even in the Warsaw neighbourhoods, whose internal organization and competences assigned to them by the legislator are similar to neighbourhoods (arrondissement) created in large urban agglomerations, i.e. in Paris or Lyon. In the Polish legal order, internal commissions of a consultative nature are created in the municipal council regarding matters concerning the activities of auxiliary units of the municipality. These commissions may take the form of a public dialogue commission, a commission for participatory budget, a commission dealing with the issue of auxiliary units in a given municipality. There is also a possibility to appoint in the municipal structure by order of the executive body other opinion-giving and consultative bodies dealing with the issues of auxiliary units of the municipality. However, it should be stated that in the Polish legal order it is not possible to appoint, on the basis of statutory provisions and statutes, a commission for consultations and requests regarding matters covered by the activity of auxiliary units of a municipality in a given municipality or a city with rights of a district whose members would be residents of a given local community (M. Augustyniak, 2017, p. 315), though it is certainly a certain desirable direction of changes.

## Conclusions

The internal structure of legislative bodies of territorial self-government units/territorial communities and normative constructions of commissions and consultative bodies (especially those in the French legal order) enable active expression of opinions and positions of residents of self-government communities. Multiplication of French commissions and committees, regulated by the Act, enriching the consultative dialogue in the territorial community, may constitute a good model for new and desirable solutions in this area in the Polish legal order.

Regardless of legal character of thematic commissions in both legal orders they are subject to legislative bodies. This means that commissions are subject to councils/sejmiks, performing a part of their tasks entrusted to them by way of an act or

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resolution. They do not constitute internal bodies of councils/sejmiks with inherent competencies (E. Ura, 2012, p. 209). They are of auxiliary nature and are a certain form of the implementation of the principle of deconcentration and subsidiarity in legislative bodies of territorial self government/territorial communities. Certain exception is the permanent commission, appearing in the French department and region, with legislative competences entrusted to it under the CGCT provisions, with the exception of certain categories of cases belonging exclusively to the departmental and regional councils. I think that it is worth following in this normative direction and establishing similar structures within the district and voivodeship in order to effectively implement the tasks by these units. The commissions of the council/sejmik are equipped with the right of a resolution initiative, but they are not entitled to convene the council/sejmik meeting, as in the case of the rights in this respect of the permanent commission in the French legal order. Regardless of the legal nature of the commissions (obligatory or optional, permanent or ad hoc), in both legal orders they are subject to the legislative body, which means that the commission, as a group of councillors, supports the council/sejmik, performing some of the tasks entrusted by the legislative body. In the Polish legal system, the council /voivodeship sejmik are entitled to establish permanent and ad hoc commissions. The commissions have a function consisting in giving opinions and submitting requests, subject to the control functions of the audit committee. A certain novelty in legislative bodies of territorial self-government units is appointment of a permanent commission for complaints and petitions. This commission is obligatory. Activities of internal commissions of the council/sejmik include passing of resolutions, but they do not legislate, contrary to the permanent commission (*commission permanente*) functioning in the department and region in France. In the French territorial self-government, the legislator and the local resolution-passing body decided to establish a wide range of commissions and other consultative bodies functioning within the structure of territorial communities (however not having the nature of internal bodies of councils), which should become a reliable indication for the Polish legislator in the field of constructing regulations regarding forms and the scope of operation of the broadly understood consultative dialogue. Analysing the activities of the authorities

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and expressing opinions and positions in this regard by a wide range of consultative bodies should be considered the right direction of indirect democracy, which unambiguously approaches participatory democracy, allowing residents to participate in the management of the territorial self-government community.

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