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REGULATION OF LOBBYING IN POLAND

Poland, as one of few countries in the world decided to regulate lobbying activities by special legislation. In 2005, Parliament passed a bill on lobbying activity in the legislative process (later law on lobbying or lobbying law). The law entered into force in March 2006. With secondary laws it determines legal regulation of lobbying in Poland. In this paper I will focus on the following issues:

- description of the basic elements of the Polish lobbying law;
- evaluation of their impact;
- possible changes;

Background and circumstances of the adoption lobbying regulations in Poland

Before proceeding with the discussion on key elements of the Polish lobbying law I will discuss shortly some issues related to the genesis of this legislation and circumstances in which it was adopted. Historical factor had, in fact, a significant impact on shaping the law on lobbying activities.

Regulating lobbying by law is not the European tradition, while influencing legislative process, is common practice in every political system[1]. Most developed legislation on lobbying exists in the United States, where is a specific model of interaction between authorities and stakeholders. In Europe developed different system of representation of interests. This model is deeply rooted in the traditions of the medieval European feudal societies. Its contemporary emanation is the idea of social dialogue and strong institutions

[1] See: Jasiecki Krzysztof, 2002, Lobbing w USA, Europie Zachodniej i Polsce. Podobieństwa i różnice, Studia Europejskie, No. 4

serving trade unions, employers' organizations and authorities to negotiate the shape of public policies.

In case of Poland, as in the majority of European countries for a long time there was no need to regulate lobbying because of its affection to the corporate model. The reluctance to create lobbying legislation was also the result of the heritage of the communist period. At that time not only a simple articulation of any interests to the authorities was difficult, but also the culture of social dialogue was rather facade[2].

During communist era didn't develop no practices or institutions allowing any kind of social actors to influence the decision making processes. This factor is important; however it was not taken into account during works on the lobbying legislation. No one asked the question if it was really necessary to regulate an activity which is performed on a large scale, and certainly is not an activity that is much professionalized.

On the other hand, it was decided to regulate lobbying in a situation where the main focus regarding relations between decision makers and of interest groups was on the side of supporters of the development of corporate social dialogue. And those were naturally opposite to the idea of creating any special lobbying legislation. This negative attitude resulted in a number of bad solutions that were introduced to the lobbying bill during parliamentary works.

The second important factor is connected with circumstances under which bill on lobbying was drafted. Although the first proposals of such a regulation appeared in the early 90s of the last century, more concrete legislative works on started between 2000 and 2003. Motivations to intensify of works on lobbying legislation were related to scandals around several legislative processes. In any of these cases it was not possible to prove to that anyone "sold" or "bought" this or that bill. No one was sentenced. However, more and more frequent allegations of blameworthy lobbying stimulated public debate and forced politicians to take action. Two incidents were crucial.

The first was the report of the World Bank, *Corruption in Poland* published in the end of 1999, where it was revealed that in the Polish Parliament an act of law could be bought for 3 million US dollars[3]. This information was not supported by any facts (and generally, the report raised many methodological doubts), but the release of this document brought about lively reaction of media and public opinion. As a result, in the second half of year 2000 government proposed the draft law on the transparency of decision-making processes, groups of interests and access to information[4].

[2] Jasiecki Krzysztof, 2002, Lobbing w USA…
[3] World Bank, Korupcja w Polsce: przegląd obszarów priorytetowych i propozycji przeciwdziałania zjawisku, Warszawa 1999

At that time the bill was not passed, but topic of lobbying remained alive. To the idea of special lobbying legislation decision makers returned five years later. The reason was again political scandal, probably one of the largest in the history of the Third Republic of Poland. The affair was the result of the bribery attempt made by a famous film producer Lew Rywin. In 2002, on behalf of an anonymous group of politicians, he was trying to convince executives of the Agora Group Company to pay $ 17 million USD for adopting favorable provisions in the new legislation regulating media market in Poland. Disclosure of this occurrence led to the deep political crisis and resulted in collapse of the government led by the Democratic Left Alliance (SLD), at that time the main party in the Parliament.

Before the elections in 2005 SLD tied to regain support of voters in various ways. One of them was to start works on the new bill on lobbying. These works have become even more intensive just before the elections, when it became clear that support for this party is so low that its existence in the next term of Parliament was questionable. Pushing to adopt the law on lobbying by SLD was an attempt to show its determination in fighting corruption. These unfavorable circumstances contributed to strengthening the negative social image of lobbying. Pre-election period, when the legislative works on the lobbying law were finalized, either did not contributed to any constructive discussion and resulted in numerous drawbacks.

Characteristics of Polish regulation of lobbying

The Act of Law on the Lobbying Activity in the Legislative Process[5] is the main element of the Polish lobbying legislation. It is accompanied by three secondary regulations. Furthermore, with the entry into force of this act there was also adopted the resolution amending the Rules of Sejm of the Republic of Poland (the lower chamber of the Polish Parliament)[6].

At the first glance, the Act of Law on the Lobbying Activity in the Legislative Process is not a very sophisticated regulation. However, on the contrary to its own title, which would suggest that the subject of this law is all kind of lobbying activity conducted in t\he lawmaking process, its subjective and objective scope is rather narrow. On the one hand, it applies to all subjects engaged in widely defined lobbying, and especially to those who perform professional kind of lobbying. On the other hand, the objective scope covers only few selected public institutions that have the right to introduce new legislation – the ministries and Sejm. Many other authorities which also have the constitutional

[5] Journal of Law No. 169 of 2005 item 1414
[6] Polish Monitor No. 26 of 2992 item 185

competences to initiate legislative process like the President of the Republic, the Senate (the higher chamber of the Polish Parliament), The National Broadcasting Council or local governments are excluded from the rigor of the lobbying law.

The objective scope of the Polish lobbying law is problematic also from another reason. In addition to the provisions related directly to the lobbying activities (definitions, rules of conducting lobbying activity, rights, privileges and responsibilities of lobbyists or provisions concerning supervision), this Act contains also many other regulations. They concern, for example, questions of the transparency of the legislative process, participation of citizens in the legislative processes or responsibilities of ministers and members of parliament. Thus, both from the perspective of the objective and subjective scope of this law, it does not match its own title.

The Act of Law on the Lobbying Activity in the Legislative Process consists of 24 articles, divided into six chapters. Referring to this structure I will elaborate on the most important regulations of the Polish lobbying law. In the next chapter I will discuss its main drawbacks and weaknesses.

Chapter 1 - General Provisions

The main components of this part are the definitions of lobbying. The legislator decided to outline the general concept of lobbying, and distinguish the professional lobbying. **The regular lobbying is: "any activity conducted by legally allowed means, which leads towards the exertion of influence upon the organs of public authorities in the lawmaking process".**

Professional lobbying is: “gainful lobbying activity conducted on behalf of third parties in order to arrive at the interests of such third parties being taken into account in the lawmaking process.”. In addition, it is worth mentioning that general provisions also state that professional lobbying may be carried out by an entrepreneur or by a physical person not being an entrepreneur, on the basis of a civil law contract.

Chapter 2 - Principles of disclosure of lobbying activity in the legislative process

Provisions of this chapter regulate the law making procedures that must be adapted by all ministries. The purpose of these procedures is to facilitate and help conducting and supervising lobbying activity. The most important are provisions establishing the obligation for the Council of Ministers and all ministries to prepare the legislative plans at least once every six months. The plans are simply summaries of bills and outlines of

bills to be drafted. The Act also specifies that they must contain basic description of their purposes, content and contact data of persons coordinating legislative works.

Another important mechanism regulated in this chapter is procedure for declaring interest in the legislative works ongoing at the governmental level. The lobbying law provides that any subject wishing to observe legislative works, or to submit proposals of changes in the draft, must notify in writing his interest to the relevant ministry. All declarations of interest must be published on the websites with documentation relating to a given legislative process.

Another institution regulated in this chapter is public hearing. The provisions of the Act state that public hearings can be arranged by the ministries on drafts of ordinances or by the Parliament on bills. The Act describes also basic rules of conducting public hearings. According to them, in example, only those who have previously submitted an interest declaration may take part in a public hearing; in case of governmental hearings they must be announced at least seven days before they are scheduled, etc.. The governmental public hearings are regulated also in the relevant ordinance. Organization of the parliamentary hearings is set out in the Resolution on the Rules of Sejm.

Chapter 3 - The registry of entities performing professional lobbying activity, and the rules of performing professional lobbying

According to its title, the chapter contains provisions regulating the registry of professional lobbyists. The office responsible for the registry of professional lobbyists is the Ministry of Interior and Administration (MSWiA). The ministry shall make an entry in the register upon request. The entry is paid, but the maximum amount of the fee cannot exceed 100 zlotys (approx. 25 EUR). Provisions set out also general rules for registration and circumstances in which the ministry may refuse an entry (e.g. in case of providing false data, either because of lack necessary data) and the scope of information which a subject applying for the entry is required to provide to the ministry. The law also allows subjects conducting professional lobbying to obtain a certificate confirming their registration. It is an important detail, as authorities carrying out legislative works may require from professional lobbyists to prove that they perform their activity legally. More detailed regulations of the registry are described in the relevant ordinance.

Chapter 4 – Supervision over professional lobbying

Ministries are required to determine the internal procedures for dealing with professional lobbyists. Officials who discover that there are subjects undertaking actions which may

be familiar with the definition of professional lobbying, without registration, are required to notify the Ministry of Internal Affairs, which may impose a penalty on those subjects. Under these provisions the ministries are also obliged to prepare annual information on actions taken against them by professional lobbyists.

Chapter 5 - Penalties for violation of provisions of the Act

According to the Act, the subject conducting professional lobbying activities without registration shall be fined. A fine ranging from 3 to 50 thousand zlotys (approx. from 800 to 10 000 EUR) may be imposed by the Ministry of Interior and Administration in the form of an administrative decision. The penalty is determined by the analysis of the impact that the activities undertaken by the subject had on the decision taken by a given authority and means which were used to achieve the influence. The penalty may be imposed repeatedly.

Chapter 6 – Changes in existing laws, transitional and final provisions

This chapter contains many important provisions, whose aim is not only to regulate lobbying but also to prevent conducting lobbying activity illegally. Among the most important solutions we can mention changes in the Act of Law on the Performing the Mandate of the Members of Sejm and the Senate[7] obliging to disclose information of persons cooperating with MPs' offices or parliamentary clubs, and political advisors to MPs. Members of Council of Ministers who employ in their cabinets advisors fall under similar obligation. These changes were introduced due to the fact that reasons of accusations against politicians that used to be subject to attempts of illegal lobbying were very often related to the experts and political advisors.

As it has been already mentioned the Act of Law on the Lobbying Activity in the Legislative Process is accompanied by three ordinances: the Order of the Minister of Interior and Administration of 20 February 2006 on The Registry of Subjects Performing Professional Lobbying Activity[8], the Order of the Council of Ministers of 24 January 2006 on the Declaration of Interest in Works On Drafts on Normative Acts[9] and the Order of the Council of Ministers of 7 February 2006 On The Public Hearing Of Drafts of Secondary Acts[10]. As it was already mentioned, the Lobbying Act has also resulted in

[7] Journal of Law No. 73 of 1996 item 350
[8] Journal of Law No. 34 of 2006 item 240
[9] Journal of Law No. 34 of 2006 item 236
[10] Journal of Law No. 30 of 2006 item 207

changes in the Resolution on the Rules of Sejm. The Act expanded the use of the public hearing on Sejm. Under the new Rules a separate register of professional lobbyists conducting their activity in the parliament was also set up. Professional lobbyists have been obliged to register in the special parliamentary registry, regardless of registration in the registry of the Ministry of Interior and Administration.

The most important problems and benefits of the Polish lobbying law

The Law on Lobbying Activity in Legislative Process has been sharply criticized yet at the stage of parliamentary works (however, its original version, as it was proposed by the government, was much better evaluated, than after changes introduced by the Parliament). Only few elements of this legislation had positive impact. Most of critical arguments against the Act were confirmed when it came into force. Therefore, this chapter focuses mainly on the problems. I will discuss the most important of them.

Flawed definition of lobbying

Let us start with the fundamental question – the definition of lobbying. On the one hand, the general definition of lobbying it is too broad. On the other hand, the definition of professional lobbying, it is too narrow. Both are imprecise.

Defining lobbying as any actions "conducted by legally allowed methods, leading to the exertion of influence upon the organs of public authority in the process of lawmaking" means that if we treat this term literary, any kind of behavior expressing constitutional rights to participate directly in exercising the power should be treated as a form of lobbying. Therefore in example a person who wants the access to public information about a given draft of legislation, the petitioner, people protesting against or expressing support for any legislative initiative, according to this definition should be treated as a lobbyists. Therefore most experts argue that that lobbying legislation enters the area regulated by other laws, unreasonably restricting their use and this might be a reason to question its constitutionality[11].

Take for example the constitutionally guaranteed right to petition. Taking into account the provisions of the lobbying law realization of this basic civic competence should be also considered as a form of lobbying activity. This may lead to the absurd conclusion that the paid preparing and submitting the petition on behalf of the third party, should be

[11] See: Wiszowaty Marcin, 2006, Ustawa o działalności lobbingowej w procesie stanowienia prawa, Przegląd Sejmowy, Vol. 5 No. 76 and Zubik Marek, 2006, Ustawa o działalności lobbingowej w procesie stanowienia prawa – uwagi na tle sytuacji organizacji pozarządowych, Trzeci Sektor, No. 6

regarded not only as a case of lobbying, but on the professional lobbying[12]. Similarly, one can consider the use of the institutions of the proposal or complaint, or even exercising the right to freedom of speech as forms of lobbying. Press or scientific articles, public statements and any other actions related to legislative process may be regarded as a lobbying activity, because they are intentional actions which always may lead "towards the exertion of influence upon the organs of public authorities". The definition also extends to extreme the population of potential lobbyists. Again, reading it literally one may conclude that deputies, senators, ministers and officials also should be treated as lobbyists. Indeed, they take part in lawmaking processes everyday and influence other organs of public authorities[13].

Interpretational problems related to the definition of lobbying are real, though in practice, they have not given yet any negative consequences (of course, beyond the inconsistency in the legal system, which is in itself a very bad consequence). Anyway, this thread should not be underestimated, because according to legal experts, the content of the legal definition of lobbying is bad enough to have an argument to ask Constitutional Court to investigate if it is in conformity with the Constitution. Unfortunately, as long as any subject (e.g. Ministry of Interior and Administration or MPs) entitled to submit the motion to the Court will not do it the investigation cannot start.

Even more problems are associated with the definition of professional lobbying. What distinguishes a "professional lobbying" from the "regular lobbying" is:

- payable character,
- that it is performed on behalf of the third party,
- that it is performed as a economic activity or under civil contract.

The trouble is that, in practice, with such a broad general definition lobbying it is difficult to establish at which point the "regular lobbying" it takes on the nature of "professional lobbying". This problem is apparent especially in the case of non-governmental organizations, which very often engage in advocacy activities (e.g. defending the rights of certain social groups, representing their beneficiaries, or defending some common good).

NGOs more often than others use external experts and specialists, who represent their interests and the interests of their beneficiaries to the authorities. Very common situation is when the entire staff of the organization is employed on the basis of civil contracts. Therefore, people working in NGO on such conditions, while representing its interests to the authorities (e.g. during social consultations of a given draft of law) may be always

[12] Wiszowaty Marcin, 2006, Ustawa o działalności lobbingowej…

[13] Zubik Marek, 2006, Ustawa o działalności lobbingowej w procesie…

treated as professional lobbyists. Consequently, if they act without registration, they expose themselves to severe fines.

This situation shows clearly the nature of the conflict between the two modes of citizen participation in decision-making processes. The law obliges ministries to carry out public consultations on of many of their decisions. Certain categories of social partners, as trade unions or employers' organizations, have even constitutionally guaranteed right to participate in the legislative process (e.g. through the Tripartite Commission). They also often use external experts in order to represent their interests. Should they be treated as lobbyist or even professional lobbyists?

Similar problem concerns lawyers. According to Polish law barristers, legal advisers, professors of law, etc. are obliged to engage in actions aimed at improvement of the legal system. If they want to fulfill this mission, they inevitably must participate in the legislative works[14]. Does this mean that also lawyers of professors should be treated as lobbyists, or even professional lobbyists, because most of them run their offices activity in a form of economic activity or work on civil contracts? Again Polish lobbying law is ambiguous on this issue, what might result in abuses of both public authorities and dishonest lobbyists.

An example over-interpretation of the definition of lobbying may be attempts to limit the access of trade unions representatives to the parliamentary subcommittees meetings. According to the Rules of Sejm professional lobbyists cannot participate in sessions of parliamentary subcommittees (I will discuss this problem also later). In 2009 one of MPs submitted a query on this in issue to parliamentary lawyers. He tried to use the provisions of lobbying law to exclude trade union representatives from consultations on the one of bills discussed at that time. The parliamentary lawyers recommended that the participation of labor unions in this process should not be blocked. However, the expert opinion did not state clearly whether the labor union representative should be or should not be treated as professional lobbyists.

In the context of the problems identified above, less important question is hardly to understand limitation of professional lobbying only to activities conducted on the basis of commercial activity or under civil contracts. One can equally perform activities defined as lobbying being regularly employed on a position by some company or organization. But according to the provisions of Polish lobbying law it is sufficient that the lobbyist is employed and no longer will be considered as ‘professional lobbyist’. This solution is against the all other of lobbying regulations in the world.

[14] Kuczma Paweł, Adwokaci i radcy prawni to lobbyści, Rzeczpospolita, wyd. 19.02.2010

Faulty control of lobbying activities

The question of legal definition of lobbying is essential. Its defectiveness determines malfunctioning of the whole regulation. However, other provisions of the Polish lobbying legislation also generate many problems. Among the most important are regulations of the registry of professional lobbyists and the procedures for supervising their activities.

A fundamental problem of the registry is related to the definition of the professional lobbying. If we cannot be sure who is a professional lobbyist, we will not know either who should or should not be registered. While works on this paper continued, in the registry of professional lobbyists administered by the Ministry of Ministry of Interior and Administration figured 165 subjects[15]. In the parliamentary registry were only 13 professional lobbyists[16]. Both registries included various types of subjects – individuals, enterprises, foundations and associations. Even a cursory analysis of the content of both registers allows us to conclude that many of those who are listed there, decided to register "just in case", with no certainty if they might be fined for doing their activities without registration. In result the registry of professional lobbyists does not let us to verify who actually is a real professional lobbyist and who is registered just because of vagueness of lobbying legislation.

Regarding the control over the professional lobbying activity, we must draw attention to the fact that the law provides that only the officials have an obligation to report. At the same time the lobbyists themselves do not have any reporting obligations. Thus we are dealing with two problems. The first is again related to the vague definitions of lobbying. Officials of the ministries every day contact with various stakeholders. However, the lobbying law does not provide clear criteria that would allow them to determine which subject interested in a given legislative process is a regular or professional lobbyist, and which is not. Furthermore, we cannot be sure who the 'professional lobbyists' is. It is therefore not surprising that according to the evaluation report describing functioning of the lobbying law in the first year since day it has entered into force; all eighteen ministries noted just five contacts with professional lobbyists[17]. Meanwhile, in the registry figured 77 subjects. Moreover, in the memorandum of the Ministry of Interior and Administration on the functioning of the registry of professional lobbyists it is stated that since March 2006 there were issued just few certificates of registration. So far, no one was fined for carrying out professional lobbying without registration. This information by no means is a proof for low activity of professional. It only shows that they perform their activities down by lobbying legislation. It would difficult to assume

[15] Source: MSWiA (http://www.bip.mswia.gov.pl/download.php?s=4&id=2110)
[16] Source: Sejm (http://orka.sejm.gov.pl/SQL.nsf/lob?OpenAgent&wykazl)
[17] MSWiA, Raport o funkcjonowaniu ustawy o działalności lobbingowej w procesie stanowienia prawa, styczeń 2007 (manuscript)

that lobbyists are not interested in the ongoing legislative work in the ministries. Of course they are, but apparently the lobbying law is simply bypassed.

In this context, it is worth to notice that obligating only officials to report on lobbying is illogical. Such an obligation should be imposed on lobbyists, above all. In most of regulations in the world only lobbyists have to report their activities; in few cases this kind of supervision is applied on both sides[18]. Reports on the activities of professional lobbyists should also be linked to the registry. Only then the registry would function properly and could be valuable source for information (e.g. it would be possible to map areas where influence on legislative processes is most intensive). However, Polish legislator abandoned the idea of imposing reporting obligation for lobbyists, although the relevant provisions were present the first versions of the bill. What is interesting, resignation from this solution was the success of lobbyists themselves who convinced MPs to change the governmental version of the bill while it was discussed in the Parliament. This step has significantly reduced the value of law as a mean of control and disclose lobbying activities.

Ostensible incentives to disclose lobbying activities

The problem of Polish lobbying regulation is also that one of its main objectives was to create mechanisms of disclosure lobbying activities, by creating incentives to carry out lobbying activity in a transparent way. However, the law does not provide any special treatment for professional lobbyists by public authorities, beside the enigmatic assertion that ministries are required to ensure lobbyists appropriate access to offices to help them to represent the interests of parties which they work for. In reality this provision does not create any special facilitation for professional lobbyists. Authorities are required to provide every citizen access to any kind of public information under the provisions of the Constitution and other laws (e.g. law on access to public information[19]), whether one is a professional lobbyist or not.

The same applies to other provisions of the Polish lobbying law, which are only seemingly favorable for professional lobbyist. As it was already mentioned in the first chapter, the law established the obligation to publish legislative plans of the government and particular ministries. Theoretically, this practice should make easy to track current policies of the government gather information about legislative expected to happen in the nearest future. This should be help lobbyists to plan their actions and make the whole legislative process more open and transparent. However the institution of legislative plans existed before the lobbying law entered into force. Even before, such plans used to be

[18] See: Wiszowaty Marcin, Regulacja prawna lobbingu na świecie, Wydawnictwo Sejmowe, Warszawa 2008
[19] Journal of Law No. 112 of 2001 item 1198

prepared and could be reached by any citizen using provisions of the Law on Access to Public Information. Of course, the introduction of the obligation to publish legislative plans had some positive effect, but did not constitute any substantial change in the whole legislative system. This solution either does not help too much professional lobbyists, due to the fact that every year approx. 30% of all legislative initiatives are run apart from legislative plans. Therefore, practical value of these plans is rather moderate.

The best example of inconsistency of Polish lobbying legislation are provisions of the Rules of Sejm that have resulted from the Law on Lobbying Activity in Legislative Process. Apart from introducing the separate registry for professional lobbyists Rules of Sejm also specified procedures for lobbyists willing to participate in parliamentary works. Changes resulting from the lobbying law again did not help to make lobbying activity easier and more transparent. Actually, after Rules of Sejm has changed, work of lobbyists became even more difficult. Let's mention only two solutions which have negative effects.

Professional lobbyists willing to conduct their activity in Sejm are obliged to wear special red badges. At the same time, they are forbidden to enter the subcommittees meetings. Anyone who has even basic knowledge about the legislative procedures in the Polish Parliament knows that it is subcommittees, where the most important decisions about content of bills are made. It is a paradoxical situation in which professional lobbyists – those who are naturally the most interested in the legislative process have been stigmatized and forbidden to participate in legislative works on their most important stage. Simultaneously, almost everyone interested in works of any subcommittee, can obtain an invitation of the chairman and freely participate in all sessions.

Public Hearing – good institution but not for lobbyists

The fact that with the entry into force of the Act of Law on the Lobbying Activity in the Legislative Process established the institution of the public hearing could be seen as a success. However, there is no legal system in any other country in which public hearings would be defined as an instrument for conducting lobbying activity or a tool for professional lobbyists. In Poland, however legislator decided to make an experiment and regulate institution of public hearing as a platform for lobbyists. By this, two different modes of citizen participation in decision-making processes have been confounded. It did not make lobbying activity easier or more transparent, but had negative effect on institution of the public hearing[20].

[20] Grzegorz Makowski, Jarosław Zbieranek, 2007, Lobbing w Polsce – żywy problem, martwe prawo, Analizy i Opinie, No. 79

Analysis of public hearing practices in other countries shows that it is nothing less than a method of execution of the right of petition. It is also a way to involve citizens in various decision-making processes. Combining public hearing with the lobbying, which has been legally allowed, but at the same time has rather negative social image, caused that from its beginning institution of public hearing has been disavowed.

On the average, several hundred of drafts of ordinances or acts, on which the government works every year, no more than 30 departmental hearings have been conducted, since when lobbing law entered into force in 2006. Also in the Parliament public hearing is not a commonly used instrument. Since 2006 there have been conducted only 14 public hearings. It should be noted that none of professional lobbyists registered in MSWiA or in Parliamentary took part in any public hearing conducted in Sejm.

Dysfunctions of the public hearing are multiplied by the fact that the regulations of this institution are full of drawbacks. The law on lobbying, for example, states that that once a public hearing is announced, it may be canceled or postponed within three days before the declared date, due to "technical reasons or inadequate office conditions", without the possibility to appeal such a decision. Also provisions of the Rules of Sejm make this institution rather ineffective. Parliamentary hearing may be conducted only once during whole legislative process – after the first reading of a bill and before initiation further detailed legislative works. Hearing is initiated at the request of at least one of the deputies who is a member of a given committee. From the formal point of view hearing parliamentary hearing is a special session of a parliamentary commission. Presidium of a given commission makes decision on conducting hearing and sets out how it should be organized. As in the case of governmental hearings, also public hearing conducted in Sejm may be canceled for technical reasons or inadequate office conditions. Interestingly, presidium of the committee also has the powers to change the list of participants. Besides very general regulations of the Rules of Sejm there are no other instructions, which would indicate how to conduct properly the parliamentary hearing. It should be also noted that neither the act on lobbying nor ordinances give any guidance how to decide which drafts should be subject to public hearings.

Another controversial solution concerning organization of parliamentary public hearings is related to the provisions of the Rules of Sejm determining that the procedure might be initiated, at the request of a deputy. Taking into account the definition of lobbying one may find himself in a paradoxical situation. How a citizen may convince a member of parliament to make request for a public hearing, if not by convincing him to do so. This is kind of behavior is of course an attempt to influence legislative process. In result, anyone trying to contact MP asking for initiating public hearing might may be accused for doing lobbying or even professional lobbying if he or she acts on behalf of the third party.

In conclusion, I would like to notice that, as in the case of provisions concerning legislative plans of the government or expressing interest in the legislative works, also parliamentary public hearing could be regulated (and indeed should) within already existing law. The public hearing institution could be incorporated into the Rules of Procedure of Sejm regardless of lobbying laws. It is also worth mentioning that obliging Sejm through adoption of the lobbying law to change its rules gives another reason to proceed this legislation to the Constitutional Court. According to experts, such a solution may be treated as interference in the constitutionally guaranteed independence of the legislative power from the executive power[21].

Other concerns

Last but not least, it should be noted that another major fault of the polish lobbying law is limited subjective and objective scope. I have mentioned earlier that the title of this act does not correspond to the subject of the regulation. The Act of Law on the Lobbying Activity in the Legislative Process that regulates lobbying, only fragmentarily creates an illusion of control. At the same time, many areas where the legislative process goes on (as the office of President, or local governments), are not covered by this legislation. The Polish lobbying law is also limited only to the law-making process. However, most of lobbying legislations in other countries regulate other forms of influencing decisions taken by a public authority, e.g.: licensing, concessions, or issuing administrative decisions.

Possible future changes

Despite much criticism the law on lobbying has not been the subject of interest of politicians, until 2010. For almost four years decision-makers were passive, although the Ministry of Interior and Administration, responsible for monitoring the implementation of this law, had reports proving it did not work properly. The only adjustment that has been to this law resulted from changes in mode of preparation of drafts of the normative acts by the government, but these amendments were rather minor.

Only at the end of 2009 the law on lobbying became an issue for the politicians. Again, the reason was the scandal. This time the it was related to attempts to influence legislative works on bill regulating gambling market in Poland. Some of representatives of the gambling industry were accused for lobbying illegally members of the government and the deputies of the ruling party. The scandal was even more serious due to the fact that also the prime minister became suspect. In these circumstances government declared that

[21] Zubik Marek, 2006, Ustawa o działalności lobbingowej w procesie…

the law on lobbying must be changed. The works were initiated parallelly by two competing ministers – the chief of the Prime Minister's Office and the Prime Minister's Plenipotentiary for Combating Corruption. Two general directions of possible changes emerged.

The first approach, assuming either simplification of even repeal of existing lobbying legislation and changing other regulations relating to the legislative process in general (e.g. regulations concerning preparation of draft laws by the government) to make them more efficient propitious to more transparent law making. The second, more radical approach, assumes strengthening of existing lobbying regulation and extending its provisions. Very first proposals assumed broadening of the definition of lobbying to activities aimed at influencing the administrative decisions and inclusion of the local governments under the rigor of the new lobbying law. These works, however, lost impetus with the fall of the intensity of public debate concerning the scandal.

Until this paper was completed, there was no officially presented draft or even outline concerning possible changes in the lobbying law. However, the legislative plan of the government for the first half of 2010 announces adoption of a new lobbying legislation or amendments to the existing one. Nonetheless, at this stage it is difficult to predict which direction the changes will go.