



**WYDZIAŁ PRAWA  
I ADMINISTRACJI**  
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Marta Banat

**Institutional control powers of local government community members towards local  
government bodies in Poland**

**Summary**

The dissertation prepared in the  
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Prof. nadzw. Dr hab. Barbara Jaworska-Dębska

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The subject of the doctoral dissertation concerns the control powers vested in members of the local government community towards local government bodies. The conducted research comprises control powers of an institutional nature having a constitutional or statutory basis under Polish legislation.

There are several reasons for dealing with this issue. What is important, above all, is the fact that social control is an important element of the whole system of administration control, and thus influences its effectiveness and efficiency. Besides, relatively recently, attention has been drawn to social control as an important institution in a democratic state under the rule of law. This also results in a deficit of research, which would include specific ways of social participation from the point of view of their control function. The issue of social control is usually only a margin of a discussion on administrative control. The situation is complicated by the fact that, on the one hand, regulations concerning particular means of social control are scattered in many legal acts, while on the other hand, in legal literature there is a gap in their overall approach. This, in turn, makes it impossible to fully assess the condition of social control in Poland as a set of individual legal institutions. Thus, defining the subject of the dissertation in this way has resulted from the desire to look at social activity, which takes a form of social control, in its entirety.

This subject was also motivated by the observed process of increasing control by citizens themselves, who are increasingly aware of their rights and needs and take action to protect and satisfy them. I limited my research to the control exercised by members of the local government community towards local government bodies. This was brought about by the fact that it is at the level of local government that social control is most intense. Moreover, it can be exercised in a broader and more detailed way than is the case with central bodies. This results both from the greater 'accessibility' of local government bodies, as well as the greater impact of their conduct on satisfying the basic needs of residents. Moreover, self-government bodies not only undertake activities in the field of providing administration but also encroach the rights and duties of members of the self-government community in a peremptory manner. Often it is mistakes of the self-government bodies in the legislative sphere that trigger the control by the addressees of the legal acts.

The main objective of the dissertation is to answer the question whether the catalogue of control powers provided for under Polish legislation allows real, effective and efficient social control of the conduct of local self-government bodies. It was equally important for me to determine whether this control is also characterized by comprehensiveness, i.e. whether certain conduct of local self-government bodies corresponds to appropriate social control

measures. By appropriateness, I mean the relative balance between the powers vested in these bodies to undertake authoritative actions, as well as the obligations imposed on them to perform other public tasks and the very control capabilities of the recipients of such conduct.

Connected to this objective, there is also a hypothesis that needed to be verified, namely whether there is a system of social control of local self-government bodies in Poland. By this system, I mean a logically ordered structure, which consists of all institutional control powers of a social nature. At the same time, I intended to show some of the strengths and weaknesses of the various means of social control, which in turn made it possible to formulate the *de lege lata* and *de lege ferenda* postulates. In my dissertation I was also trying to determine whether the changes in social control at the level of the local government go in the right direction; it means whether in this sphere the situation of a member of the local government community in relation to local government bodies is strengthening or weakening on a normative basis.

The starting point for this dissertation, however, was a thesis that the term 'community of the local government' as a legal concept has not only a sociological and ideological dimensions but above all, it has an important constitutional-legal as well as substantive- legal meaning. This statement, in turn, is the source of another thesis that also individual members of the local government community, as they are the personal substratum of the local government community, have the right to control local government bodies, guaranteed on a normative basis. Even though these statements seem to be obvious and crucial for the whole concept of local government as well as for social control within it, I considered it necessary to refer to those issues in my dissertation. It is important to note that the doctrine and case law, in fact, attribute extremely different meanings to the term 'community of self-government'. According to some views, this notion, in fact, contains certain legal contents. However, the concept also has a legally neutral meaning and is reduced to a sociological or even merely an ideological dimension. As a consequence of such an assumption, the authors of these beliefs also do not combine certain powers or duties with the fact of membership in the local government community.

The dissertation consists of six chapters and a conclusion.

The first chapter covers many aspects, as it serves as an introduction to further considerations. I determined the meaning of the concepts used in the dissertation, as well as I set some criteria and made the breakdowns on which I based my further research.

In this chapter, I first established the pedigree of the notion of 'control', as well as the conceptual apparatus that functions in relation to this term. Then, I presented the ways of

understanding the term 'control' in sociological terms, as well as in the sciences of organization and management. I also analysed the doctrinal views on the meaning of control in the legal sciences and its stages. Next, I moved on to the main issues, namely the understanding of the term 'social control' as a legal institution. This concept has no legal definition. At the same time, it should be noted that there is no uniformity of views in the legal literature as to when we are dealing with social control. Various criteria are indicated which determine whether a given form of activity can be considered a means of social control or not. I, therefore, considered it useful to look at the individual elements that make up this concept. They are: the entity that controls, the object of control and the forms of control. However, it was only the overall results of the research conducted in the dissertation, especially concerning individual control rights, that allowed the concept of 'social control' to be defined at the end. In this chapter, I also defined what type of control is social control and focused on its characteristics. This, in turn, made it possible to determine what makes it different from and similar to the control of administration exercised by non-social entities. It is also important to carry out a typology of social control in terms of selected criteria, as this determines, among other things, how the individual control rights are examined, which I will return to. I further determined what relations arise between particular criteria (legality, purposefulness, reliability, thrift, efficiency) used in administration control by various entities authorized to carry it out. No legal provision determines the criteria for social control. However, it turns out that the criteria for social control depend on the position of a social controller in relation to the controlled local government body. This position, in turn, is determined by whether social control relates to the activities of the administration interfering with legal sphere of residents or of the administration rendering public services. The last part of the first chapter was devoted to explaining the terms: 'control powers' and 'control instruments'. I concluded that they are not synonymous. Therefore, while the control powers constitute the core of the considerations, in the first chapter I only briefly referred to individual control instruments, as they do not fall within the scope of my research.

The subject of the second chapter is to determine the meaning of the key concept of 'community of the local government'. The thesis is confirmed here that not only does it have its legal definition, but that the legislative body uses it in the texts of existing legal acts. First of all, in my opinion, there is no doubt that the notion of the 'self-government community' has a significant legal meaning under constitutional and substantive laws. Determining what specific legal content was attributed to this community by the legislative body, first required an analysis of its constitutive features.

In the dissertation, I also considered the meaning of the term 'the local government community' on the substantive legal grounds. The criterion determining that it has a specific substantive value turned out to be the fact that the members of this community share common values, interests, goals and undertake common activities. At the same time, I did not deny that the notion of 'the local government community' also has a sociological dimension, and I tried to bring this aspect closer.

In the further part of the second chapter, I confirmed the thesis that members of the local government community have the right to control local government bodies on a normative basis. Since the local government community is a subject of law and a subject of authority, its membership has a specific legal dimension as well. I also stated that the bodies of local government remain not only under the control of the local government community but also of its individual members. At the same time, I made it clear that the status of a member of the local government community is fundamentally different from the status of an entity that is not a resident of a given local government entity, which is another argument in support of the thesis. In this chapter, I also made arrangements for the conditions of membership in the local government community. This has a significant impact on the possibility of exercising the right to social control in certain forms. After the analysis, I concluded that the only reason for recognizing a person as a member of the local government community is the fact of permanent residence on a specific territory.

The following chapters were devoted to specific control powers. A consequence of adopting a comprehensive understanding of the term 'social control' is that my research includes an extensive catalogue of control powers. They were systematised in terms of the generally defined object of control at which they are oriented. For, in my opinion, the legislative body, when constituting the social control measures under investigation, was guided to a large extent by the very conduct of the authorities which they intend to subject to social control.

The first group of control powers comprises institutions which are to influence the personal staffing of local government bodies. These include local government elections and a referendum on the dismissal of a local government unit deriving from direct elections (appeal referendum). Starting research from these means of social control has its justification. For a given behaviour of a local government unit to be subject to control, the body which is authorised to undertake certain actions must first be elected.

The second group of control institutions consists of a referendum on matters other than the dismissal of a local government unit coming from direct elections (substantive

referendum), self-government social consultations, a civic resolution initiative and a village and general meeting of the housing estate's residents. The decision-making process was indicated as the subject of control in this case.

The subject of control in the third group of control powers are the acts of law-making undertaken by the bodies of the local government, including local laws and some other resolutions and orders affecting the situation of members of the local government community. Here, the right to lodge a local government complaint with an administrative court and a constitutional complaint with the Constitutional Tribunal was analysed.

The last group of control powers are universal powers, which are based on the institutions of complaints, requests and petitions and the request to the Ombudsman to help protect constitutional freedoms and rights. Universalism refers first of all to the subject matter of control, which is precisely difficult to define explicitly due to its very broad scope. Moreover, the procedure of applying these control powers, as compared to others, is also much less formalised, and thus they are common and much more available to a member of the local government community.

The adoption of the above-mentioned evaluation approach (looking at certain institutions from the perspective of a social control measure) required first of all the application of specific criteria for the analysis of the examined control powers, which determined the subject matter under consideration. Some of them result from control understood broadly on the legal grounds, as well as management and organisational sciences. Others, in turn, are related to the specificity of social control itself, which is not uniform in nature. They were systematised and clarified in chapter one.

As the research was mainly aimed at collating and comparing social control entitlements, the structure of the analysis is the same for each of them. The specified criteria were also assigned to four main research aspects due to their specificity.

For me, the initial issue was, first of all, to clarify the essence of a given control right, and thus, above all, to define it. Secondly, to define the normative basis of a given control power, in other words, its source. This is of strategic importance for the position (situation) of a member of the local government community intending to undertake or already undertaking an act of control in a specific form towards a given body of a local government unit. This is also often correlated with the fact whether the legislative body and, subsequently, the local government administration bodies properly implement the provisions of the legislature, e.g. by defining a detailed procedure for a given control power, and thus they ensure a real possibility for a member of the local government community to carry out control.

The second research aspect was to determine whether, due to the nature of the right of control, we are dealing with an individual or collective control. A key issue in this part of the discussion was also to examine whether a given right of control is related to membership of the local government community, and if so, to what extent. Thus, the specific objective here was to determine the correlation that exists between the membership of the community and the right of control in certain forms. In other words, my interest was whether a controlling entity can derive its entitlement, legal interest or actual interest from the membership of a local government community. This, in turn, made it possible to confirm whether, the membership of the local government community entails not only certain obligations but also specific powers, in the present case, control powers.

Undoubtedly, the main research aspect, which makes it possible to verify the main hypothesis to a large extent, is to specify the subject matter of the control, as it is, in fact, primarily the specific conduct of local authorities and their staffing. First, I determined whether we are dealing with the control of local government administration in terms of subject or subject matter. Next, the subject of control was specified in detail. It should also be borne in mind that control is not, in principle, a target per se. Therefore, I considered it very important to define the object of protection, i.e. the category of interest protected by social control. I based my deliberations on the concept (and I limited to it), according to which an administered entity may find itself in the situation of an actual stakeholder, a legal stakeholder and a holder of a public subjective right. It is also important to clarify the purpose of the control activities regarding individual and public interests. The analysis also included issues such as the scope (extent) of the audit, the time ratio of the controlling entity's activities to those of the controlled entity, the criteria used for the audit and the manner of assessment (evaluation approach).

The last research aspect was the procedure for the application of a given control power, as this largely determines the real effectiveness of social control. However, my aim was not to analyse the individual procedures in detail, which would have been very difficult, given the multitude of control institutions and the fact that the procedure of a large part of them is very formalised. Therefore, I decided to focus on some of its elements, which in my opinion are the most important from the point of view of the member of the local government community exercising the control. Issues were taken into account, i.e. the criterion of the obligation to conduct an inspection, the manner of initiating the inspection, the time of starting the inspection, the nature of the inspection activity, the manner of conducting the

inspection, the manner of influencing the inspecting entity on the inspected entity and the effects that a given inspection brings about both in the individual and general dimension.

The conclusion of this doctoral dissertation is also crucial. It contains not only a summary of the research results. There, I have also compiled and compared all the control powers analysed in the paper. However, it is not based on a summary of individual, consecutive institutions of social control according to the work plan. This is because at this point the core of the considerations was based on the detailed criteria of social control adopted in the thesis and the individual control entitlements assigned to them. As a result, this procedure allowed looking at the phenomenon of social control in the local government from a legal perspective from a broad point of view, and thus one of the main objectives of the work was achieved.

Primarily, my research confirmed that the social control system exists in Poland. It is of a relatively comprehensive, multidirectional and coherent character, in the sense that it allows for control, as a rule, of all behaviours of local government bodies, as well as conditions resulting from them, which may most frequently violate the legal sphere of members of the local government community, as well as factual interests.

At the same time, however, the research has shown that there are significant deficiencies at various levels in terms of the method of regulation and the functioning in practice of individual control institutions. This, in turn, raises serious doubts as to the actual possibilities of social control and its effectiveness. Undoubtedly, the value of the conducted research is to show both the strengths and weaknesses of social control rights and to formulate *de lege lata* and *de lege ferenda* postulates in relation to them. I concluded that it is necessary not so much to introduce new control powers but to improve and enhance the quality of the existing ones. Excessive development of the system of social control may be counterproductive and may result in, for example, a decrease in the value and importance of further social control measures.

However, despite the perceived shortcomings of this system, I believe that the situation of members of the local government community in relation to local government bodies is strengthening on a normative basis in terms of possibilities of social control. This is indicated, for example, by the legislative authority meeting social expectations and the postulates of doctrine by sanctioning the civic institution of a legislative initiative. Undoubtedly, guaranteeing the inhabitants' influence on the shape of the civic budget and granting the right to participate in the debate on the report on the condition of a given local government unit should also be considered a step in the right direction.



The basic research method used in this work is dogmatic and legal. It is the shape of legal regulations that determines to a large extent the shape and effectiveness of social control. Constitutional and statutory regulations were analysed, as well as selected resolutions and orders of local government bodies. The examination of the theory of individual control institutions also required the application of the theoretical and legal method. Therefore, in my dissertation, I presented the collected views of legal doctrine. I also used the case law of administrative courts, the Supreme Court and the Constitutional Tribunal. In some cases, the sociological and statistical method was also applied, which made it possible to assess, for example, how a given control institution operates in practice, or with what intensity a specific control right is used.

In my opinion, consideration of the results of the research carried out in this dissertation may contribute to the improvement of the process of socialization of control and increase its substantive value in the Polish local government, which is, after all, an indispensable element in a democratic state of law, which applies the principles of social justice.

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Marta Banat