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Citizens' legislative initiative as a tool to strengthen local legislative inclusive procedures – from idea to formal legislation

Introduction

The issue of the citizens' legislative initiative, as the very local government – in the scientific approach – has an interdisciplinary character. It exceeds the legal sphere, touching upon the interest areas of other sciences, including: political, administrative, sociological and management and quality sciences. It particularly profoundly falls within the interest area of public policy. Citizens' legislative initiative is, in this context, a tool to strengthen the local legislative inclusive procedure. It makes that we may treat it as a practical element of the concept of *multi-level governance* (Peters 1996; Kohler-Koch, Eising 1999). Formal citizens' legitimation is the objective of citizens' legislative initiative, allowing to include them into a series of entities entitled to initiate a legislative procedure at the local or regional level (Podgórska-Rykała 2021). Self-government political law regulates this initiative in a very general way, leaving – in compliance with the principle of subsidiarity – a relative independence of municipalities, poviats and voivodships in terms of the definition of its demonstration, formation of the committees realizing it, the principles of promotion, as well as formal requirements, which the submitted draft must comply with. These regulations must be included in the resolution of a decision-making body, being an act of local law and a source of generally applicable law of the Republic of Poland in a given area.

During their deliberations, the authors attempt to respond to three questions. The first one concern the approach of particular political environments towards the legitimacy of the regulation of a legislative initiative in common law. The second question is related to the way and scope of the very regulation. The authors also attempt to respond to the final question: "Why, despite the attempts of consolidating

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particular solutions in terms of citizens' legislative initiative, was it successful only in 2018?" Parliamentary printer matters of the specific drafts of amendments in law as well as the decision of administrative courts are supportive in our responses to the questions posed above. To achieve the research objectives, the authors trace legislative paths of four drafts, and they follow, in their reflections, from the idea to the formal legislation of local citizens' legislative initiative.

At this point, it is worth adding that very interesting research on the decision-making process in the Polish Sejm is conducted by B. Kotarba (2019). One of the case studies he describes is precisely the project of amending some laws to increase the participation of citizens in the process of electing, functioning and controlling some public authorities – as a subject of the Sejm debate. Among other things, the author characterizes the decision-making situation and the decision-making center, the decision-making process and the decisions themselves. The authors' research goes in a slightly different direction. The research foundation of the article is formed by the methods characteristic for research on public policy and studies within law and administration. The comparative analysis, conducted by the authors of the article, on the drafts of legal acts is particularly valuable in this case. The functional systemic analysis became, however, an ancillary tool in these actions. Heated discussion and dispute in the doctrine as well as in a group of members of local governments about the legitimacy of the implementation of the regulation of citizens' legislative initiative and about its final form is the core of this paper.

The idea to strengthen the local legislative inclusive procedure in the face of divergent stances of judicature

Granting citizens the right for the direct decision-making about the direction of development of local issues, followed by citizens' legislative initiative, regulated over a decade ago, becomes an inseparable part of the model of *multi-level governance*. This concept aims at systematic and effective inclusion of citizens into the process of public governance. Co-governance understood this way has also a multi-level character, involving various entities, starting from natural persons, and ending with their organizations – as the structural elements of civic society (Kępa, Podgórska-Rykała 2020). For years we label the entirety of such inclusive processes as participation, whose one of the forms, are participatory budgets, so profoundly implemented in a social fabric of big cities (Podgórska-Rykała 2019; Podgórska-Rykała, Sroka 2021; Ostachowski 2021). It has, towards the advancing public administration reforms, a chance to lead not only to the increase of involvement of particular citizens in a local life and a better understanding of political decisions, but mostly it shall contribute a more effective implementation of public tasks (Podgórska-Rykała 2017).

The idea, to grant consistently and nationally the citizens of local government the right to submit a legislative initiative occurred in 2010, which was over a decade ago. The monitoring activities, conducted then by various social organisations, provided evidence that in many local governments the citizens had such type of rights much earlier. It was, among others, in Ełk and Warka poviats, which were joined in 2005 by Kwidzyń, Kędzierzyn-Koźle, Hajnówka and Bochnia poviats. Toruń may

be regarded as a trend-setter of such actions, where the regulations on citizens' legislative initiative occurred in the city charter already in 1991.

With no common regulations, many local governments (municipal and district ones) decided for their independent preparation and implementation. The results of the research by Institute of Public Affairs, conducted within the project "Let us decide together," in the years 2011-2012. 193 municipalities participated in it, among which as many as in 79, that is 41%, a legislative initiative was the subject of statutory regulation (Makowski 2012). Despite a considerable interest in this issue, until the beginning of 2018 this law was never a subject of statutory matter, although there were many appeals for it in the doctrine (Sześciło 2012).

The judicature of voivodship administrative courts formed two opposing interpretation views in this matter. The first one was dominated by the view that the stipulation of a legislative initiative in a local law in favour of citizens is unacceptable. In the opinion of judges, „a legislator explicitly stood for participatory system and for a restricted – until elections and referendum – participation of the municipality citizens in a direct governance and the constitution of local law. In the remaining case citizens of local government community make solutions „by means of municipal authorities,” which excludes their direct participation in the constitution of a local law” (The judgment of Voivodship Administrative Court no. 584/05). It was substantiated that lack of unequivocal legislator's reference to this issue „must be evaluated as a legislator's choice; their silence must be interpreted in this case as lack of consent for such a form of governance by citizens.” These theses faced, however, considerable criticism in the doctrine and among members of the local government. As its result, over the last several years a view prevailed, according to which, due to lack of a statutory prohibition, granting the right of a legislative initiative for other entities than it was indicated in the regulations, among others, for a group of citizens, is permissible (The judgment of Voivodship Administrative Court no. 329/12). A part of a groundbreaking opinion of the Supreme Administrative Court of 2013 must be quoted here, which eventually decided about the legality of this initiative, namely: “a local government in itself is a democratic value, and its features (...) comprise, among others, independence, and communal, social character. The provision of citizens (...) with a legislative initiative becomes an inseparable part of a direction of civic society, allowing for a direct participation of citizens in the adoption of decisions by a legislative authority. (...) granting groups of citizens a legislative initiative, along with lack of regulations governing this issue and in light of systemic clarification of the act on municipal local government and communal character of local government units, is within the boundaries of mandatory law, and thus it does not violate this law” (The Judgment of the Supreme Administrative Court no. 1887/13).

Even though citizens' legislative initiative was becoming increasingly frequent practice of local governments, supported by favourable judicature, then still many local authorities did not decide to reach for such a solution. The argument about too immense variety of particular models was being made, focusing also on “injustice” or even discrimination in local governments, which either were excluding citizens from a group of entities initiating a legislative process or they were applying two high thresholds of effectiveness of this institution – causing this entitlement *de facto* unenforceable.

During the last decade there occurred as many as four drafts of legal acts, which were to include the analysed institution in a national legal order, also negating discrepancies emphasized in it. Eventually, this stipulation was able to be implemented only based on the regulations of the act of 11th January 2018 *on the amendment of some acts to increase citizens' participation in the process of selection, functioning and controlling of some public authorities* (The Journal of Laws 2018: item 130).

Citizens' legislative initiative – the first bill – „presidential”

On 30th August 2013 on the initiative of Bronisław Komorowski *the presidential bill on the cooperation in local government in favour of local and regional development and on the amendment of some acts* (Print 1699/VII) entered the Sejm. Works on it lasted already since 2010, but the extensive scope of suggested amendments cause that several rounds of social consultations were necessary before the president eventually decided to present it to the parliament (Sześciło 2018). The original title of a bill presented in March 2011 was different, namely: *“on the strengthening of citizens' participation in a local government, cooperation of municipalities, poviats and voivodships and on the amendment of some acts”*, which changed, however, during consultations. The content of the document was prepared by the presidential consultation team “Local Government for Poland,” functioning within Public Debate Forum. The objective of the conducted works on it was, among others, “preparation (...) of evolutionary drafts of reforms, which shall considerably modernize the state” (*A brief guide to the Act* [b.d.]: 6). An array of innovative tools was proposed in the draft, by means of which citizens were to influence the functioning of their own local and regional community. They were prioritized intentionally, from the weakest to the strongest one, and they were consecutively the following ones: public consultations, public hearing, citizens' questions, citizens' legislative initiative.

The regulation of a legislative initiative was incredibly extensive in the draft. It was defined in the fifth chapter. It was acknowledged that the procedure is to be initiated upon the request of a group of at least 15 citizens or a non-governmental organization. The chairperson of the decision-making body was to send a draft with its justification to the executive body. The executive body was, in this case, obliged to issue an opinion about the draft within 30 days since its receipt. If its acceptance was likely to cause financial results, the chairperson could send it to a regional accounting chamber, which would be, in this case, obliged to analyse it within 30 days. It was assumed that the draft initiators, during 60 days since the application submission, shall submit a list of collected signatures to the chairperson, on which there could be no fewer signatures than 1% of citizens of municipality or poviats with voting rights, or 0.5% in case of a voivodship. The draft meeting these criteria was to be processed by the decision-making body within three months since the day of signatures' submission, and the complaint to the administrative court was to be made for not meeting the aforementioned deadlines. What is interesting, this initiative was related to a local referendum, indicating that if a draft resolution were rejected, the applicants could apply its matter as the subject of a referendum (Podgórska-Rykała 2021).

In the period from March to July 2011 extensive consultations of the draft were conducted, because of which 952 applications were received, sent jointly by 100 people and institutions. Less than 9% of postulates (84) referred to in some part to citizens' legislative initiative. The most remarks concerned too low a number of people entitled to initiate the procedure. There was a concern of excessive activation of citizens and non-governmental organisations, which would paralyse the work of the institution, also a concern related to politicisation of local government and antagonisation of local communities by submitting controversial drafts and not related to the scope of entitlements of local government. Initially, a description of procedure included in a draft was meticulous. The analysis of remarks from consultations resulted, however, in its simplification. Only a general characteristic of an initiative was selected, assuming that the rules and the mode of its implementation shall be defined in statutes – in accordance with local conditions. It was arranged as well that the initiative cannot concern the resolutions, for which an exclusive relevance of other entities was reserved, and the percentage of citizens, which could initiate a legislative procedure could not be at a level higher than 15% – for municipalities and poviats and 5% – for voivodships. It was indicated as well that the draft resolution had to be processed without undue delay. In addition, the legislator assumed that they shall directly apply the regulations from the discussed legal act (art. 92–97) until the time of determination in a statute of a given local government unit its individual rules and mode of the implementation of the right to citizens' legislative initiative. The regulations on the so-called initiative group, which was to consist of 1% of municipality or poviat citizens entitled to vote (however not fewer than 100 people) or 0.1 % of voivodship citizens entitled to vote were among these regulations. It was determined that the signatures of support had to be collected within 60 days, and their minimal number was to be, correspondingly: equal to 15% of municipality or poviat citizens entitled to vote (however not smaller than 600 people) and 5% for a voivodship. The chairperson of the decision-making body was obliged to include the draft in the agenda of the session within three months since the day of the submission of collected signatures. The voting on it could take place within six months (Podgórska-Rykała 2021).

The first reading of the draft took place on 27th September 2013. During the voting on the application to reject this draft in the first reading, 183 of deputies voted for, 254 were against it (Civic Platform, Democratic Left Alliance, Polish People's Party), and 3 of them abstained from voting (Voting no. 18... 2013). The draft was referred to the Committee of Local Government and Regional Policy. The legislative works lasted, and during that time a public hearing took place on 10th December 2013. Many representatives of non-governmental organisations commented on the issue of the proposed regulation. The remarks mainly concerned too high maximum thresholds to initiate a legislative initiative. This issue was addressed by, among others, Batory Foundation, SHIPYARD – Centre for Social Innovation and Research, Regional Centre for Supporting Non-Governmental Initiatives, Civitas Lukoviensis Association and Direct Democracy. The government's position was submitted on 11th June 2014, in which the draft was recommended for subsequent parliamentary works, and a report of special subcommittee was presented on 29th July 2015,

supplemented on 4th August 2015 with a report of the Committee of Local Government and Regional Policy, in which the draft was recommended (in a shortened version compared to the original one, however containing the regulations on a legislative initiative) to be passed by the Sejm (Print 3796/VII 2019). Unfortunately, with the termination of 7th term of the Sejm since 11th November 2015 this draft was subject to the so-called discontinuation.

Citizens' legislative initiative – the second bill – “parliamentary”

The parliamentary bill on the amendment of the act on municipal government and on some other acts (Print 1500/VII 2013) was the second project, which related to the issue of citizens' legislative initiative. The Deputy, Marek Sowa, was authorized to represent the draft initiators in the works over this draft¹. The proposed solutions had a character of exhaustive regulation, in which the inclusion of the entire chapter with the regulations related to penal liability into systemic local government acts was postulated.

Chapter 4a titled „The municipality citizens' legislative initiative” was to be added in the act *on municipal local government*. It was defined, among others, that: a number in a group of citizens supporting a draft is to minimally amount to 100 people in municipalities up to 5000 citizens; 200 people in municipalities up to 200 thousand citizens and 300 people in municipalities over 20 thousand citizens. It was indicated that a draft resolution had to concern the issues related to the scope of competence of the decision-making body. In addition, it was reserved that the draft had to conform with the requirements included in the statute. What is more, it was determined that the draft submission should not constitute an obstacle to submit other draft in the same case. The draft resolution, in relation to which the legislative procedure was not terminated during the council term, in which it was submitted, was to be processed in the next term. It was decided as well that the actions related to the draft preparation, its distribution, a promotion campaign, as well as with the organisation of the collection of signatures is to be conducted by the committee of legislative initiative, acting under the name supplemented with a title of draft resolution. The initiative committee could be formed by at least a 3-person group, on behalf of which a proxy or a deputy could act. It was determined that after a collection of signatures the proxy shall notify the council chairperson about the formation of the committee, and that they will attach a draft resolution to this notification as well as the list of citizens' signatures endorsing it. The subsequent regulations of the analysed draft constituted that the analysis of the draft resolution by the council was to take place within 3 months since the

¹ A list of draft initiators: Joanna Augustynowska; Adam Cyrański; Barbara Dolniak; Grzegorz Furgo; Kamila Gasiuk-Pihowicz; Marta Golbik; Zbigniew Gryglas; Paulina Hennig-Kloska; Paweł Kobyliński; Ewa Liedler; Katarzyna Lubnauer; Jerzy Meysztowicz; Krzysztof Mieszkowski; Piotr Misiło; Mirosław Pampuch; Ryszard Petru; Monika Rosa; Marek Ruciński; Joanna Scheuring-Wielgus; Joanna Schmidt; Marek Sowa; Michał Stasiński; Elżbieta Stępień; Mirosław Suchoń; Adam Szłapka; Krzysztof Truskolaski; Kornelia Wróblewska; Witold Zembaczyński.

date of the draft submission by the chairperson – this deadline, however, could be a subject of suspension in case of the initiation of administrative proceedings or court and administrative proceedings. It was determined that the committee should be represented in the works over a draft resolution by a representative or by a person authorized in the mode and on the basis defined in the statute. As for the expenses related to the performance of a legislative procedure, it was to be entirely covered by the committee. It was reserved that the committee is subject to dissolution after the expiry of 3 months since the termination date of the legislative proceedings or the passing of a resolution by the council regarding the refusal to accept the notification. It was postulated as well to add a regulation implementing a penal liability, which reads as follows: “Who by means of violence, illegal threat or by fraud disturbs in the performance of a legislative initiative by municipality citizens or by misuse of the relation of dependency influences its performance – is subject to imprisonment from 3 months to 5 years.”

The corresponding regulations were proposed in the act *on poviats local government*, except that a different number of a group of citizens was indicated (at least 500 people) and – what is interesting – voivodship cities were excluded from this category. It was proposed to place the cities with poviats rights in the category of “poviats,” which, however, in accordance with the legislator’s will are constituted by municipalities, not poviats – although they realise tasks of both municipalities and poviats. A number of the founding members of the committee was defined here at the level of 5 people. The subsequent regulations remained unchanged. As for the act *on voivodship local government*, the amendments proposed in it are remarkably similar except that a group of initiating citizens “of a voivodship or a city being a voivod’s seat or voivodship local government authorities” is to amount at least to 1 thousand people. What is interesting, this regulation comprised not only the “voivodship” initiative, but also the municipal one – pointing to citizens of a city being a voivod’s seat or voivodship local government authorities. A minimal number of the members of the initiating committee was increased to at least 10 people.

The discussed draft was submitted to the Sejm on 30th March 2017, and it was referred to the first reading on 20th April 2017. A debate was conducted, in which many deputies took the floor, both the ones defending the draft as well as the ones objecting to it. The debate ended with a voting. It was interrupted and continued at the next session. Characterising its course, we should quote several opinions expressed in it. The deputy, Ryszard Wilczyński, presenting the stance of the Parliamentary Club of Civic Platform expressed a universal support for the draft, however he referred to several debatable regulations, among others, to an unequivocal specification of a number of the committee and criminal penalties unnecessary ones. The deputy, Grzegorz Woźniak, presented the stance on behalf of the club, Law and Justice. Referring to judicature he stated that „there is no (...) need to resolve the discussed issue by way of an act because it may be regulated in the statute.” He expressed a concern that the statutory regulations may implement „a more expanded, less friendly” procedure. The deputy, Marek Sowa, took the floor on behalf of the Parliamentary Club the Modern Party, who endorsed the draft and referring to the research of Association 61, he stated that „where citizens’ legislative initiative

is made, citizens' participation considerably increased, who, not only on the election day, but also during the entire term, may decide about their issues." Additionally, he quoted the data, which were to depict an extreme diversity of the solutions made so far in the municipalities' statutes and to justify the necessity of the unification of regulations: "in Toruń, which, perhaps already in 1991, included such an initiative into the statute it was recorded that a collection of 150 signatures could be sufficient, but we also have 6 thousand, 4 thousand and 15 thousand, thus sometimes it is simply incredibly exorbitant." The deputy, Tomasz Jaskóła presented the stance of the parliamentary club, Kukiz'15. He declared the endorsement for the draft, but he also pointed to a set of errors and "deficiencies" in it (among others, related to a vague assignment of the cities with powiat rights to a group of "poviats"). The draft was also endorsed the deputy, Piotr Zgorzelski, on behalf of the Parliamentary Club of Polish People's Party.

The debate on the draft – on 10th May 2017 – took place in "an empty parliamentary chamber", mostly without the participation of the members of the parliamentary club Law and Justice. The Speaker of the Sejm decided to postpone the voting and hold it during the next session on 25th May 2017. On this day, the deputies voted on the application to reject the draft resolution in the first reading. 227 deputies voted for the rejection (out of whom 223 of the members of the Club Law and Justice, 3 representatives of the Parliamentary Circle the Free and the Solidary and 1 non-attached deputy – Jan Klawiter). 209 deputies from all other clubs and parliamentary circles were against. No deputy abstained from voting (Voting no. 33... 2017).

Citizens' legislative initiative – the third bill – petition

On 28th April 2017 Democratic Left Alliance submitted a petition to the Sejm on the implementation of the chance of citizens of municipalities, poviats and voivodships to introduce citizens' legislative initiative. The draft act on *the amendment of the act of 8th March 1990 on municipal local government, of the act of 5th June 1998 on powiat local government and of the act of 5th June 1998 on voivodship local government* (Print BKSP-145-223/17) was attached to the petition. This draft act consisted of four articles. The first added art. 12a containing a definition of citizens' legislative initiative to the regulations of *the act on municipal local government* as well as guaranteeing the citizens the right to apply it. The draft act predicted that a group of at least 10% of citizens could exercise this right, and the specific principles and the mode should be defined by the statute. The subsequent regulations of this draft act – art. 2 and art. 3 contained the analogous regulations related to a powiat or a voivodship, except that in case of the latter one the threshold was determined to reach 5%.

The attached draft act contained only an article part. It lacks a justification, but in accordance with the opinion of the Bureau of Research did not raise serious legal reservations (Gierach 2017). On 12th May 2017, the petition was referred to the Committee for Petitions, and it was processed in this Committee on 12th September, where without any vetoes it was recommended for further legislative procedure (Record of the Committee for Petitions no. 86). At the press conference

prof. Małgorzata Niewiadomaska-Cudak stated later: “The statutory regulation of citizens’ legislative initiative is slowly becoming a fact. The solution proposed by Democratic Left Alliance, endorsed yesterday by the Sejm committee, assumes that citizens of each municipality, poviats and voivodships would obtain the right to submit their own draft resolutions. (...) It is particularly important to give the citizens of all municipalities a chance to submit their own draft resolutions. We see, on the example of Łódź, that citizens very willingly exercise the right of a legislative initiative” (“Citizens’ initiative...” 2017). The petition, despite its recommendation by the committee, was not proceeded further as its content was consumed by other – pending – draft act.

Citizens’ legislative initiative – the fourth bill – “parliamentary”

On 10th November 2017 the Speaker of the Sejm received the subsequent, already the last one, *parliamentary draft act on the amendment of some acts to increase citizens’ participation in the process of selection, functioning and controlling of some public authorities*, which comprised the regulation of not only citizens’ legislative initiative, but also an array of other – very important – institutions, jointly defined somehow already in the title (Print 2001/VIII 2017). As its result, the institution of citizens’ legislative initiative was implemented into legal order. The following regulations were proposed in the draft act: a group of citizens submitting an initiative in municipalities must amount at least to 300 people (in municipalities up to 20 thousand citizens) or at least 500 people (in municipalities over 20 thousand citizens), in poviats at least 500 people, and in voivodships at least 2 thousand. It was determined that the draft acts become a subject of the sessions of the decision-making body of a given local government unit at the upcoming session held not later than after the expiry of 3 months since the day of draft act submission. The decision-making body was obliged to define, by way of resolution, the types of cases, which the draft act may concern, the principles of the submission of citizens’ initiatives, and in particular a number of required signatures, the principles of forming the committees of legislative initiatives, the principles of the promotion of citizens’ legislative initiatives and the formal requirements which the submitted draft acts must meet.

On 13th November 2017, the draft act was referred to the first reading at the session of the Sejm and for social consultations. Among several dozen of opinions on the act, only several of them referred to the legal institution, which citizens’ legislative initiative was supposed to be. The opinion was expressed, among others, by the Marshall’s Office of the Świętokrzyskie Voivodship, indicating that its doubts are raised by the obligation to submit the draft act to constitute the agenda of the upcoming session, not later than for 3 months. Also, the Municipal Office of the City of Łódź referred to the consulted draft act, raising the issue of too low a threshold in case of the cities over 500 thousand citizens. „in Łódź this threshold amounts to 1 thousand citizens, and it seems that the procedure works well. The citizens are in touch with their representatives, and each councillor has their legislative initiative and may be a citizens’ representative in the council.” The officials in Łódź were afraid that the city council shall be overwhelmed by unimportant draft acts. The Municipality

Office of the City of Wrocław expressed their doubts as well, in whose opinion „it is not clear what „the committee of legislative initiative” is and who this committee is composed of.” The Inspector General for the Protection of Personal Data also made their amendments, who paid attention to lack of clear criteria of the processing of personal data collected in relation to the initiative „who should be the controller of the personal data”? The Congress of Urban Movements postulated, however, to unequivocally determine the exclusions from an array of cases, which are to be the subject of citizens' legislative initiative, “because in the present record most in the decision-making body (council) may exclude the initiatives uncomfortable for them. The council's resolutions should regulate only the technical-organisational issues of citizens' legislative initiative.” (Print 2001 – the opinions of the Bureau of Research 2017). Except for the opinions which were delivered to the Chancellery of the Sejm “in writing” an array of objections in an oral form. The public hearing organized on 9th December 2017 within the territory of the University of Warsaw is particularly noteworthy. It was organized by, among others, the Center for Quantitative Research in Political Science of the Jagiellonian University, the University of Warsaw, SHIPYARD – Centre for Social Innovation and Research, the Congress of Urban Movements, Polish National Union of Local Government Organisations, Union of Polish Metropolises, Union of Polish Towns, Union of Rural Municipalities of the Republic of Poland, Association of Polish Cities, Association of Polish Counties and Association of Voivodships of the Republic of Poland as well an array of private individuals and volunteers. 50 people, representing various institutions and organisations, actively participated in the hearing. 177 people (A list of participants... 2017), including the observants, engaged in the realization of the consultations, as results from the list of names submitted on the website. However, it should be emphasized that there was no public hearing within the meaning of the Act on lobbying activities in the law-making process of 2007 and the Rules of Procedure of the Sejm. Moreover, the majority of the Sejm did not allow a formal public hearing to be held, despite the fact that such formal requests were received.

On 24th November 2017 the first reading took place during the session of the Sejm, where the application to reject the draft act in the first reading was being voted. 199 deputies were for the rejection, 235 were against, nobody abstained from voting. The entire “opposition” wanted this rejection, and the ruling Law and Justice, along with the non-attached deputies (2) and the member of the parliamentary circle The Free and the Solidary (5) endorse the draft (Voting no. 88... 2017). The next voting was related to the referral of the draft act to the Special Committee to consider the draft acts within voting rights, because the draft act concentrated only to a small extent on citizens' legislative initiative, its core was constituted by other, highly controversial, regulations, among others, within voting rights. Due to this reason, the institution in question was not much debated on in the discussions. Only two people took the floor in this case at the meeting of the Special Committee of 28th November. The chairperson of the Council of the City of Łowicz, Michał Trzoska, stated: “I was attempting to implement such a solution in Łowicz, but I observed such an objection from many parties that so far I was not able to do it. I hope that after the act comes into force, we shall have citizens' legislative initiative at last.

What is important, this legislative initiative is real. The best evidence is that the legislator thought about it to prevent the use of the so-called “freezer,” which actually occurs at each level of such decision-making bodies.” The floor was taken as well by the deputy, Marek Sowa (the Modern Party), who reminded of a fate of the earlier draft act, in the works over which he was personally involved as the initiator: “All parliamentary clubs, apart from the club of Law and Justice, endorsed my draft act submitted by the deputies of the Modern Party in spring this year. This draft act was rejected in May by the deputies of Law and Justice. Solely the deputies of Law and Justice voted against the draft act.”

Much more discussion was devoted to a legislative initiative at the meeting on 30th November 2017. The procedural issues related to the extension of the council’s competences in related to the obligation to consider legislative initiatives, as well as the ones related to a required number of citizens – the initiative initiators and the necessity to consider it at the upcoming council session were discussed, among other issues. The discussion, initiated earlier, was continued at the next meeting of the Committed, on 7th December. The content of 144 applications submitted by individual deputies and their groups during works in the committees (Print 2113/VIII 2017) was placed in the report from its meeting. None of these, however, concerned citizens’ legislative initiative. The second reading took place on 13th December, and the third one on 14th December. The voting on the entire act resulted in its endorsement by 234 deputies (Law and Justice with 2 deputies from the Parliamentary Circle the Free and the Solidary), 199 deputies were against, and 2 people abstained from voting. On 15th December, the passed act was sent to the Senate, which presented its stance on 21st December. The senators proposed 19 amendments to be included in the text. All of these (except for several instances of editorial character) referred to the election issues. On 10th January 2018, the stance of the Senate was considered by the Sejm, with the acceptance of all amendments. The voting took place already after midnight; thus, the act was passed with the date of 11th January 2018. On this day, the text of *on the amendment of some acts to increase citizens’ participation in the process of selection, functioning and controlling of some public authorities* – earned in the legislative course – was sent to the president to be signed, which he did on 15th January 2018.

Conclusion

In the doctrine of law there are no doubts that granting the local communities the competences to initiate a local legislative procedure is an expression of concern by the legislator to strengthen their subjectivity in the process of the management of public affairs. It is emphasized that the essence of a local government is the effective and democratic governance by national administration, or governance of public affairs on the specific territory and performing tasks in favour of a specific community (Dolnicki 2008). The legislative efforts, observed over the last years, aiming directly at the development of citizens’ relations with their representatives and at the increase of the impact of the former ones on the decision-making process, aim mostly at the elimination of the consequences of the advancing isolation of political elites

from their sovereign (Shapiro 2004). These tendencies are exposed already not only at the national level, but also at the local and the regional level, thus it was justifiable to take relevant steps of a legislative character.

Several years ago, the issue of the legality of the initiation of a legislative process by citizens in local government units was still raising doubts of a formal and legal character. The focus was on the possibility to solve the issue of permissibility of a legal situation of this institution at the level of statutes of particular units. The divergences in the judicature of administrative courts were the consequence of lack of unequivocal regulation. Only the judgment of the Supreme Administrative Court of 21st November 2013 was the groundbreaking one, in which it was adjudged that the members of a local government community are entitled to initiate a legislative process, derived directly from a subjective character of this community. In the following years, this institution was implemented in a considerable number into local government units, particularly at the level of municipalities, but not only. Despite a positive jurisprudence, many environments did not settle for such a solution, fighting for an unequivocal and common mandatory regulation in this matter.

During the last decade four such legislative attempts were made, out of which the last one was successful. During that time, the controversial issues were somehow recurrent, and the same arguments and doubts were being raised. These were, among others: convincing the officials and members of the local government about expensiveness and labour intensity of the procedure, the dispute concerning the issue who specifically must be an initiator (among others, a non-governmental organization), a concern of too low or too high thresholds, bringing either to an unequivocal or a progressive determination of a required number of signatures, a concern of too short and tight deadlines, related to an array of actions within the entire procedure (among others, time to collect these signatures or deadlines, within which the council is obliged to consider a draft act) or a dispute related to a scope of a given regulation – should it be meticulous, or on the contrary, should it leave the local governments a relative independence and the possibility of a flexible adjustment of regulations to their local conditions. The accepted solutions constitute a compromise between various solutions proposed over the years.

The authors assumed in the text, first of all, the fulfilment of the descriptive objective. Therefore, the text does not include an in-depth analysis of the reasons and political reasons for the legal regulation of the local citizens' legislative. Also, the exact circumstances that influenced its institutionalization in 2018 are not presented. Research in this direction has already been published in other previous studies of the authors, which are widely referred to in the article. However, it should be emphasized at this point that the local citizens' legislative is a legal solution that was "included in the package" of broad statutory changes and was adopted "by the way", so to speak. It was by no means (like, for example, the citizens' budget) the main point of the 2018 amendments to the local government acts.

As the analysis of the processes of all initiated legislative attempts indicates, the very idea did not raise any doubts from the very beginning. What is interesting, however, is that it became a cause of disagreement many times in accordance with party divisions and depending on the political option of an initiator it was endorsed

or rejected by the remaining political environments. Observing the discussed processed holistically, citizens' legislative initiative combines the politicians of all parliamentary clubs, although during the chance of specific voting – it divided them many times. It occurred so, on the one hand due to the observed party polarization in the Polish national politics, and on the other hand due to the fact that a legislative initiative, in most cases, did not constitute an issue from the so-called mainstream, but it was rather treated as an additional entitlement, accompanying other prodemocratic innovations and it somehow slipped in the discourse. It is proved by the fact that when it was finally regulated, then it occurred along with a very extensive and highly controversial occasion in many other issues of the amendment of systemic local government law, as well as beside other, more popular governance tools (among others, participatory budget).

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Citizens' legislative initiative as a tool to strengthen the local legislative inclusive procedure – from idea to formal legislation

Abstract

The article attempts to characterize and analyze the institution of a civic initiative by describing its idea, genesis, and four legislative paths, the last of which was successful. According to the 2018 governmental amendment, the right to initiate a legislative procedure may be exercised by residents of all Polish municipalities, poviats, and voivodships on an equal basis. The article focuses on the formal legislative path of the act, which is today the legal basis of the discussed institution, and the characteristics of the three previously ineffective drafts. The axis of the work is a challenge to the doctrine among local government officials and others regarding the legitimacy of introducing this regulation and its final form. The article uses methods characteristic of research on public policy, law, and administration studies. The primary tool is a comparative analysis of draft legal acts, and the auxiliary is functional system

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analysis. The authors discuss the attitude of individual political circles, the influence on the legitimacy of regulating the resolution initiative in common law, and the manner and scope of the regulation itself. The question is, why, despite almost a decade of attempts to standardize individual solutions, was it possible to do it only in 2018?

Keywords: local citizens' legislative initiative, local self-government, multi-level governance