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THE LEGAL ANALYSIS OF THE POSSIBILITY OF CREATING WOMEN'S COUNCILS: A PROPOSAL FOR LEGISLATIVE CHANGES

| Abstract

- ▶ *Goal* – The aim of this analysis is to examine the legal possibilities for establishing Women's Councils as advisory bodies within the structure of a Polish local government, as well as to present proposals for legislative changes in this regard. The primary issue is the legal grounding of Women's Councils in the constitutional laws of a local government, following the model of youth and senior councils.
- ▶ *Research methodology* – The paper analyses the existing legal regulations, their consequences for the functioning of councils, and recommendations concerning their future role in the local government system.
- ▶ *Score/results* – The results of the analysis constitute proposed solutions to strengthen the role of Women's Councils, consultative bodies in a local government, following the example of experience and evolution of practice and legislation regarding Youth Councils and Senior Councils.
- ▶ *Originality/value* – The outcome of the analysis constitutes the proposal of recommendations for legal solutions that will strengthen the institutional framework of advisory bodies such as Women's Councils

| **Keywords:** Women's Councils, local government, constitutional law, social organisations, civic participation, legislative changes.

1. Introduction

Women's Councils are relatively new advisory bodies that have been established in a Polish local government since 2010 (the first Women's Council was created

in Wrocław in 2010). They were initiated by various social organisations that recognised the need to increase women's representation in decision-making processes at the local level. In recent years, there has been a growing number of such councils in Poland, reflecting the increasing importance of social participation and civic activity in shaping local policies. Women's Councils, alongside senior councils, youth councils of municipalities, youth councils at regional assemblies, economic councils, and public benefit councils, are advisory bodies that strengthen local governments and encourage social engagement.

The new pathways for citizen participation in decision-making processes, which Women's Councils are currently pursuing, have already been outlined by the activities and functioning of youth councils and senior councils within a local government. In the case of youth councils and senior councils, local government bodies, mostly executive authorities, created new forms of social participation through administrative orders until regulations at the statutory level were introduced.

A noticeable increase in the creation of Women's Councils occurred in 2018, a year in which Polish women celebrated the 100th anniversary of gaining the right to vote and other subjective rights. Polish women were among the first Europeans and the first women in the world to obtain voting rights through the Decree of the Head of State, Józef Piłsudski, on the electoral law for the Legislative Sejm on November 28, 1918 [*Decree on the Electoral Code for the Legislative Sejm Journal of Laws*, 1918, no. 18, item 46]. The right to vote and to stand for election allowed women to run for and elect representatives to governing bodies. The centenary of this event became an inspiration for women's activities in various social spheres.

Currently, more than 50 Women's Councils operate in Poland (including two at the level of regional self-governments) (As of December 1, 2024). These councils have been established in local governments and regional assemblies, including, for example, the Wrocław Women's Council, Przemyśl Women's Council, Słupsk Women's Council, Hrubieszów Women's Council, Tarnobrzeg Women's Council, Dzierżoniów Women's Council, Koszalin Women's Council, Kalisz Women's Council, Lubusz Provincial Women's Council, Piaseczno Women's Council, Białogard Women's Council, and Kielce Women's Council. These bodies are established within municipal units or regional self-governments.

Following the initiative of the Women's Forum of Podlasie, the Podlaskie Women's Council was established in January 2023 at the Marshal of the Podlaskie Voivodeship. [Resolution no. 315/5821/2023 of the Board of the Podlaskie

Voivodeship of January 5, 2023]. In May 2023, the Białystok Women's Council was created at the President of Białystok's office [Order no. 485/23 of the Mayor of the City of Białystok of May 25, 2023].

These new initiatives play a significant role in promoting women's activity in regions that have made efforts to increase their representation in public life. Although Women's Councils have already been established in many municipalities and provinces, there is still no legal framework that would ensure their legal stability and full legitimacy.

The purpose of this analysis is to assess the legal basis for the functioning of Women's Councils and present proposals for legislative changes that could anchor these bodies in the local government system. The paper will include a comparative legal analysis, drawing on the experiences of youth councils and senior councils, which serve as model examples of advisory bodies operating within local government structures. The theses proposed for the article are as follows:

- The executive body of local government units can optionally create a Council by administrative order as an advisory body, without granting it external competencies.
- Councils established by executive orders (by mayors, presidents, as well as regional and provincial authorities) are not independent from the body that creates them in terms of organisation and financial subjectivity.
- The creating body is not bound by the results of the work of the Council.
- Women's Councils can be established within the local government structures through amendments to the municipal statute.
- Women's Councils should be legally grounded in the constitutional laws of a local government, following the example of youth councils and senior councils.

2. Subject of the legal analysis

The subject of this legal analysis is the possibility of situating Women's Councils as advisory bodies within the constitutional law of local government – the governing statutes of local government units – and granting them rights equal to those of youth councils or municipal senior councils.

- The Constitution of the Republic of Poland of April 2, 1997 [Journal of Laws no. 78, item 483, as amended], hereinafter: "Constitution of the Republic of Poland";

- The Act of April 7, 1989 – Law on Associations [consolidated text, Journal of Laws of 2020, item 2261, as amended], hereinafter: “Law on Associations”;
- The Act of March 8, 1990 on Municipal Government [consolidated text, Journal of Laws of 2023, item 40, as amended], hereinafter: “u.s.g.”;
- The Act of June 5, 1998 on County Government [consolidated text, Journal of Laws of 2022, item 1526, as amended], hereinafter: “u.s.p.”;
- The Act of June 5, 1998 on the Voivodeship Government [consolidated text, Journal of Laws of 2022, item 2094, as amended], hereinafter: “u.s.w.”;
- The Act of April 11, 2001 amending the Acts on Municipal Government, County Government, Voivodeship Government, Government Administration in the Voivodeship, and amending some other laws [Journal of Laws no. 497], hereinafter: “Amendment Act of 2001”;
- The Act of April 20, 2021 amending the Act on Municipal Government, the Act on County Government, the Act on Voivodeship Government, and the Act on Public Benefit Activity and Volunteering [Journal of Laws, item 1038], hereinafter: “Amendment Act of 2021”;

3. Legal forms of Women’s Councils

Practical experience indicates that Women’s Councils so far have been created through administrative orders issued by mayors (or presidents). In the case of Women’s Councils at the voivodeship level, the legal act is a resolution of the voivodeship board establishing the Women’s Council with the Marshal. The first such council was the Lubelskie Voivodeship Women’s Council, created on June 18, 2019. [Resolution no. 40/617/19 of the Lubuskie Voivodeship Board of June 18, 2019]. This is an advisory, consultative, and initiatory body, focused on monitoring and analysing the needs of women in the region and raising awareness of gender equality. Councils established through the administrative order of the executive body include:

- Wrocław Women’s Council [Order no. 1157/19 of the President of Wrocław of June 17, 2019];
- Dzierżoniów Women’s Council [Order no. 557/2019 of the President of the City of Dzierżoniów of October 11, 2019];
- Piaseczno Women’s Council [Order no. SPS.0050.25.2019 of the Mayor of the Town and Commune of Piaseczno of April 10, 2019];

- Tarnobrzeg Women's Council [Order no. 21/2022 of the Mayor of Tarnobrzeg of January 19, 2022];
- Przemyśl Women's Council [Order no. 477/2020 of the Mayor of Przemyśl of December 9, 2020];
- Wałbrzych Women's Council [Order no. 374/2022 of the Mayor of Wałbrzych of May 26, 2022]

Another legal form in which Women's Councils operate is a registered association (e.g., the Municipal Women's Council in Łobżenica, the Municipal Women's Council in Grodziczno, the Municipal Women's Council Association in Nakło nad Notecią).

Such legal forms are not without their flaws. Therefore, it is essential to propose alternative solutions that would strengthen the status of these advisory bodies.

The first proposal to enhance the status of Women's Councils is to establish them as auxiliary bodies within local government units. Legal doctrine indicates that "both the ordinary legislator and the legislative bodies of local government units (municipalities) may create auxiliary bodies, both for the municipality and for its constitutional bodies. They have the organisational power to do so, under one non-overridable condition: that the legal status of these bodies as auxiliary organs does not take over the public tasks and authoritative competencies of the legislative and control bodies, as well as the executive bodies of the municipality, and the auxiliary bodies provided for by the law (this requirement applies to municipalities and other local government units). The tasks of these auxiliary bodies should be clearly instrumental to the tasks and bodies of the municipality and should not conflict with those tasks and their competencies" [Niżnik Dobosz, 2022, LEX].

The doctrine emphasises that "the creation of original organisational solutions is not excluded *ex definitione*, but jurisprudence shows strong resistance to municipal initiatives that aim to create new structures, especially if they are intended to transfer competencies of bodies and entities provided for by law. In principle, only when the creation of such structures does not involve assigning them any competencies (even advisory ones), the right to create them is not contested" [Chmielnicki, Warsaw, 2006].

Therefore, there are no legal obstacles to the functioning of Women's Councils as auxiliary bodies within JST, which may initiate actions, issue opinions on matters presented by decision-making bodies (resolving issues through legal actions), or only perform supervisory tasks [Ochędowski, Toruń, 2013: 252].

A decision by the mayor (or town president) is the most common legal solution used in establishing Women's Councils. However, it is important to note that this legal form of a normative act is internal and does not have the character of local law. A decision only applies to the organisational units under the mayor (or president). It should also be noted that such a decision is not published in the official journal. It is not a universally applicable act and cannot create entities in the external sphere with their own tasks and competencies. ("Article 93, paragraph 1 of the Constitution of the Republic of Poland: a regulation is an internal act and applies only to the organisational units subordinate to the authority issuing the act.").

It is worth noting that in each of the decisions analysed by the mayor (or president) on the establishment of a Women's Council, Article 31 of the "Municipal Government Act" (u.s.g.) was cited as the legal basis. This is particularly noticeable in the decisions of the President of the City of Rzeszów and of the Mayor of Hrubieszów, where this provision of the "Municipal Government Act" served as the sole and exclusive legal basis for issuing the act. Apart from the aforementioned Article 31 of the "Municipal Government Act," the executive bodies in the analysed decisions referred to:

1. Article 11a(3) of the "Municipal Government Act" – this provision states that "whenever the law refers to a mayor, this should also be understood as referring to a town president or city mayor;"
2. Article 30(1) of the "Municipal Government Act" – this provision states that "the mayor executes the resolutions of the municipal council and tasks of the municipality defined by law;"
3. Article 33(3) of the "Municipal Government Act" – this provision states that "the head of the office is the mayor;"
4. The organisational regulations of the city/municipal office. According to Article 33(2) of the "Municipal Government Act," "the organisation and operational principles of the municipal office are specified by the organisational regulations issued by the mayor through a decision."

Regarding the correctness of the legal basis for the decision to establish the Women's Council, the position was taken by the Warmian-Masurian Voivode in their supervisory decisions. In the supervisory decision of June 18, 2019, the Warmian-Masurian Voivode, based on Article 91(1) of the "Municipal Government Act," declared the decision of the Mayor of Iława from March 8, 2019, no. 00-50-24/2019, establishing a Women's Council in the Municipality of Iława

and determining the recruitment and operational rules, to be invalid. The supervisory body argued that Article 31 of the “Municipal Government Act” cannot serve as the basis for such a decision, as this provision provides a statutory delegation in strictly defined legal frameworks for the executive body to take actions representing the municipality. The “Municipal Government Act” does not define the scope of the mayor’s, town president’s, or city mayor’s representation, but according to the Voivode, it is assumed that this represents the municipality both in the public-law (constitutional) and civil-law spheres. Within this scope, it can be assumed that the representation extends to both legal and non-legal actions. Therefore, in the view of the supervisory body, this provision does not authorise the executive body of the municipality to issue decisions that have an authoritative and public-law nature.

In its ruling of March 1, 2022, the Supreme Administrative Court (NSA) [Case reference III OSK 2738/21, CBOSA] stated that “Article 31 of the ‘Municipal Government Act’ does not provide a basis for issuing a decision to establish a consultative and advisory body.” According to this provision, the mayor (town president, city mayor) manages the ongoing affairs of the municipality and represents it externally. Representation by the mayor (or city president) means interacting with external entities under both private law and public law, and it extends beyond the competencies to undertake legal actions from which this representation arises (for example, representing the municipality at a courtesy meeting). On the other hand, managing the ongoing affairs of the municipality refers to a collective description of the position of the mayor (or town president) as the managing body of matters whose execution results from other legal acts (especially from laws).

In the case law of administrative courts, there is an argument questioning the possibility of establishing Women’s Councils based on Article 31 of the “Municipal Government Act.” The Provincial Administrative Court in Olsztyn questioned the possibility of relying on Article 31 of the “Municipal Government Act” when establishing a Women’s Council through a decision by the executive body of the municipality (II SA/OI 962/19). According to Article 31 of the “Municipal Government Act,” the mayor manages the ongoing affairs of the municipality and represents it externally. In contrast, Article 7(1)(17) of the “Municipal Government Act” states that satisfying collective needs of the community is one of the municipality’s own tasks, and these tasks include, among others, supporting and promoting the idea of local government, including creating conditions for the operation and development of auxiliary units and implementing programs to stimulate civic activity.

It is worth considering whether the cited legal basis is justified and whether the executive body has the authority to create an advisory body through a decision. The legal basis for the decision and the executive body's creative powers are questioned by the judgment of January 21, 2020, by the Provincial Administrative Court in Olsztyn (II SA/OI 962/19), which addresses the inadmissibility of establishing a municipal Women's Council. The court referred to the constitutional principle of the rule of law. The judgment indicated that there is no legal basis for establishing a Women's Council as an advisory and consultative body in a municipality based on the executive body's power to manage the municipality's affairs or represent it externally. The court referred to the principle of legality, enshrined in Article 7 of the Constitution of the Republic of Poland, which requires that the matter regulated by a normative act must result from a statutory delegation and must not exceed the scope of that delegation. The executive body is not authorised to regulate what has already been regulated by law. According to the court, any regulation that exceeds the statutory authorisation is a violation of the competency rules and the constitutional conditions for the legality of a legal act issued on the basis of a statutory delegation. The court's decision indicated that not only is the normative act issued in violation of the statutory authorisation invalid, but it also regards any act that does not fulfill the authorisation.

The Provincial Administrative Court in Olsztyn ruled that the decision issued by the mayor, based on Article 31 of the "Municipal Government Act" regarding the principles of recruitment and operation of the Women's Council should be deemed invalid. According to the court, the creation of such a body by the executive body of the municipality, under the powers granted by Article 31, was not legally permissible. The court emphasised that this provision does not authorise the executive body to create auxiliary bodies such as the Women's Council, which could have advisory or consultative functions, as such bodies are outside the scope of what is foreseen in the law for the mayor's powers.

The judgment, based on the principle of legality, is an essential reminder that legal acts, especially those of public bodies, must adhere strictly to statutory provisions and not exceed the scope of the powers granted. The decision confirms that the mayor cannot issue normative acts creating new bodies with legal status, as this would violate the boundaries of their competence and undermine constitutional principles, such as the rule of law and legal certainty.

The legal uncertainty surrounding the establishment of Women's Councils through executive decisions highlights the importance of a clear legal framework. There is a need for specific statutory authorisation if such councils are to

be formally established, rather than relying on broad provisions like Article 31, which primarily deals with the mayor's duties concerning the general management of municipal affairs and external representation.

In light of the above, the legal analysis shows that establishing Women's Councils based solely on a decision by the mayor or town president under Article 31 of the "Municipal Government Act" is problematic. Such councils, as advisory or consultative bodies, require a clearer, more explicit legal basis in order to function within the local government framework. While municipalities are empowered to create auxiliary bodies, the creation of these bodies must be carefully designed to fit within the limits of legal authorisation and not infringe upon the competencies of other statutory bodies. Therefore, to avoid legal challenges and ensure the proper functioning of Women's Councils, it would be necessary to either amend the existing legal framework or to adopt new regulations that explicitly authorise the creation of such bodies in local government structures.

In summary, it should be noted that case law of administrative courts indicates that Article 31 of the Act on Municipal Government does not constitute a sufficient and independent legal basis for issuing an order to establish a consultative body. This provision does not contain a competence rule granting the mayor (president, or town mayor) the authority to issue an order concerning the creation of such a body. Therefore, the legal basis for issuing this type of order should be extended to include at least Article 30(1) and Article 33(3) of the Act on Municipal Government but also be grounded in the organisational regulations of the office.

It seems unjustified to limit the ability of local government units to autonomously shape their internal structures. The idea of local government autonomy assumes the independence of local government units in fulfilling the needs of their residents. This autonomy includes, among other things, the ability to create advisory, consultative, and initiatory bodies that support the activities of both structural bodies in local government and the functioning of local government itself. The question to consider is which of the bodies functioning within the local government – either the executive body (mayor, president, town mayor) or the legislative body – the municipal council, is competent to create advisory bodies? One might ask whether both constitutional bodies have the same legal power in reinforcing the idea of a local government's autonomy. Assuming that the presumption of competence lies with the legislative body in local government units, the creation of consultative bodies through resolutions of local government

legislative bodies could be a more effective legal solution that gives greater legitimacy to these advisory bodies.

4. Experiences of the existing Women's Councils

As can be seen from the experience so far, Women's Councils have the following functions:

- **Consultative:** Providing an opportunity to give opinions on local strategies, development programs, draft resolutions, undertaken initiatives, or investments, particularly regarding their impact on the quality of life for women.
- **Advisory:** Allowing the use of knowledge on the needs, rights, and opportunities of women when developing strategies, programs, and other documents related to the development of women.
- **Initiatory:** Enabling the council to propose its own ideas for actions aimed at women, supporting women's activities, and encouraging all forms of participation, including those aimed at utilising their potential.

The most important areas of activity defined by Women's Councils are:

- **Health and health prevention:** Including cancer prevention, subsidies for in vitro procedures, subsidies for HPV vaccines, health programs for women.
- **Education:** Workshops for women, including those related to personal development, legal education, and civic social activity.
- **Cultural events:** Exhibitions, cycles of meetings about well-known local women, community meetings, cooperation with local associations.
- **Participation in consultations concerning issues related to ecology,** promoting actions against menstrual poverty (the so-called "pink boxes"), and issues related to women's transformations and image.

Given the spheres of activity of Women's Councils, it is worth considering whether the intention of those initiating the creation of Women's Councils is to amplify the voice of women in shaping local public policies in general, or whether these should be bodies solely focused on a narrow, specialised set of issues affecting women in the local community. In my opinion, it would be more reasonable to focus on incorporating the female perspective into all public policies, especially in the area of social issues, but not limited to just that.

5. Establishment of Women's Councils

Since the Act on Municipal Government does not provide specific regulations regarding the creation, functioning, and role of Women's Councils, these consultative bodies are established through resolutions or orders issued by executive bodies. An analysis of the 39 existing Women's Councils indicates that councils at the municipal level are created through orders of the executive body, while at the regional government level, they are created by resolutions of the regional executive body.

There are two procedural practices related to the establishment of these bodies:

1. The first, bottom-up procedure involves the initiation of the council's creation by a grassroots group that submits a proposal to the executive body. In this case, initiators typically present a list of candidate initiators for the Women's Council along with recommendations for experts who could collaborate with the council.
2. The second method involves an initiative from the local government bodies. The establishment of the council is linked to a competition in which eligible individuals can participate according to the rules. Women's Councils typically consist of 7 to 25 members, depending on the size of the municipality. The optimal number seems to be 15 members. It is important that this group includes representatives from different social groups, with varied experience and age. Typically, this group includes representatives from the local government administration appointed by the executive body, councilors, civil servants (if there is a position of an equal treatment officer, she should also be included), and heads of municipal organisational units. Another group could consist of women representing local businesses and entrepreneurship, as well as representatives from social organisations, local activists, and academic circles.

The formal requirement for candidates for the Women's Council is their maturity (18 years of age) and permanent residence in the area of the given municipality or another territorial self-government unit. In some regulations, this requirement is extended not only to women residing in the municipality, but also to those conducting business activities in the area or who are permanently involved in the community through social, cultural, or other forms of activity. While elections require residence in the territorial self-government unit for both candidates and voters, in the case of public consultations, it is justifiable to extend this subject area to individuals who are connected with the unit, similar to the rules for participation in consultations.

6. Loss of membership in the Council

An analysis of orders and resolutions establishing Women's Councils indicates that membership can be lost due to the following circumstances:

1. Written resignation from a member.
2. In the case of a member ceasing to work in the municipal office (for those appointed from among municipal employees).
3. Withdrawal of recommendations by a non-governmental organisation or the withdrawal of recommendations from a self-government body (usually the executive body).
4. A criminal conviction for a deliberate crime.
5. The death of a member.
6. Three unjustified absences from council meetings within a year.
7. Other important reasons.

The ambiguous term "other important reasons" seems to be too broad and may serve as a loophole for removing a member from the council. Withdrawal of recommendations or voluntary resignation from a member are rational reasons based on the voluntary nature of participation in the council's work.

7. Functioning of the Council

The term of office of Women's Councils lasts from 3 to 5 years, and in the case of the first councils, it usually does not coincide with the term of office of the body that created the council. It happens that councils created through grassroots initiatives last for a shorter period compared to those created through competition.

Current practice indicates that the number of members in the council ranges from 7 to 25. The optimal number seems to be 15 members, from an organisational perspective, as well as in terms of the effectiveness of the council's functioning. A very large membership can hinder the council's work. If not carefully considered, such a large body may face difficulties ensuring full attendance or active participation, which can lead to the collapse or ineffectiveness of the Women's Council.

The main tasks of Women's Councils are:

1. Analysing the municipality's policies in terms of the needs of women.
2. Diagnosing the situation of women in the municipality.

3. Educating residents of all ages about gender equality and women's rights.
4. Supporting social initiatives and events focused on women's issues and gender equality.
5. Monitoring municipal activities related to family policies.
6. Monitoring municipal activities related to social policies.
7. Cooperating with other councils, teams, and organisations functioning within the municipality.
8. Taking other actions aimed at promoting gender equality policies within the municipality.

In the case of Women's Councils functioning at the regional level (for example, in the Lubusz Voivodeship), the council's tasks include:

1. Diagnosing the situation of women in the Lubuskie Voivodeship.
2. Analysing policies in the Lubuskie Voivodeship concerning women.
3. Educating residents on gender equality and supporting gender equality campaigns as well as health awareness campaigns.
4. Analysing needs and initiating actions supporting women's return to the job market.
5. Supporting social initiatives and events promoting women's issues and gender equality.
6. Monitoring activities in the Lubuskie Voivodeship related to family, social, and senior policies.

Councils perform their tasks primarily through continuous cooperation with municipal councils, non-governmental organisations, and other entities whose goals align with those of the council. Another point is the ability to submit proposals for initiatives to the legislative body and to direct inquiries and proposals to the executive body.

Regarding the functioning of Women's Councils, it is possible to draw from the experiences of other bodies within a local government, such as youth councils and senior councils. The council has an internal organisational body, similar to a presidium, composed of councilors, a chairperson, two vice-chairpersons, a secretary, and a treasurer. The presidium is responsible for managing the current affairs of the council, preparing the council's work plan, drafting resolutions, representing the council externally, and overseeing the execution of the council's tasks. The presidium should be elected at the first council session by a simple majority of votes, with at least half of the council present.

8. Conclusion

Undoubtedly, one of the challenges for the future of Women's Councils will be creating a vision and mission for these consultative bodies, as well as a strategy for the development of local government units. It is also important to establish principles for cooperation with local government bodies. Another aspect to consider is financing the councils' activities.

Currently, many councils function based on limited budgets and rely heavily on voluntary work and support from local organisations. A more systematic approach to funding, possibly through municipal or regional budgets, would allow for a more sustainable and effective implementation of the councils' activities. It would also help ensure that the councils can adequately address the needs and challenges of women in the local communities.

In conclusion, while Women's Councils represent a valuable tool for promoting gender equality and supporting women's involvement in public life, their long-term success will depend on securing proper legal and financial foundations, as well as fostering strong cooperation between these bodies and local government structures. Properly functioning Women's Councils could play a crucial role in making local governments more inclusive, ensuring that women's voices are heard and their needs are addressed in policy-making processes.

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