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À PROPOS DE NOUS

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PARTICIPATORY BUDGETING IN POLAND - NEW LEGAL REGULATIONS AND RULES FOR IMPLEMENTATION

(ON THE EXAMPLE OF THE CITY OF LODZ)

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Participatory budgeting has existed in Poland for several years. The first city to have established this process was Sopot in 2012. A year later, participatory budgeting appeared in about 50 local government units, and another 20 decided to enter it into the budgets for 2014 (for example, Lodz or Warsaw). Currently, participatory budgets are present in about 200 local government units; these are not only cities but also rural communes, poviats, and voivodships.

The aim of the article is to present and analyze new regulations regarding the institution of participatory budgeting in Poland. These considerations will be supplemented by discussing the principles of its functioning on the example of participatory budgeting in the city of Lodz for 2019.

There are several arguments for choosing the example of participatory budgeting in the city of Lodz for analysis.

Lodz was in the group of Polish cities that quickly introduced participatory budgeting. The first time that participatory budget appeared in the budget was 2014, which means that its sixth edition ended in 2018.

Secondly, Lodz was one of the first cities to have “believed” in the potential of this institution. In the first edition of participatory budgeting (2014), a large amount was allocated to voting of local residents (20 million PLN), and in the second edition (2015), this amount was doubled (to 40 million PLN). By the decision of the local government authorities, the amount allocated for the participatory budget for 2020 will increase to 50 million PLN. These amounts were and are still very high not only in comparison to the participatory budgets of other local government units, but also with respect to Lodz’s budget expenditures.

Thirdly, in Lodz - for the first time in Poland - a participatory budget as a form of consultations regarding the directions of spending public funds does not only refer to budget expenditure, but also to a part of the public university expenditure. In 2018, the authorities of the Faculty of Economics and Sociology of the University of Lodz decided to carry out participatory budgeting on a Faculty level. Funds earmarked for distribution within the framework of the participatory budget were divided into two parts: the employee’s and the student’s. Under the first pool of funds, the right to submit projects and the right to vote was awarded to

employees and doctoral students; these rights are available to full-time and part-time students under the second pool of funds.

§ 1 – NEW LEGAL PROVISIONS FOR INSTITUTIONS OF THE PARTICIPATORY BUDGET

The presentation of Lodz's experience in the field of participatory budgeting will precede the discussion about recent significant changes in the regulations regarding this budget in Poland. The requirements resulting from new regulations will have to be met in the preparation of the participatory budgets of communes, poviats, and voivodships for 2020.

Until 2018, the institution of the participatory budget was not directly regulated by Polish law. The legal basis for its implementation in municipalities was art. 5a sec. 1 of the Local Government Act¹. Pursuant to this act, local legislative bodies have the power to consult with local residents on major issues of the municipality. One of the forms of such social consultations was participatory budgeting. The rules and manner of conducting consultations in the form of participatory budgeting were to be determined by an appropriate resolution of the local legislative body (art. 5a sec. 2 l.g.a.). Analogous provisions included laws on poviats self-government² and voivodships³.

Despite the lack of a legal definition of the participatory budget institution, the Polish doctrine of financial law was in line with the essence of this budget.

The participatory budget was most often defined in functional terms as a form of participation of a given community's local residents in the design of local expenditures⁴. The essence of the participatory budget is the ability of the local residents to decide on one-year public tasks of a given local government unit, which should be financed from public funds in a given year⁵.

There was also no doubt about the impossibility of a participatory budget relative to the local budget, its subsidiarity, and therefore a complementary character, and the fact that it constitutes a financial plan for a part of budget expenditure, and not budget revenues⁶.

On the other hand, the question was whether the result of consultations in the form of participatory budgeting is actually binding for local government authorities. This problem was related

¹ Act of 8 March 1990 about local government, OJ 2018. item 994, further: l.g.a.

² Act of 5 June 1998 about poviat self-government, OJ 2018.995, further: p.g.a.

³ Act of 5 June 1998 about the voivodship self-government, OJ 2018.913, further: v.g.a.

⁴ Zob. D. Sześciło, « Uwarunkowania prawne budżetu partycypacyjnego w Polsce », *Finanse Komunalne*, no. 12/2012, p. 15, D. Tykwińska-Rutkowska, P. Glejt, « Prawna regulacja budżetu obywatelskiego a jego praktyczna realizacja - czyli o uspołecznianiu wykonywania zadań publicznych na przykładzie rozwiązań przyjętych w Trójmieście », *Gdańskie Studia Prawnicze*, no. 34/2015, p. 320.

⁵ B. Jaworska-Dębska, « Normatywne podstawy społecznego dialogu w samorządzie terytorialnym », in B. Jaworska-Dębska, R. Budzisz (dir.), *Prawne problemy samorządu terytorialnego z perspektywy 25-lecia jego funkcjonowania*, Warsaw 2016, p. 60

⁶ Dębowska – Romanowska T., « Budżet obywatelski jako instytucja prawa samorządowego », *Przedsiębiorczość i Zarządzanie*, no. 3/2015, part 3 (Vol. XVI), p. 308.

to the recognition of participatory budgeting as one of the forms of public consultations referred to in art. 5a sec. 1 and 2 of the l.g.a. The authors of the view on the non-binding nature of the results of voting in the participatory budget⁷ referred to the nature of public consultations referred in art. 5a sec. 1 and 2 of the l.g.a. Public consultations - which is indisputable in legal doctrine⁸ and jurisprudence⁹ - have an opinion-giving character, which means that the opinions (expectations) of residents about the manner of resolving a matter belonging to another body's jurisdiction manifests itself through them. Binding the result of voting on a participatory budget, local self-government bodies would therefore stand against the essence of public consultations referred to in art. 5a sec. 1 and 2 of the l.g.a.

The authors of the opposite view argued that despite the lack of provisions explicitly speaking for the binding nature of the participatory budget's voting results, this character resulted from the social contract concluded by the local government authorities with the local residents. Taking the decision on the introduction of a participatory budget by the local government authorities constituted their simultaneous commitment to include budget tasks selected by the local residents in the local government¹⁰. The non-respect of the participatory budget's voting results by not "introducing" selected tasks to the draft budgetary resolution would be a manifestation of a breach of the social contract and at the same time would indicate the simulation of direct democracy¹¹. Other authors, binding on the nature of the participatory budget, justified possible political sanctions that may be incurred by local governmental authorities in the event of failure to execute, change or abandon the implementation of projects selected by the local residents¹².

At the beginning of 2018, the legislator defined the participatory budget institutions and defined the basic principles of their functioning.

The legal regulation of the participatory budget was introduced into local government laws¹³ on the basis of the act of 11 January 2018 on amending certain acts in order to increase the participation of citizens in the process of selecting, operating, and controlling certain public bodies¹⁴.

Most of the new regulations governing the institution of the participatory budget include many solutions already used in local government practice.

⁷ Sześciło D., « Uwarunkowania... », p. 22.

⁸ R. Marchaj, *Samorządowe konsultacje społeczne*, Warsaw 2016, p. 116-117.

⁹ See: judgment of the Supreme Administrative Court in Warsaw of 1 February 2001, file no. II SA 2817/00, LEX nr 54153; judgment of the Supreme Administrative Court in Warsaw of 13 December 2017, file no. II OSK 564/17, LEX no. 2441376.

¹⁰ T. Dębowska – Romanowska, « Budżet... », p. 307.

¹¹ *Ibidem*, p. 308.

¹² D. Tykwińska-Rutkowska, D. Glejt, « Prawna... », p. 322.

¹³ Act of 8 March 1990 about local government, act of 5 June 1998 about powiat self-government, act of 5 June 1998 about the voivodship self-government.

¹⁴ OJ 2018.130.

Firstly, the essence of the participatory budget itself has not changed in comparison to the solutions existing until the end of 2017. The participatory budget is considered as a special form of social consultations, the essence of which is the ability of local residents to decide on a part of the budget expenditure of a given unit. The legislator stipulated that the local residents vote as part of the participatory budget annually and in direct voting.

Secondly, there is the possibility of voting at the level of the entire unit or only a part. According to art. 5 (a) sec. 6 l.g.a. (art. 3 (d) sec. 5 p.g.a.; art. 10 (a) sec. 5 v.g.a.) funds included in the participatory budget can be divided into pools covering the entire commune (respectively poviats or voivodships) and their parts in the form of auxiliary units or groups of auxiliary units (respectively communes or groups of communes, poviats or groups of poviats).

The legislator defining the participatory budget indicated that it constitutes a “special” form of public consultations.

This “special” nature of social consultations in the form of participatory budget in relation to other social consultations referred to in article 5a sec. 1 and 2 of the l.g.a. is expressed in their separate and broad statutory regulation as compared to the regulations applicable to other (“ordinary”) public consultation.

In the field of “ordinary” consultations, the legislator only defines the group of entities (local residents) entitled to participate in them; the determination of other rules and the manner of conducting consultations belongs to the local legislative body¹⁵. Consultations on the participatory budget are regulated in the law to a wider extent¹⁶. As regards the participatory budget, not only the circle of entities entitled to participate in the vote is defined, but also the voting rules (direct and annual voting) and the distribution of participatory budget funds.

The legislator obliged the local legislative body to specify, by way of a resolution, the requirements to be met by the draft participatory budget. The local legislative body is required to specify in particular: 1) formal requirements to be met by submitted projects; 2) the required number of signatures of local residents supporting the project, however, it cannot be greater than 0.1% of the population of the area covered by the participatory budget, in which the project is submitted; 3) rules for assessing submitted projects as to their compliance with the law, technical feasibility, their formal requirements and the procedure for appealing against the decision not to allow the draft for voting; 4) rules governing the voting, determining the results and making them public, taking into account that the voting rules must ensure equality and directness of the vote.

Public consultations in the form of a participatory budget are a “special” form also because of their essence. The participatory budget - as opposed to “ordinary” public consultations - is not a

¹⁵ Art. 5 (a) sec. 1 i 2 l.g.a.; art. 3 (d) sec. 1 i 2 p.g.a.; art. 10 (a) sec. 1 i 2 v.g.a.

¹⁶ M. Rulka, « Ustawowa regulacja budżetu obywatelskiego – wstępna ocena », *Przegląd Legislacyjny*, no. 4(106)/2018, p. 68.

form of social evaluation of proposals, intentions or legal acts prepared by the local legislative body. The participatory budget, being a simplified form of denouncing the position of a resident by voting for a given proposal, is an instrument of social participation of a financial nature¹⁷.

The special nature of public consultations in the form of a participatory budget also results from the binding nature of voting results.

Beginning with 2018, the implementation of the participatory budget evokes legal consequences for a local government unit. The legislator obliged the local government authorities to include resolution tasks selected in the participatory budgeting. In the course of work on the draft budgetary resolution, the commune council cannot also delete or change, to an essential degree, the tasks selected in the participatory budgeting. This kind of legal binding of the local government unit by voting results of the participatory budget did not occur until 2018.

Till 2018, the participatory budget was optional, which means that local authorities could have introduced it, but they were not obliged to do so. Its performance was a manifestation of the goodwill of the local authorities.

From 2018, participatory budget can be optional or obligatory. The legislator has obliged cities with poviats rights to create a civic budget. In other units, participatory budget may or may not be carried out¹⁸.

Regulations have set a minimum amount of obligatory participatory budget - it must amount to at least 0.5% of the commune's expenditure included in the last report on the budget's implementation. The minimum amount of expenditure earmarked for the participatory budget has not been established in relation to budgets of communes other than cities with poviats rights, poviats, and voivodships.

§ 2 – THE IMPLEMENTATION OF PARTICIPATORY BUDGETING IN POLAND ON THE EXAMPLE OF THE CITY OF LODZ IN 2018

The procedure for implementing a participatory budget in Polish local governments is similar. It is the result of the fact that the local government authorities, when defining the principles of this budget, follow the other - previously introduced - participatory budgets. Thus, it is possible to distinguish a general scheme of conduct in which both the local government and local residents

¹⁷ Za: M. Augustyniak, « Dylematy partycypacji społecznej w samorządzie terytorialnym – 25 lat doświadczeń. Wybrane zagadnienia dotyczące form o charakterze fakultatywnym », in B. Jaworska-Dębska, R. Budzisz (dir.), *Prawne problemy samorządu terytorialnego z perspektywy 25-lecia jego funkcjonowania*, Warsaw 2016, p. 69.

¹⁸ Differently: Glejt P., Uziebło P., « Kilka uwag o “nowych” instrumentach partycypacji mieszkańców na poziomie samorządowym », in R. Balicki, M. Jabłoński (dir.), *Dookoła Wojtek... : księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, Wrocław 2018, p. 396.

take part. In Lodz, participatory budgeting takes about 8-9 months. Four stages can be distinguished.

The first stage belongs to the local government authorities. It consists in carrying out a procedure defining budget rules, including the budget amount. The legal basis for creating the participatory budget in Lodz is the decree of the mayor of the city regarding public consultations in the form of participatory budget. The decree for 2019 shows that the amount of the participatory budget is 40 million PLN and will be divided into district (30 million PLN) and extra-residential (10 million PLN) tasks. District tasks are those tasks that are located in the auxiliary unit of the city of Lodz (district) and mainly concern its local residents; extra-residential tasks are tasks for residents of more than one district or such tasks, where the place of implementation is not one district.

The second stage belongs to local residents who submit applications with a proposal of a task to be included in the participatory budget. The application should include a description of the task, specify the place of its implementation and the benefits that the local community can obtain.

Any local resident of Lodz may apply; each application must be supported by 15 local residents other than the author. Every person can vote for five district tasks and for five extra-residential tasks.

Due to the fact that Lodz is both a commune and a city with poviats rights, the tasks proposed should fall within the competence of the commune or poviats. The task must be one-year. In 2019, it is forbidden to report to the participatory budget tasks related to: new city bike stations; conducting consultations or building monuments of people or events.

Reported tasks are assessed from the point of view of their compliance with the rules of the participatory budget adopted for a given year. In 2018, about 30% of the applications were rejected. The most common reasons for rejecting applications include: unregulated legal status of real estate in the case of investment projects (for example, building a playground on private property), completion of a task exceeds one year (for example, construction of a multi-level car park), the task is unlawful (for example, constructing square playgrounds in the street strip or renovation of a building not owned by the commune).

As far as the number of applications is concerned - we can observe an upward trend in Lodz – in 2018, almost 1.300 applications were submitted, and in 2017 it was 1.130.

The third stage of consultations is multi-day voting on proposals for tasks submitted to the participatory budget, which have been positively evaluated by the commission.

Any local resident over 16 years of age can vote. Voting takes place electronically or on paper cards at stationary points (for example, in libraries). Comparing the attendance of the sixth edition of the participatory budget and the fifth edition, more local residents took part in the last voting. The attendance rate for voting in 2018 amounted to 10% and compared to the attendance in the last local

government elections (58% of local residents voted) - which is not a large number. About 71% of votes were given in electronic form. The fourth stage of consultations is the announcement of projects selected for implementation and their inclusion in the local government budget for the following year. The proposals for tasks that receive the largest number of votes are recommended for implementation until the participatory budget provided for the given district is exhausted.

Many tasks selected in 2018 concern education and children (for example, buying books for libraries, toys for kindergartens or computer equipment for schools, construction of playgrounds), sports and recreation tasks (renovation of gyms, organization of sports events), road and communication infrastructure (for example, construction of traffic lights, renovation of pavements), green areas and environmental protection (new trees in the city), culture (for example, organization of a summer cinema in the park) or bicycle infrastructure (for example, bicycle paths, bike racks). The last stage also includes the assessment of participation budgeting. Local residents have the opportunity to indicate the disadvantages of the consultation process in order to eliminate them in the budget for the next year.

SUMMARY

Assessment of the change of self-government laws regarding institutions of participatory budgeting must take into account the number of issues.

First of all, it is necessary to positively assess the introduction of provisions regulating directly the institutions of the participatory budget into self-government acts.

The doctrine has long indicated the need to pass such regulations¹⁹, pointing to the advantages of such a regulation. Adoption of the statutory regulation of the participatory budget procedure is a clear incentive to use this institution of social participation. It reduces the possible fears of local authorities regarding the legality of activities that are not clearly regulated by law. On the other hand, it gives local residents an important argument in their efforts to implement a participatory budget. From the point of view of local residents, the statutory regulation of the participatory budget also has a guarantee function in the sense that it more effectively ensures transparency and fairness of this procedure²⁰. Amendments to the regulations introduced at the beginning of 2018 will undoubtedly strengthen the participation of local residents in the decision-making process concerning local budgets.

¹⁹ Dębowska – Romanowska T., « Budżet...», p. 307; Nowak T., « Dilemmas of Participatory Budgeting From The Perspective of The Polish Law and Experience », *International Journal of Open Government*, 2017, vol. 6., p. 63 [http://ojs.imodev.org/index.php/RIGO/article/view/208/346].

²⁰ D. Sześciło, « Uwarunkowania...», p. 23.

Such legal regulations reinforce the idea of open government in Poland.

Secondly, it should be noted that the provisions adopted by the Polish legislator in 2018 are not free from defects.

Regulation of the basic principles of the participatory budget undoubtedly plays a guarantee function for the residents that the social consultation process will proceed properly. It seems, however, that in addition to equality and directness of voting, there should also be a statutory reservation that voting in the participatory budget is a secret ballot. Secrecy of voting is an indispensable element of the public consultation procedure regarding the participatory budget, due to their binding nature. In a situation where the results of voting are binding for local government authorities, a resident may be worried about the consequences of revealing the content of their vote, since the projects are submitted by the residents of the local government unit with whom the voter may remain in various relations, including subordination. There is no statutory reservation of voting, of course, it does not exclude the possibility of its introduction by local government. Nevertheless, it is justified that this law would guarantee residents freedom of expression so closely related to the principle of freedom of consultation with residents of the local government unit²¹.

There are also objections to making the participatory budget a legal institution of an obligatory nature²². On the one hand, the obligatory character of participatory budget in cities with poviats rights constitutes a legal guarantee of the participation of local communities in spending public funds. Implementation of the participatory budget will no longer be a manifestation of the good will of the local authorities, but its statutory duty.

On the other hand, it should be noticed that participatory budgeting is not a natural right of a municipality's residents. Powers in budgetary matters are vested in the local authorities that have better knowledge of the financial situation of the municipality than its local residents. The local authority should not be limited in creating the budget, so the decision on "activating" the participatory part should belong to these bodies²³.

The legal regulation of participatory budgeting should only determine the manner of its drafting, adoption, and implementation. These regulations should fulfill auxiliary and security-guarantee functions when it comes to exposing the commune to the increase in public debt, limiting the principle of financial transparency, or attempting to exert pressure on the directions of spending by informal pressure groups²⁴.

²¹ M. Rulka, « Ustawowa... », p. 77-78.

²² The following doctrine is also against the obligatory participatory budget: T. Dębowska – Romanowska, « Budżet... », p. 307, T. Nowak, « Dilemmas... », p. 64.

²³ T. Nowak, « Dilemmas... », p. 64.

²⁴ T. Dębowska – Romanowska, « Budżet... », p. 307.

The method of determining the minimum amount of participatory budget in cities with powiat rights should be assessed positively. Determination of the minimum amount of the participatory budget will guarantee that it will not be marginal or even apparent. On the other hand, the connection between the amount of the participatory budget and the amount of the self-government's budget expenditure depends on the participatory budget from the actual financial situation of the local government unit.

Summarizing the second part of the discussion, it should be pointed out that the assessment of Polish experience in the field of participatory budget based on the example of the city of Lodz is positive.

In Poland, local government authorities have been and still are interested in participatory budgeting. The evidence to this interest is the fact that they have introduced participatory budgeting a long time ago and subsequent units of self-government also do so.

On the other hand, clearly noticeable is the interest of local residents who are submitting more and more applications with tasks in each subsequent participatory budget edition. The increase in the number of applications indicates the existence of such a social need in Poland for such public participation in public matters. What still needs to be done in Poland in this matter is the encouragement of local residents to vote in the participatory budget. The passivity of inhabitants in this area results from the fact that the Polish society is not one brought up in the spirit of social activity. The society is still learning how to commit to local matters and be responsible. Therefore, it is very important to raise the young generation in the spirit of a civil society. An important role in this area is played by children/youth/school participatory budgets, which are slowly appearing in some Polish cities (for example, Wrocław). It would be a good idea to make them widespread as "adult" participatory budgets.

