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## **The Legal Basis of Citizen Electronic Participation in Poland**

**Keywords:** access to public information, citizen participation, e-government, e-participation, legal norms, Poland

**Słowa kluczowe:** dostęp do informacji publicznej, e-government, e-partycypacja, normy prawne, partycypacja obywatelska, Polska

### **Abstract**

This article discusses the legal basis of citizen e-participation, understood as the use of digital media in the relations of citizens and governments in order to increase participation by citizens. The concept of top-down e-participation determines the scope of analysis. The legal review of the local, national and international law shows that there are some well-regulated levels of e-participation in Poland while others are not a subject of legal regulations.

### **Streszczenie**

#### **Podstawy prawne elektronicznej partycypacji obywatelskiej w Polsce**

Celem artykułu jest prezentacja podstaw prawnych e-partycypacji obywatelskiej rozumianej jako wykorzystanie mediów cyfrowych w relacji obywateli z rządami w celu zwiększenia uczestnictwa obywateli. Zakres analizy wyznacza koncepcja odgórznej e-partycypacji. Z przeglądu źródeł prawa lokalnego, krajowego i międzynarodowego wynika, że pewne poziomy e-partycypacji w Polsce są dobrze uregulowane, podczas gdy inne nie podlegają regulacjom prawnym.

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## I. Introduction

Citizen electronic participation is one of the consequences of the digitization of democratic processes. As many researchers estimate, applying information and communication technologies (ICT) in the public sphere may strengthen the practice of democratic principles in states by easier involving citizens via electronic tools<sup>2</sup>. In the context of high rates of electoral absenteeism in national elections and the growing distrust of citizens in political elites, the symptoms of increased citizen participation seem particularly interesting, both as new social movements and in the form of institutional mechanisms facilitating the active participation of citizens in the decision-making process. As a new phenomenon, especially in the initial period, it was not a subject of legal regulations mainly because the statutory law did not keep up with technological and social changes. However, actions taken by network users indicated the need for legal regulation not only by the national but also international law due to the non-territorial nature of the Internet.

This article reviews the legal basis of citizen electronic participation in Poland, taking into account the legislation at the local, national, and supranational levels. The scope of analysis is determined by the concept of e-participation proposed by Marianne Kneuer, and it refers to top-down forms of e-participation. The main goal is to answer the question of what is the legal status of citizen e-participation in Poland. The legal review aims to verify the research hypothesis: citizen e-participation in Poland is subject to legal regulations for all levels of participation.

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<sup>2</sup> G. Sartori, *The Theory of Democracy Revisited*, [in:] *Democracy*, eds. R. Blaug, J. Schwarzmantel, New York Chichester–West Sussex 2016, pp. 192–196; L. Komito, *e-Participation and Governance: Widening the Net*, “The electronic journal of e-Government” 2005, No. 1, pp. 39–48; M. Kneuer, *E-democracy: A new challenge for measuring democracy*, “International Political Science Review” 2016, No. 37 (5), p. 667.

## II. Definition and Typology of Citizen e-Participation

Citizen participation in a broad sense is defined as various forms of attendance in public life – from participation in elections, referenda, and consultations, through various forms of protests, to civic activity for social or political initiatives. It refers to all the political and social practices by which citizens influence public affairs<sup>3</sup>. Electronic participation (citizen e-participation) differs from the traditional one in that it uses ICT in the process of civic activity. This use affects the change of communication processes (it reaches with information easier, faster, without time and space constraints) and mobilization processes (it enables to involve and engage many people). Jan van Dijk indicates that e-participation is “the use of digital media to mediate and transform the relations of citizens to governments and public administrations in the direction of more participation by citizens”<sup>4</sup>. Therefore, citizen e-participation refers to grassroots initiatives and the activities of public administration, providing public services, making decisions, or preparing and implementing public policy.

According to Lindner and Aichholzer, the impact of electronic communication tools in the public sphere concerning civic participation manifests itself in political decision-making (formally institutionalized mechanisms) and new social movements (informal civic engagement)<sup>5</sup>. Thus, the forms of citizen participation can be divided into two types: formal and informal participation. Informal participation develops freely, while the formal forms are subject to further classifications. OECD proposes a three-factor categorization of participation, according to which democratic political participation must include ways of being informed, mechanisms for participating in the decision-making process, and the ability to participate and influence the political agenda: information, consultation, and active participation<sup>6</sup>. Marianne

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<sup>3</sup> M. Parés, H. March, *Short Guides for Citizen Participation 3. Guide to Evaluating Participatory Processes*. Government of Catalonia, Barcelona 2013, p. 7.

<sup>4</sup> J.A.G.M. van Dijk, *Participation in Policy Making*, [in:] *Study on the Social Impact of ICT*, Luxembourg 2010, p. 30.

<sup>5</sup> R. Lindner, G. Aichholzer, *E-Democracy: Conceptual Foundations and Recent Trends*, [in:] *European E-Democracy in Practice*, eds. L. Hennen et al., Cham 2020, p. 18.

<sup>6</sup> OECD 2001, *Citizens as Partners*, [https://www.oecd-ilibrary.org/governance/citizens-as-partners\\_9789264195578-en](https://www.oecd-ilibrary.org/governance/citizens-as-partners_9789264195578-en) (10.03.2021).

Kneuer identifies e-participation as one of the dimensions of e-democracy, indicating four levels of this process: e-information, e-consultation, e-monitoring, and e-decision-making<sup>7</sup>. She also points out two directions of e-participation: top-down and bottom-up, noting that all levels may be applicable in both directions (even though e-monitoring is a more bottom-up tool). The essence of top-down participation is citizens' access to information and reacting to government initiatives. The other one enables citizens to influence the shape of political projects, placing them as initiators and creators and ultimately agents of change. In this case, new technologies are a factor enhancing participation.

Referring to the article's main goal, the next section analyzes the legal basis of citizen e-participation in Poland regarding Kneuer's concept. Due to the limited volume of the article, only top-down forms will be presented and analyzed. When analyzing levels of e-participation, it should be noted that e-information determines whether the state provides the kind of information that encourages and empowers citizen participation, i.e., calendars of discussion forums, electronic notification tools.; e-consultation top-down tools include online consultation, chatrooms, or online citizens' juries; e-monitoring can be understood primarily as a bottom-up tool for citizens to hold their officials accountable but also a government may have an interest in self-monitoring or monitoring specific procedures and policy-making processes, and thus can install online polls or surveys; e-decision-making can be measured using top-down tools like participatory budgeting, collaborative governance, and e-referenda.

### III. Sources of Law Relating to Top-Down e-Participation

Top-down e-participation refers to the relations between public institutions, the citizens, and its legal basis should be sought in e-government regulations (e-gov)<sup>8</sup>. E-government in Poland is regulated both by European and national legislation. The acts of European law directly affecting Polish e-government

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<sup>7</sup> M. Kneuer, *op.cit.*, pp. 672–674.

<sup>8</sup> N. Lubik-Reczek, I. Kapsa, M. Musiał-Karg, *Elektroniczna partycypacja obywatelska w Polsce. Deklaracje i opinie Polaków na temat e-administracji i e-głosowania*, Poznań 2020.

are Directive 2003/98/EC of the European Parliament (EP) and of the Council of November 17, 2003 on the re-use of public sector information; Decision of the EP and of the Council of July 12, 1999 on a series of guidelines, including the identification of projects of common interest, for trans-European networks for the electronic interchange of data between administrations (IDA); Decision 2004/387/EC of the EP and of the Council of April 21, 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses, and citizens (IDABC). These decisions result from the EU policy adopted in the field of information society and e-administration development and developed in programme documents under eEurope.

In the national law, the basis for creating e-government was provided by the resolution of the Sejm of the Republic of Poland of July 14, 2000 on building the information society<sup>9</sup>. In the following years, the parliament adopted the following acts constituting the foundation of e-government: The Act of July 27, 2001 on the protection of databases<sup>10</sup>; Act of September 6, 2001 on access to public information<sup>11</sup>; Act of September 18, 2001 on electronic signature<sup>12</sup>; Act of July 18, 2002 on the provision of electronic services<sup>13</sup>; Act of September 12, 2002 on electronic payment instruments<sup>14</sup>; Act of February 17, 2005 on computerization of activities of entities performing public tasks<sup>15</sup>. The indicated legislative acts then adopted regulations to clarify the method of providing information and services electronically (ex. Public Information Bulletin; ePUAP<sup>16</sup>, or an electronic signature).

Regarding the first level of e-participation – e-information, Polish citizens have a right to access public information guaranteed by Art. 19 of the Universal Declaration of Human Rights; Art. 10 of European Convention on Human Rights; Art. 61 of Constitution of the Republic of Poland; Act on Access

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<sup>9</sup> M.P. No. 22, item 448.

<sup>10</sup> Dz.U.No. 128, item 1402.

<sup>11</sup> Dz.U.No. 112, item 1198.

<sup>12</sup> Dz.U.No. 130, item 1450.

<sup>13</sup> Dz.U.No. 144, item 1204.

<sup>14</sup> Dz.U.No. 169, item 1385.

<sup>15</sup> Dz.U.No. 64, item 565.

<sup>16</sup> ePUAP – Electronic Platform of Public Administration Services (<https://www.epuap.gov.pl/>). The conditions of using ePUAP are regulated in the Regulation of the Minister of Digitalization of October 5, 2016 (Dz.U. 2017, item 1626).

to Public Information of 2001. The latter act of law imposed on public bodies the obligation to make public information available for free (with some exceptions set out in Art. 15). It is implemented through the Public Information Bulletin (Art. 8) that currently functions as a website system created by each obligated entity. In addition to the information that can be obtained directly from the website, the user has the opportunity to receive information on the possibilities and methods of obtaining access to public information other than directly from the Bulletin. An important result of the application of this Act (amended in 2010) was the creation of a central repository of information resources, where data is deposited by government administration bodies, special purpose funds, national research institutes (except for universities, the Polish Academy of Sciences, and research units) and state legal entities established to perform public tasks.

The right to consult in Poland is guaranteed both by national and local legislation. Consultations may take place at the government and the local level (the acts provide for compulsory and optional consultations for a commune and a district, while in the province – only optional consultations, which may be carried out in matters important for a local government unit, based on the so-called local self-government acts<sup>17</sup>). Concerning e-consultation, it is worth noting that there is no obligation to conduct public consultations via electronic tools. In most cases, there is only information on the conducted consultations published online (according to the access to the public information). However, citizens' opinions must be expressed in writing, signed, and delivered to the office, or a person interested in consultations must attend a meeting. As at the local level, the rules and procedures for conducting public consultations are determined by the resolutions of the councils of the relevant local government units. There are some cases of using electronic forms to get opinions from citizens, but there is no uniformly adopted regulation for e-consultations.

The next level is e-monitoring. There are no regulations regarding the participation of citizens in the government monitoring process.

The level of e-decision making in Poland is carried out mainly by participatory budgets. It is also referred to as "civic budget" (this term is often used

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<sup>17</sup> Dz.U. 2018 item 913, 994–995.

colloquially in Poland), and it is understood as a procedure involving the inclusion of residents in the disposal of a part of public funds allocated from the budget of a specific local government unit<sup>18</sup>. Although the first such budget was adopted in Sopot in 2011, in the Polish legal system, for several years, no regulations were defining and outlining the rules for the functioning of the civic budget. Considering the conditions and specificity of the commune, local self-government determined the conditions and scope of the functioning of this budget and funds allocated for projects. At that time, the legal basis of civic budgets was the Act on Municipal Self-Government<sup>19</sup> concerning public consultations. It was only in 2018 that it was determined that a civic budget is a special form of public consultation, and the general principles of its operation were indicated. The Act of January 11, 2018 amending certain acts in order to increase the participation of citizens in the process of selecting, functioning, and controlling certain public bodies<sup>20</sup> introduced a provision stating that in communes that are cities with district status, the creation of a participatory budget is obligatory. It also means that creating a civic budget in other communes is not obligatory, but based on earlier legal acts, it is optional.

#### IV. Conclusions

Electronic participation is an important form of civic activity in contemporary democracy. It influences the quality of political decisions, increases the acceptance of government actions among the public, and distributes responsibility for individual initiatives to citizens. The legal basis for formal participation in Poland is becoming more and more systematized. The issues that can be considered regulated relate primarily to e-government tools. Out of the four levels of e-participation indicated by Kneuer, they are subject to legal regulations in Poland that apply to e-information and e-decision making. We also find legal provisions regarding consultations (no e-consultation), but there is no regulation on e-monitoring. E-information mainly works as infor-

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<sup>18</sup> A. Pięta-Szawara, *Participatory Budgeting as a Form of Direct Democracy at the Local Level*, "Przegląd Prawa Konstytucyjnego" 2019, No. 6 (52), p. 361.

<sup>19</sup> Art. 5a (Dz.U. 2018, item 994).

<sup>20</sup> Dz.U. item 130.

mation delivery. When verifying if e-information encourage and empower citizen participation, it should be noted that this is not a subject of legal regulation as a compulsory task of state institutions. Regarding e-decision making, it should be indicated that participatory budgets are not obligatory in all Polish cities. Legal regulations concern only some of them. In others, it is optional.

The review of the legal basis of electronic citizen participation in Poland shows some well-regulated levels of e-participation in Poland while others are not a subject of legal regulations (the research hypothesis was partially positively verified). In order to further develop citizen e-participation, efforts should be made to broaden the legal basis for greater participation of citizens in political processes.

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