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## Procedural guarantees for public participation in environmental protection

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### **Abstract**

This article analyses the principles and the procedure related to public participation in environmental protection within the meaning of the Act of 3 October 2008 on the Provision of Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment. This Act provides for a division of public participation into: public participation in decision making (Art. 33-38) and public participation in the preparation of documents (Art. 39-43). The author describes one by one the solutions that ensure public participation in procedures in individual matters settled by way of administrative decisions, and the solutions that ensure public participation in the process of preparing documents for which this participation is obligatory. In conclusion, the author presents specific rights of environmental organisations related to public participation, as environmental organisations, by referring to their

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statutory objectives and declaring their willingness to participate in procedures requiring public participation, participate in these procedures as a party.

**Keywords:** environmental protection, public participation, environmental organisation, decision on environmental conditions for the implementation of a project.

## Introduction

This article is aimed at describing the mechanism of public participation in decision making and the preparation of documents in the field of environmental protection, which, apart from the right of access to information about the environment and its protection, is the normative materialisation of the principle of public participation in environmental matters. 'The mechanism of public participation in environmental protection procedures has been introduced with the aim of ensuring public control of environmental protection procedures. Environmental protection is understood as undertaking or giving up specific actions, which allows to maintain or restore environmental balance, whereby this protection consists, in particular, in reasonable development of the environment and management of environmental resources in compliance with the principle of sustainable development. The aim of environmental impact assessment procedures is to provide administration authorities with materials enabling them to assess the admissibility of a given project in a specific location due to environmental conditions prevailing in this location. Despite referring to individual entities, decisions made with regard to environmental protection issues have an impact on the environment, which is a public good and a good owned by the general public. Undoubtedly, a failure to ensure the possibility of public participation in environmental protection procedures violates the principles of decision making in such procedures and may make it justified to declare a decision invalid.'<sup>1</sup>

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<sup>1</sup> Judgment of the Voivodeship Administrative Court in Poznań of 6 June, 2018, file ref. no. II SA/Po 872/17, [www.orzeczenia.nsa.gov.pl](http://www.orzeczenia.nsa.gov.pl).

## 1. Basic issues

‘A procedure requiring public participation is only a procedure with regard to which the public participation requirement is provided for in a specific provision of substantive administrative law.’<sup>2</sup> ‘It is a sub-procedure aimed at ensuring public participation (participation of individual citizens, their groups and organisations) in the main procedures.’ Pursuant to the Act of 3 October 2008 on the Provision of Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment, the basic models of the public participation sub-procedure and one of the main procedures, i.e. the environmental impact assessment procedure, have been regulated.<sup>3</sup> The Environmental Protection Law regulates the issue of the main procedures, which are also defined as those ‘requiring public participation’, but they are not related to environmental impact assessment.<sup>4</sup>

Pursuant to Art. 30 of the PIE Act, ‘The administration authorities competent to issue decisions or to draw up the draft documents for which the provisions of this Act or other Acts require that the possibility of public participation should be ensured, shall ensure the possibility of public participation, respectively, prior to the issue of these decisions or their modification, as well as prior to the adoption of these documents or their modification.’ According to the provision cited above, public participation should be ensured both in individual matters settled by way of

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<sup>2</sup> R. Dziuba, *Partycypacja społeczna na tle zrównoważonego rozwoju*, “Przegląd Prawa i Administracji” 2016, No. 105, p. 49-56.

<sup>3</sup> Act of 3 October 2008 on the Provision of Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment (Journal of Laws 2020, item 283, hereinafter referred to as the PIE Act).

<sup>4</sup> M. Micińska, *Udział społeczeństwa w ochronie środowiska. Instrumenty administracyjno-prawne*, Toruń 2011, p. 147.

Pursuant to Art. 218 of the Act of 27 April 2001 Environmental Protection Law (Journal of Laws 2019, item 1396), administration authorities are obliged to ensure public participation under and pursuant to the PIE Act in procedures the subject of which covers, among other things, the issue of an integrated permit for a new facility or a decision regarding a significant modification of a facility. Pursuant to Art. 42, paragraph 7 of the Act of 14 December 2012 on Waste (Journal of Laws 2019, item 701), administration authorities ensure the possibility of public participation under and pursuant to the PIE Act in procedures the subject of which covers the issue of a permit for a thermal recycling facility or a decision on the modification of this permit.

administrative decisions and in the process of drawing up draft documents if the provisions of this Act or other legal acts ensure the possibility of public participation. Art. 33-38 of the Act cited provide for solutions ensuring public participation in procedures in individual matters settled by way of administrative decisions, and Art. 39-42 of this Act provide for solutions ensuring public participation in the process of preparing documents for which public participation is obligatory.<sup>5</sup> Moreover, it should be highlighted that public participation within the meaning of Art. 33-38 of the PIE Act cannot be identified with the rights of the parties to the procedure within the meaning of Art. 28-29 of the Administrative Procedure Code.<sup>6</sup>

As indicated above, the principles governing public participation in environmental protection are defined by the PIE Act. The need to establish appropriate conditions for the right of public participation in environmental protection matters to materialise results directly from the provisions of the Aarhus Convention signed in 1998.<sup>7</sup> ‘This international agreement is based on three areas: access to environmental information, public participation in environmental protection and access to appealing procedures in environmental matters (referred to in the Convention as “access to justice”)<sup>8</sup>. Pursuant to the Aarhus Convention, public participation is divided into:

- participation in the preparation of strategic documents (Art. 7);
- participation in decision making (Art. 8).

The public should be understood as ‘one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups’.

Pursuant to Art. 7 of the Convention, ‘Each Party shall make appropriate practical and/or other provisions for the public to participate during

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<sup>5</sup> K. Gruszecki, *Komentarz do ustawy o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko*, ed. III, LEX/online 2020.

<sup>6</sup> Judgment of the Supreme Administrative Court of 12 December, 2017, file ref. no. II OSK 692/16, LEX No. 2428553.

<sup>7</sup> Convention on access to information, public participation in decision-making and access to justice in environmental matters, Aarhus on 25 June, 1998 (Journal of Laws No. 78, item 706), ratified with the Act of 21 June 2011 (Journal of Laws No. 89, item 970).

<sup>8</sup> J. Szuma, *Udział społeczeństwa w postępowaniu w przedmiocie oceny oddziaływania na środowisko*, in: *Oceny oddziaływania na środowisko w praktyce*, (ed.) B. Rakoczy, Warszawa 2017, p. 132.

the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework, Article 6(3), (4) and (8) shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.’ Pursuant to Art. 8, ‘Each Party shall strive to promote effective public participation, at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment. To this end, the following steps should be taken: (a) time-frames sufficient for effective participation should be fixed, (b) draft rules should be published or otherwise made publicly available, and (c) the public should be given the opportunity to comment, directly or through representative consultative bodies. The result of public participation shall be taken into account as far as possible.’

Furthermore, the principle of public participation is provided for in Art. 74, paragraph 4 of the Constitution of the Republic of Poland, according to which ‘Public authorities shall support the activities of citizens to protect and improve the quality of the environment’.<sup>9</sup> At the statutory level, the principle of public participation in environmental protection matters is provided for in Art. 5 of the PIE Act, pursuant to which ‘every person shall have the right to take part, on the conditions laid down in this Act, in a procedure requiring public participation’. It should be added that “every person” denotes natural persons, legal persons, organisational entities without legal personality and groups of natural persons. Simultaneously, it is worth paying attention to the possibility of submitting comments and suggestions by social organisations and institutions, even those engaged in the fulfilment of tasks in the field of public administration, as the fulfilment of the said tasks does not result in losing the status of the addressee of constitutional rights and freedoms.<sup>10</sup>

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<sup>9</sup> Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483 as amended).

<sup>10</sup> A. Haładyj, *Udział społeczeństwa w strategicznej ocenie oddziaływania na środowisko jako instytucji prawa ochrony środowiska*, Lublin 2015, p. 76.

Therefore, it seems that the notion of “every person” is even wider than the notion of “the public” as defined in the Aarhus Convention.<sup>11</sup>

## 2. Public participation in decision making

As indicated above, and modelled after the Aarhus Convention, the PIE Act divides public participation into the following:

- public participation in decision making (Art. 33-38 of the PIE Act),
- public participation in the preparation of documents (Art. 39-43 of the PIE Act).

Both of the above-mentioned issues are regulated in a similar way with only minor differences resulting from the specific nature of individual procedures.

When discussing public participation in decision making, a typical and the most characteristic administrative procedure ensuring public participation is the procedure aimed at issuing a decision on environmental conditions. The legal basis obliging the competent authority to ensure public participation is provided for in Art. 79, paragraph 1 of the PIE Act, pursuant to which prior to the issue of a decision on environmental conditions, the authority competent to issue the decision shall ensure the possibility of public participation in the procedure within the framework of which the environmental impact assessment for a project is carried out. Here, it is worth reminding that not all procedures for the issue of decisions on environmental conditions require that the environmental impact assessment is carried out, that is, such assessment is unconditionally carried out only in the case of projects which may always have a significant impact on the environment, i.e. projects specified in Art. 2 of the Regulation of the Council of Ministers of 10 September 2019 on projects likely to have a significant impact on the environment.<sup>12</sup> In other cases, i.e. with regard to projects which may have a potential significant impact on the environment, specified in Art. 3 of the above-mentioned Regulation, the obligation to carry out the environmental impact assessment is determined by the authority conducting a procedure

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<sup>11</sup> Cf. J. Jendrośka, *Obowiązek powiadamiania społeczeństwa w nowych przepisach o ocenie oddziaływania przedsięwzięcia na środowisko*, “Prawo i Środowisko” 2009, No. 1, p. 56-65.

<sup>12</sup> Regulation of the Council of Ministers of 10 September 2019 on projects likely to have a significant impact on the environment (Official Journal 2019, item 1839).

for the issue of a decision on environmental conditions and this is done by way of this authority's decision. The provisions of the PIE Act that ensure public participation shall apply only to a procedure with regard to which such a decision has been made.<sup>13</sup> Public participation shall not be ensured for procedures resulting in issuing decisions on environmental conditions which state no need to carry out the environmental impact assessment for a project (Art. 84, paragraph 1 of the PIE Act).

According to the definition provided for in Art. 3, paragraph 1, item 8, environmental impact assessment for a project shall be understood as a procedure for the assessment of the environmental impact of the proposed project, including in particular:

- a) verification of the environmental impact report for the project,
- b) acquisition of the opinions and approvals required by the Act,
- c) ensuring the possibility of public participation in the procedure.

The procedural guarantees and legal instruments ensuring public participation in procedures are defined in Art. 33 of the PIE Act. However, the catalogue of measures ensuring public participation is of a closed nature, which is the result of the structure of Art. 33 of the PIE Act, as since this provision does not define that the list is exemplary, it should be assumed that the legislator does not allow any other instruments within the scope discussed.<sup>14</sup>

Pursuant to Art. 33, paragraph 1 of the PIE Act, 'Prior to the issue and modification of decisions requiring public participation, the administration authority competent to issue such decisions shall provide the public, without undue delay, with information concerning:

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<sup>13</sup> 'In procedures for which the environmental impact assessment is optional, public participation shall be ensured only at the moment of issuing a decision determining the need to carry out the environmental impact assessment. Therefore, it is only then that the notification duties of the competent authority, referred to in Art. 33, paragraph 1 of the Act of 2008 on the Provision of Information about the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment, arise, which duties should be satisfied by the competent authority without undue delay, which, as assumed in the doctrine, should occur after the receipt of a report by the authority responsible for conducting the public participation procedure.' (Judgment of the Voivodeship Administrative Court in Bydgoszcz of 27 September, 2017, file ref. no. II SA/Bd 276/16, LEX No. 2383420).

<sup>14</sup> K. Gruszecki, *op.cit.*

- 1) the launch of the environmental impact assessment for a project;
- 2) the initiation of the procedure;
- 3) the subject matter of the decision which has to be issued in the matter;
- 4) the authority competent to issue decisions or the authorities competent to provide opinions and grant approvals;
- 5) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
- 6) the possibility of submitting comments and suggestions;
- 7) the manner and place for submitting comments and suggestions, providing, at the same time, for a 30-day period for their submission;
- 8) the authority competent to consider comments and suggestions;
- 9) the date and place of the administrative hearing open to the public, referred to in Art. 36, if it is to be conducted;
- 10) the procedure for the transboundary impact on the environment, if it is conducted.'

The basic form of public participation in decision making is the right to submit comments and suggestions. Prior to the issue and modification of decisions requiring public participation, the authority competent to issue such decisions provides the public, without undue delay, with information about the possibility, manner and place for submitting comments and suggestions, providing, at the same time, for a 30-day period for their submission (Art. 33, paragraph 1, items 6 and 7 of the Act). This deadline is substantive, and not procedural, in its nature, which, in practice, means that after the expiry of this period any submitted comments and suggestions shall not be considered, and, therefore, there will be no option of accusing the competent authority of a failure to take an attitude towards the issues raised in the justification of the decision (Art. 35 of the PIE Act).<sup>15</sup>

The Act under discussion fails to define what the submission of comments and suggestions means, and, therefore, in this regard, it is worth referring to the gloss by B. Draniewicz, which is commonly accepted in the doctrine, to the judgment of the Voivodeship Administrative Court in Gdańsk of 24 February 2009, which provides explanations for these notions. According to thesis no. 3 of the gloss referred to, "Comments" shall mean critical

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<sup>15</sup> Judgment of the Voivodeship Administrative Court in Warsaw of 25 November, 2008, file ref. no. IV SA/Wa 1597/08, LEX No. 521846.



statements about the proposed project, plan, programme or procedure, and “suggestions” shall mean projects presented for consideration and determination.’<sup>16</sup> ‘Comments and suggestions may refer both to procedural and substantive issues. Their scope is not limited in any way, and, therefore, it covers the issues addressed in a given administrative case. Thus, they, and, in particular, suggestions, can also refer to the examination of the evidence. [...] If a hearing is conducted during the 21-day period for their submission (the 30-day period – author’s note), they should be recognised to be the comments and suggestions within the meaning of these provisions, the more so because they are submitted as provided for in Art. 34 [of the Act of 2008 on the Provision of Information about the Environment...] (as a rule, verbally to be recorded in the minutes). If a hearing is conducted after the expiry of the said period of time, pursuant to Art. 35, it is not necessary to apply the requirements under Art. 37 (i.e. their consideration and consequent provision of information about the manner of their use in the justification).’<sup>17</sup>

Pursuant to Art. 34 of the PIE Act, comments and suggestions can be submitted: in a written form; verbally to be recorded in the minutes; using the means of electronic communication with no need to provide the qualified electronic signature. Attention should be paid to the fact that these forms are competitive in their nature, which means that it is the entity interested in submitting a comment or a suggestion that decides which of these three forms is the easiest one to apply.’<sup>18</sup>

An extremely significant obligation of the authority conducting a procedure is the one specified in Art. 37 of the PIE Act: ‘The authority which conducts the procedure: 1) shall consider comments and suggestions; 2) in the justification of the decision, irrespective of the requirements under the Administrative Procedure Code,<sup>19</sup> shall provide information on public participation in the procedure and the manner in which the comments and suggestions submitted in relation to public participation have been considered and the extent to which they have been used.’

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<sup>16</sup> Judgment of the Voivodeship Administrative Court in Gdańsk of 24 February, 2009, file ref. no. II SA/Gd 906/08, [www.orzeczenia.nsa.gov.pl](http://www.orzeczenia.nsa.gov.pl).

<sup>17</sup> Z. Bukowski, B. Sygit, *Udział społeczeństwa w postępowaniach administracyjnych w sprawach ochrony środowiska*, CASUS 2010, No. 3, p. 24–29.

<sup>18</sup> K. Gruszecki, *op.cit.*

<sup>19</sup> Act of 14 June 1960 Administrative Procedure Code (Journal of Laws 2020, item 256, hereinafter referred to as the APC).

‘However, when comments or suggestions are submitted, the competent authority is obliged to consider them. To consider them means to become acquainted with a comment or a suggestion, to read it and to analyse it. Obviously, the authority is by no means bound by such comments or suggestions, but it is obliged to consider them. Only when the comments and suggestions have been considered, can the authority proceed to provide a substantive settlement and issue an administrative decision.’<sup>20</sup>

In the justification of the decision, irrespective of the requirements under the APC, the public administration authority is obliged to provide information that the procedure has been conducted with public participation. Moreover, it is obliged to specify the manner in which the submitted comments or suggestions have been considered and the extent to which they have been taken into account. This is a fully justified solution. The public, which has the right to participate in procedures, also has the right to know if and to what extent its comments have been taken into account. Therefore, the authority can, if that is at all possible, refer to the issues addressed in the comments and suggestions in a comprehensive way, taking into account the differences between individual opinions provided that such opinions have at all been formulated.<sup>21</sup> In the event of potential appeal proceedings, a failure to address or “laconic” consideration of comments submitted by the public may form the basis for revoking such a decision.

As a matter of fact, it may happen that, due to the specific nature of a project, the comments submitted by the public and the precautionary principle, it becomes justified to impose additional obligations on the applicant, e.g. to carry out a post-execution analysis, but this cannot be identified with a refusal to issue the decision on environmental conditions.<sup>22</sup> Moreover, the lack of public acceptance may also influence the choice of another project variant. This view is present in some decisions of administrative courts, which highlight that the objection of the local community, ‘however, in no case, means the possibility of ignoring the arguments raised by the project’s

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<sup>20</sup> B. Rakoczy, *Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko. Komentarz*, LexisNexis 2010

<sup>21</sup> Ibid.

<sup>22</sup> ‘Public objection itself cannot form the grounds for a refusal to issue an environmental approval for project implementation’ (Judgment of the Voivodeship Administrative Court in Łódź of 18 January, 2012, file ref. no. II SA/Łd 886/12, [www.orzeczenia.nsa.gov.pl](http://www.orzeczenia.nsa.gov.pl)).

opponents. They need to be addressed in a reliable and exhaustive analysis carried out by an authority of first instance.<sup>23</sup>

### 3. Public participation in the preparation of documents

The regulations governing public participation in the preparation of documents are analogous to those discussed with regard to public participation in decision making. The administrative procedures, which by virtue of law ensure public participation in the preparation of documents under and pursuant to the PIE Act include, according to the Water Law of 20 July 2017,<sup>24</sup> the drafts of the following documents:

- 1) the action programme related to limiting water pollution caused by nitrates from agricultural sources (Art. 106, paragraph 2),
- 2) the protection programme for marine waters (Art. 161, paragraph 6),
- 3) the flood risk management plan (Art. 173, paragraph 6),
- 4) the plan to counteract the effects of drought (Art. 185, paragraph 3).

There are more similar examples in other acts in the field of environmental protection, and, therefore, it should be each time verified whether public participation is ensured for a specific procedure being of interest to us.

Pursuant to Art. 39, paragraph 1 of the PIE Act, 'The authority which prepares a draft document requiring public participation shall provide the public, without undue delay, with information concerning:

- 1) the launch of the preparation of the draft document and its subject matter;
- 2) the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review;
- 3) the possibility of submitting comments and suggestions;
- 4) the manner and place for submitting comments and suggestions, providing, at the same time, for at least a 21-day period for their submission;
- 5) the authority competent to consider comments and suggestions;

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<sup>23</sup> A. Sypnicki, *Spoleczna akceptacja przedsięwzięcia – wybrane zagadnienia*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2019, No. 5, p. 110-120.

<sup>24</sup> Act of 20 July 2017 Water Law (Journal of Laws 2020, item 310).

6) the procedure for the transboundary impact on the environment, if it is conducted.'

'Pursuant to Art. 39, paragraph 1 of the PIE Act, similarly to Art. 33, paragraph 1, the basic instrument that ensures public participation is providing the public with information about launching the preparation of documents requiring public participation. There are three basic differences when compared to administrative decisions that result from this provision. First, this solution addresses only documents and not their modifications during preparation, which lets us conclude that any potential modification of a document does not have to be introduced with public participation. However, this conclusion seems to be too far-reaching. Any modifications to documents requiring public participation should be introduced following the same standards as in the case of the documents themselves, as, if we assumed that the introduction of modifications does not require public participation, this participation would become illusory in practice. This is because the original version could take account of public expectations, but its modifications not necessarily. Second, it should be noticed that pursuant to Art. 39, paragraph 1, item 4 of the Act, contrary to the provisions governing the issue of decisions, the deadline for submitting comments and suggestions is at least 21 days. This means that the administration authority has some freedom in this regard, and, when establishing the deadline for the submission of comments and suggestions, it only needs to bear in mind that this deadline cannot be shorter than the one provided for in Art. 39, paragraph 1, item 4 of the Act, and that it should be extended in the case of complex documents requiring a more profound analysis. Third, the legislator has not provided for an option of an administrative hearing for the preparation of documents.'<sup>25</sup>

#### 4. The rights of environmental organisations

The statutory definition of an environmental organisation is included in Art. 3, paragraph 1, item 10 of the PIE Act. However, this provision does not define an environmental organisation in its strict sense, but only distinguishes it from a wider notion of a social organisation with the use of the subjective

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<sup>25</sup> K. Gruszecki, *op.cit.*

criterion, i.e. the scope of the activities conducted,<sup>26</sup> as pursuant to Art. 3, paragraph 1, item 10, an environmental organisation is a social organisation the statutory aim of which is environmental protection.<sup>27</sup>

Pursuant to Art. 44, paragraph 1 of the PIE Act, ‘The environmental organisations which, referring to their statutory objectives, inform of their wish to take part in a specific procedure requiring public participation shall take part therein with the rights of a party provided that they have conducted their statutory activities in the field of environmental protection or nature protection for at least 12 months before the date of initiating this procedure.’

‘Given the above, an environmental organisation should be treated as a social organisation specialising in environmental protection matters, which acts in environmental protection procedures requiring public participation only, as organisations of this type do not act in any other administrative procedures.’<sup>28</sup>

Moreover, an environmental organisation has the right to appeal against a decision issued in a procedure requiring public participation if this is justified by the statutory objectives of this organisation, including the case when it did not participate in a specific procedure requiring public participation conducted by the first instance authority. In such a case, lodging an appeal is equivalent to the declaration of willingness to participate in this procedure, in which the organisation shall participate as a party. Furthermore, an environmental organisation has the right to file a complaint with the administrative court against a decision issued in a procedure requiring public participation if this is justified by the statutory objectives of this organisation, including the case when it did not participate in a specific procedure requiring public participation. If an environmental organisation is refused to participate in a procedure, it shall have the right to lodge a complaint against this refusal.<sup>29</sup>

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<sup>26</sup> Ibid.

<sup>27</sup> Social organisations are professional, self-government, cooperative and other social organisations.

<sup>28</sup> B. Krupa, *Udział organizacji ekologicznych postępowaniu administracyjnym o wydanie decyzji o środowiskowych uwarunkowaniach realizacji przedsięwzięcia*, “Ius et Administratio” 2014, No. 3.

<sup>29</sup> B. Gładkowska-Chocian, *Wpływ udziału społeczeństwa w procedurze oceny oddziaływania na środowisko na rozwój inwestycji infrastrukturalnych*, “Ekonomia i Środowisko” 2016, No. 3 (58), p. 301.

Currently, an environmental organisation can declare its willingness to participate in a procedure at every stage of the procedure, as the indirectly set 30-day period for the submission of comments and suggestions does not apply here. There is no requirement imposed on environmental organisations, which are willing to participate in procedures, to submit comments and suggestions at the same time. Comments and suggestions can be submitted by “all persons” pursuant to Art. 29 of the PIE Act in the course of a procedure requiring public participation. And as this is the right of “all persons”, it is also the right of environmental organisations. The submission of comments or suggestions is irrespective of declaring the willingness to participate in a procedure.’<sup>30</sup>

‘Taking into account the rights of environmental organisations, considerably more far-reaching opportunities for their participation in environmental protection and, what follows, an extended objective scope can be noticed. The right of “all persons” covers only the possibility of submitting comments and suggestions with no influence on the further course of a procedure or document preparation. On the other hand, the rights of environmental organisations are much more far-reaching and they are not limited to the submission of comments and suggestions only. Therefore, it can be assumed that the public can participate in environmental protection in two forms, i.e. through the submission by all persons of comments or suggestions, or through the rights of environmental organisations.’<sup>31</sup> These rights include the right to participate in procedures requiring participation of the public with the rights of a party. The participation in such procedures is at the sole discretion of an environmental organisation. The difference between a party to a procedure and an entity acting as a party refers to the subject of the procedure, that is, an environmental organisation can conduct procedural acts only, but it cannot dispose of the tangible rights constituting the subject of the procedure conducted for another person. Therefore, the rights to be exercised by environmental organisations include the right to demand suspension of a procedure and discontinuance of an administrative procedure, the right to reach a settlement and the right to demand resumption of a procedure.

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<sup>30</sup> B. Draniewicz, *Udział organizacji ekologicznej w postępowaniu niewymagającym udziału społeczeństwa*. Gloss to the judgment of the Voivodeship Administrative Court of 22 July, 2010, file ref. no. II SA/Kr 272/10, “Prawo i Środowisko” 2010, No. 3, p. 110-119.

<sup>31</sup> B. Rakoczy, op.cit.

## Conclusion

Public participation in environmental protection is an essential element of controlling the activities of public administration authorities and it is of a normative nature, as it is provided for in a general rule of administrative procedures requiring administration authorities to deepen public trust in these authorities. The guarantee of public participation in environmental protection is provided for in Art. 5 of the PIE Act. Chapter 3 of this Act defines public participation in decision making and the preparation of documents, and the rights of environmental organisations as regards participation in procedures requiring public participation.

The administration authorities competent to issue decisions or to draw up draft documents are obliged to ensure the possibility of public participation in a procedure pending respectively prior to the issue of these decisions or their modification and prior to the adoption of these documents or their modification whenever public participation is possible (Art. 30). Pursuant to the Act cited, public participation in environmental protection is, in fact, a set of activities that constitute the obligations of a competent authority and of the rights of the public, which are their correlates.<sup>32</sup>

The competent authority is obliged to provide the public with information about, among other things, the launch of the environmental impact assessment for a project, the initiation of the procedure, the subject matter of the decision to be issued in the matter, the authority competent to issue decisions and the authorities competent to provide opinions and grant approvals, the possibilities of becoming acquainted with the necessary documentation of the case and the place where it is available for review, the possibility of submitting comments and suggestions, the manner and place for submitting comments and suggestions, providing, at the same time, for a 30-day period for their submission, the authority competent to consider comments and suggestions, and the date and place of an administrative hearing open to the public if it is to be conducted (Art. 33 of the PIE Act).

In the case of public participation in the preparation of documents, the competent authority is obliged to provide the public with information about the launch of the environmental impact assessment for a project, the initiation of the procedure, the subject matter of the decision to be issued

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<sup>32</sup> J. Szuma, *op.cit.*, p. 150.

in the matter, the authority competent to issue decisions and the authorities competent to provide opinions and grant approvals, the possibilities of becoming acquainted with the necessary documentation of the case (including the assumptions of the document or its draft and enclosures) and the place where it is available for review, the possibility of submitting comments and suggestions, the manner and place for submitting comments and suggestions, providing, at the same time, for a 21-day period for their submission, and the authority competent to consider comments and suggestions (Art. 39 of the PIE Act).

In both cases, the public can express its will (by way of comments and suggestions), and this is recorded in the justification of the decision in the case of participation in decision making, and in the enclosure to the adopted document in the case of participation in the preparation of documents. In both cases, the competent authority is obliged to include information about the manner in which the comments and suggestions submitted by the public have been taken into account and the extent to which they have been used.

Pursuant to Art. 44 of the PIE Act, environmental organisations have special rights related to public participation, as, environmental organisations, by way of referring to their statutory objectives and declaring their will to participate in a specific procedure requiring public participation, participate in the procedure as a party.

‘Any potential infringement of the rules related to public participation in procedures needs to be assessed in order to determine whether this infringement could have had a significant impact on the result of a given case.’<sup>33</sup>

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