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CITIZENS' RESOLUTION-PASSING INITIATIVE

Abstract

Amendment to local government political acts, introduced in January 2018, expanded the catalogue of legal instruments for participation of residents of local government units in solving the actual problems of their self-governing communities. The catalogue included a citizens' resolution-passing initiative, which may be classified as a means of integrating members of a given community and involving them in the process of law making. Until the entry into force of legal solutions, introduced by the amending act, the issues of the resolution-passing initiative were subject to statutory regulations. The scope of these regulations was diverse, which is why the legislator decided to harmonise them.

The study includes an analysis of applicable legal solutions that shape the institution of the citizens' resolution-passing initiative as well as their assessment and an attempt to formulate *de lege lata* conclusions.

Keywords: participation, resolution-passing initiative, resolution-passing procedure

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Introduction

The catalogue of legal instruments for participation of residents of local government units in identifying and solving the actual problems of their self-governing communities covers different forms of participation, which were not normatively determined in the same way. One of the forms of social participation and means of integrating members of a given community is the citizens' resolution-passing initiative. The term of "resolution-passing initiative" was not defined by the legislator. The source literature suggests the possibility of its definition in a comparable manner to the definition of the term of "legislative initiative"¹ due to significant similarities between those two concepts.² The legislative initiative is treated as the right to submit with the body authorised to pass resolutions the bills with a specific legal effect in the form of an obligation to put such bills for voting.³ In the literature, it is also stressed that such initiative may be either direct or indirect. In the first case, the bill is subject to voting, during which the citizens may decide whether it should be adopted or rejected. The indirect initiative means that once the competent body receives the bill submitted for voting, the citizens have no direct impact on the adoption of the act, as the final decision in that respect is made by the representative body⁴. The right to implement the citizens' legislative initiative was guaranteed by the Constitution. By virtue of Article 118 sec. 2 of the Constitution of the Republic of Poland⁵, the aforesaid right is granted to a group of at least 100 000 citizens entitled to vote for the Sejm. The procedure related to the implementation of the legislative initiative by the citizens is described in the Act of 24 June 1999.⁶

¹ Szewc, A. and Szewc, T., *Uchwalodawcza działalność organów samorządu terytorialnego*, Warszawa 1999, s. 58.

² Dolnicki, B., *Obywatelska inicjatywa uchwalodawcza jako forma partycypacji obywateli w podejmowaniu rozstrzygnięć na poziomie lokalnym*, in: M. Stec, M., Mączyński, M., (ed.), *Partycypacja obywateli i podmiotów obywatelskich w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*, Warszawa 2012, p. 114.

³ Uziębło, P., *Inicjatywa ustawodawcza obywateli. Act of 24 June 1999 with commentary*, Warszawa 2008, p. 45–46.

⁴ Borski, M., *Inicjatywa ludowa instrumentem presji na ustawodawcę?*, "Przegląd Prawa Publicznego" 2016, No. 7–8, 56–65, p. 56.

⁵ Constitution of the Republic of Poland of 2 April 1997, Dz.U. (Journal of Laws) of 2003, No. 78, item 483, as amended).

⁶ Act of 24 June 1999 on the Exercise of the Citizens' Legislative Initiative, consolidated text: Dz.U. (Journal of Laws) of 2018, item 2120.

Therefore, while referring the term of the “legislative initiative” to local and regional structures and conditions, it must be assumed that the resolution-passing initiative means the right of a specific entity to submit the bill with the decision-making, controlling and executive body.⁷ The resolution-passing initiative may be treated as a factor initiating the resolution-passing procedure before the decision-making and controlling body of the local government unit. At the preliminary stage of the procedure, the entitled (and sometimes obliged) entities submit with the decision-making body a proposition to regulate certain standard elements by way of issuing draft normative acts, including financial simulation of the effects of their adoption, while obliging the decision-making body to examine such draft laws.⁸ In the literature it is recognised that the resolution-passing initiative may be seen as the institution restricting access to the law-making process. Nonetheless, the restriction of the circle of entities that may put forward the bill is not aimed at limiting the rights of individual members of a given community, but at ensuring appropriate substantive and legislative level of the established laws.⁹

Attention should be drawn to the need of differentiating the following terms: “resolution-passing initiative” and “preparation of the bill”. The preparation of the bill is understood as a set of activities aimed at developing a written document expressing the content of the intended resolution, appropriate in terms of both the text and form, in order to become the subject of the meeting of the local-government body and take the form of its resolution.¹⁰ Therefore, its semantic scope should cover all activities aimed at satisfying formal requirements before putting the bill to the decision-making body. For example, the above-mentioned activities may refer to: appropriate form and contents of the bill, including all the opinions required by law.¹¹

⁷ Szewc, A. and Szewc, T., *Uchwalodawcza...*, p. 58.

⁸ Wierzbiца, A., *Referendum i wybory oraz zarządzenia i uchwały jednostek samorządu terytorialnego*, Warszawa 2014, p. 358.

⁹ Czerw, J., *Procedury podejmowania uchwał przez radę gminy i powiatu. Poradnik dla praktyków*, Warszawa 2010, p. 65.

¹⁰ Szewc, A. and Szewc, T., *Uchwalodawcza...*, p. 67.

¹¹ Dąbek, D., *Prawo miejscowe*, Warszawa 2007, p. 210.

Objective and subjective scope of the citizens' resolution-passing initiative

The legal bases for the citizens' resolution-passing initiative were shaped at the statutory level by way of provisions of the Act of 11 January 2018 Amending Certain Laws to Increase Citizens' Participation in the Process of Election, Operation and Control of Some Public Bodies.¹² The aforesaid legal act amended local government organisational laws¹³ by introducing regulations aimed at increasing citizens' participation in the process of election, operation and control of some local government authorities. The adopted legal solutions established new institution, which include, among other things, the citizens' resolution-passing initiative. Until the entry into force of the amending act, the issues of the resolution-passing initiative were subject to statutory regulations. However, the act was included in the statutes in a relatively rare and differentiated manner.¹⁴ Under the current legal environment, every local government organisational law includes regulations, which unify the institution of the citizens' resolution-passing initiative at the level of local and regional self-governing communities.

In conformity to will of the legislator, a group of inhabitants in a given local government unit, who have active voting rights, may submit the citizens' resolution-passing initiative with the decision-making body.¹⁵ Therefore, the whole individuals residing within the area of a specific self-governing community is covered by the subjective scope of the regulation.¹⁶ By virtue of Article 25 of

¹² Act of 11 January 2018 Amending Certain Laws to Increase Citizens' Participation in the Process of Election, Operation and Control of Some Public Bodies, Dz.U. (Journal of Laws) of 2018, item 130.

¹³ Act of 8 March 1990 on Local Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 506, as amended, hereinafter referred to as the "Local Self-Government Act"; Act of 5 June 1998 on District Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 511, as amended, hereinafter referred to as the "District Self-Government Act"; Act of 5 June 1998 on Voivodeship Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 512, as amended, hereinafter referred to as the "Voivodeship Self-Government Act".

¹⁴ The resolution-passing initiative was mainly addressed to a group of inhabitants, whose size depended on the number of inhabitants in a given self-governing community, whereas the right to the resolution-passing initiative was correlated with the requirement to enter an inhabitant into the election register; Koniuszewska, E., *Inicjatywa uchwalodawcza członków wspólnoty samorządowej jako narzędzie partycypacji społecznej*, in: Dolnicki, B., (eds.), *Partycypacja społeczna w samorządzie terytorialnym*, Warszawa 2014, p. 418–430.

¹⁵ Article 41a sec. 1 of the Local Self-Government Act, Article 42a sec. 1 of the District Self-Government Act, Article 89a sec. 1 of the Voivodeship Self-Government Act.

¹⁶ Szewc, A. *Commentary to Article 1*, in: Szewc, A. (eds.), *Ustawa o samorządzie gminnym. Komentarz*, Warszawa 2012, s. 34.

the Civil Code,¹⁷ the place of residence of an individual is the place where such individual stays with an intention of permanent stay. The permanent place of residence of the individual at a specific location is not determined solely on the basis of the permanent residence registration, but also on the facts confirming the individual's permanent stay at such place. Therefore, the permanent residence registration should be treated as only one of the elements showing that the individual stays within the area of the commune with the intention of permanent stay.¹⁸

To exercise their rights, the inhabitants of the local government unit must prove active voting rights before the decision-making body. Pursuant to Article 10 § 1 point 3 of the Election Code,¹⁹ a Polish citizen and EU citizen, who is not Polish citizen, being at least 18 years old at the time of elections and permanently residing in the commune has the right to elect representatives to the commune council. On the other hand, a Polish citizen, being at least 18 years old at the time of elections and permanently residing the area of such district and voivodeship, respectively, has the right to elect representatives to the district council and regional council. Additionally, pursuant to 10 § 2 of the Election Code, no voting rights are vested in a person who: has been deprived of civil rights based on court's decision, has been deprived of voting rights based on final decision of the State Tribunal, legally incapacitated based on court's decision. In the literature, any limitation of the citizens' resolution-passing initiative to only those community members who have active voting rights in the decision-making body is subject to criticism. It is shown that failure to involve underage inhabitants in public affairs, while they are still able to file complaints, motions and petitions seems inexplicable.²⁰ A possibility of granting underage inhabitants of the self-governing community the right to put forward the resolution-passing initiative should be examined also in the context of the operations at the commune level of the youth commune council. In compliance with the provisions of Article 5b sec. 2 of the Local Self-Government Act, the commune council

¹⁷ Act of 23 April 1964, Civil Code, consolidated text: Dz.U. (Journal of Laws) of 2019, item 1145.

¹⁸ Dolnicki, B., *Commentary to Article 1*, in: Dolnicki, B. (eds.), *Ustawa o samorządzie gminnym. Komentarz*, Warszawa 2016, p. 25–26.

¹⁹ Act of 5 January 2011, Election Code, consolidation text: Dz.U. (Journal of Laws) of 2019, item 684, as amended.

²⁰ Kłucińska, P., Sześciło, D., Wilk, B., *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018 r.*, "Samorząd Terytorialny" 2018, No. 10, p. 34.

may – upon request of the interested circles – give their consent to establish the consultative youth council of the commune. Such body has impact on public life of the local community, among other things, by: representing youth interests before the commune self-government authorities, education authorities, non-government organizations, taking actions to promote integration and collaboration within youth communities, starting undertakings for the youth, especially in the field of science, culture and sports. The responsibilities of the youth commune council include evaluation of certain bills, in particular those referring to acts that influence conditions for the development of young people today,²¹ and submission of applications to the chairperson of the council, councillors and executive bodies with respect to the implementation of the resolution-passing initiative.²² Since the youth commune council is allowed to undertake actions directly related to the resolution-passing procedure, it would be reasonable to include underage inhabitants of the commune in the group of entities entitled to put forward resolution-passing initiatives. However, it should be assumed that the legislator, while establishing the law of the citizens' resolution-passing initiative, used legal solutions included in the Act on the Exercise of the Citizens' Legislative Initiative. According to the aforesaid Act, the exercise of the right of legislative initiative depends on the right to vote in elections to the Sejm.

The prerequisite for the exercise of the right of resolution-passing initiative by members of the self-governing communities is to act in an organised manner. To that end, such members form a group of persons supporting the initiative, whose size depends on the number of inhabitants in a given local government unit. At the commune level, the group must consist of: at least 100 persons – where the commune contains up to 5 000 inhabitants, at least 200 persons – where the commune contains up to 20 000 inhabitants, at least 300 persons – where the commune contains more than 20 000 inhabitants. In the district, the group comprises: at least 300 persons – in the district up to 100 000 inhabitants, at least 500 persons – in the district with more than 100 000 inhabitants. In the self-governing voivodeship, the group of inhabitants that propose the resolution-passing initiative must consist of at least 1 000 persons. Thresholds for supporting the bill in the smallest self-governing communities adopted by the legislator are too high

²¹ Mączyński, M., *Commentary to Article 5b*, in: Chmielnicki, P. (ed.), *Ustawa o samorządzie gminnym. Komentarz*, Warszawa 2013, p. 141.

²² Bylaws of the Youth Council of the City in Łódź, https://uml.lodz.pl/files/public/dla_mieszkanca/Statut_ujednoczony_MRM_pdf.pdf, accessed on: 25.10.1019.

while considering a relatively low level of social involvement in local affairs.²³ It should be noted that already at the stage of works on the bill introducing the citizens' resolution-passing initiative, the representatives of sciences informed about the risk associated with setting an unnecessarily high limit for the number of persons required to support the bill. It was shown that the limit for the required signatures should be based on objective criteria. It was also suggested to use the desired number of signatures for the implementation of the legislative initiatives as a frame of reference.²⁴ Furthermore, the professionals stressed that the support threshold should be determined in a manner, which – in the view of a given community – promotes the submission of further projects. On the other hand, the aforementioned threshold should constitute an actual barrier to making hasty decisions about the resolution-passing initiatives.²⁵

While formulating the requirement of supporting the resolution-passing initiative, the legislator used the term “group of inhabitants”. Therefore, it should be considered whether the support should be given by the group of inhabitants distinguished from among all inhabitants of a given local government unit or the group comprising only persons with active rights to elect representatives to the decision-making bodies. A reference in sec. 2 Article 41a of the Local Self-Government Act (sec. 2 Article 42a of the District Self-Government Act, sec. 2 Article 89a of the Voivodeship Self-Government Act) to sec. 1, which defines the powers of the group of inhabitants with active voting rights, justifies the thesis that only a group of inhabitants having the right of action may efficiently support the resolution-passing initiative. Furthermore, it must be stressed that while determining in Article 28aa sec. 7 of the Local Self-Government Act (Article 30a sec. 7 of the District Self-Government Act and Article 89a sec. 7 of the Voivodeship Self-Government Act) the conditions of participation of the inhabitants of the local government unit in a debate on the report on its situation, the legislator did not require to affix signatures of the inhabitants with active voting rights on the written applications for participation. The requirement to prove active voting rights was not formulated with respect to the inhabitants supporting the bill

²³ Marchaj, R., *Commentary to Article 41*, in: Dolnicki, B. (ed.), *Ustawa o samorządzie gminnym. Komentarz*, publ. II, WKP 2018, LEX/el.

²⁴ Dolnicki, B., *Obywatelska...*, p. 128.

²⁵ Augustyniak, M., *Inicjatywa uchwalodawcza mieszkańców jako forma partycypacji społecznej w jednostkach samorządu terytorialnego – wnioski de lege lata i postulaty de lege ferenda*, in: Dolnicki, B. (ed.), *Partycypacja społeczna w samorządzie terytorialnym*, Warszawa 2014, p. 368.

implemented in the framework of the participatory budget either. The aforementioned legal regulations highlight the use of diverse criteria, which determine involvement of the members of the self-governing community in the undertakings that refer to such community.

The regulations shaping the requirement for supporting the resolution-passing initiative do not contain any provisions that would exclude a possibility of withdrawing the support given.²⁶ The legislator did not decide to adopt the solution that constitutes equivalent of Article 9 sec. 3 of the Act on the Exercise of the Citizens' Legislative Initiative, in compliance with which any withdrawal of support for the bill is ineffective. Lack of equivalent regulation on the resolution-passing initiative creates a risk that it may be necessary to supplement such support immediately before submitting the bill with the decision-making body.

The objective scope of the citizens' resolution-passing initiative covers all matters referring to tasks and competencies of the decision-making bodies and controlling local government units. Nonetheless, it is essential to exclude from the aforesaid scope all matters, in which the resolution-passing initiative has been reserved for specific entities pursuant to special provisions of law. In some areas, the legislator entrusted the resolution-passing initiative with: commune administrator, interested circles, review panel, specific number of councillors.²⁷ In the absence of other restrictions, it may be assumed that the subject matter of the resolution-passing initiative may be bills that will become local acts of law and other not universally applicable laws.

Procedure in case of citizens' initiative

By virtue of Article 41a sec. 3 of the Local Self-Government Act (Article 42a sec. 3 of the District Self-Government Act and Article 89a sec. 3 of the Voivodeship Self-Government Act, respectively), the bill proposed as part of the citizens' resolution-passing initiative becomes the subject of the meeting of the commune council at its next session after the submission of the bill, however, not later than after 3 months from the date of filing such bill. On the basis of the

²⁶ Marchaj, R., *Commentary to Article 41a*, in: Dolnicki, B. (ed.), *Ustawa o samorządzie gminnym. Komentarz*, publ. II, WKP 2018, LEX/el.

²⁷ See Czerw, J., *Stanowienie uchwał przez radę gminy*, "Samorząd Terytorialny" 2015, No. 12, p. 35, Czerw, J., *Procedury...*, pp. 65–67.

text of the invoked legal solution, the responsibilities of the party that initiated the resolution-passing proceedings and the body competent to conduct such proceedings may be determined. The group of inhabitants in the local government unit, which initiates the resolution-passing proceedings, is obliged to submit the bill by exercising their rights. As emphasised in the jurisprudence, within the framework of the resolution-passing initiative, the members of the self-governing communities are entitled to develop and submit the bill, which by operation of law and upon fulfilment of formal conditions should become the subject of the meeting and then submitted for a vote of the decision-making body.²⁸ Therefore, the subject matter of the resolution-passing initiative is the bill in the form which allows it to be included in the agenda of the meeting by the chairperson of the decision-making body. With the above in mind, the submission of assumptions to the bill may not be treated as the implementation of the resolution-passing initiative. The demands to settle the issue or the direction of desired actions as shown by the initiators must be included in the bill prepared by the executive body.²⁹ By invoking the regulations on the citizens' legislative initiative, which shaped it as the so-called "formulated" initiative³⁰, it may be stated that based on the applicable legal solutions, the citizens' resolution-passing initiative took an analogous form. The "formulated" initiative means that it is necessary to put forward proposals in compliance with the legislative technique. The initiative is also opposed to the "non-formulated" initiative, whose essence consists in treating the legislative initiative as the requirement.³¹

Bearing in mind the previously made arrangements with regard to the terminology and the need to delimit the following terms: "resolution-passing initiative" and "preparation of the bill", it must be assumed that the right of the inhabitants of the local government unit to submit the resolution-passing initiative is correlated with an obligation to draft the bill. The necessity to draft the bill by the initiator is actually justified by practical reasons. To put the bill on the agenda for the meeting of the decision-making body, it is essential to first obtain

²⁸ Supervising authority's resolution no. NPII.4131.1.656.2018 of the Śląskie Voivodeship Governor of 14 December 2018, Official Journal of Śląskie Voivodeship of 2018, item 8074.

²⁹ Decision of the Voivodeship Administrative Court of 25 June 2019, III SA/GI 435/19, LEX no. 2706767.

³⁰ Article 118 sec. 3 of the Constitution of the Republic of Poland.

³¹ Szmyt, A., *Obywatelska inicjatywa ustawodawcza*, "Gdańskie Studia Prawnicze" 1998, volume III, pp. 151–152.

the support of a specific group of inhabitants, who should familiarise themselves with the contents of such bill. Otherwise, the bill prepared once the required number of signatures of the members of the self-governing community have been collected could not meet the expectations of persons opposing the initiative or even be against their intentions.³²

The bill drafted as part of the citizens' resolution-passing initiative should be in line with the requirements for bills submitted by other entities entitled to the resolution-passing initiative. The literature shows that the requirements specified in "The principles of legislative technique"³³ must apply to resolutions of the decision-making bodies of the local government units, which constitute local acts of law. Nonetheless, it is recommended that the uniform structure and form were used in case of all resolutions passed by the decision-making bodies in the self-government bodies. The resolutions should be structured according to the pattern that includes the following: title, legal basis, substantive provisions – general and special, when necessary, interim and adjustment provisions, final provisions, signature of the resolution.³⁴ It must be stressed that the provisions of Article 58 sec. 1 of the Local Self-Government Act with reference to the resolutions of the commune authorities concerning the financial commitments establish the obligation to indicate sources, from which such commitments will be covered. The aforementioned legal regulation causes certain interpretation doubts and is subject to criticism by the doctrine representatives.³⁵ It must be noted that the legal regulation does not correspond to other regulations of the Act on Public Finance³⁶ and the requirement to indicate the source, from which the commitments will be covered is illogical and unenforceable.³⁷ Despite negative assessment of the provisions of the Article 58 sec. 1 of the Local Self-Government Act, they may

³² Decision of the Voivodeship Administrative Court of 25 June 2019, III SA/GI 435/19, LEX no. 2706767.

³³ § 143 of the Appendix to the Resolution of the Prime Minister of 20 June 2002 on "The Principles of Legislative Technique", consolidated text: Dz.U. (Journal of Laws) of 2016, item 283.

³⁴ Czerw, J. and Krześnicki, I., *Działalność uchwalodawcza rady gminy ze wzorami uchwał, procedur i pism*. Warszawa 2007, pp. 161–162.

³⁵ Kryczko P., *Commentary to Article 58*, in: Chmielnicki, P. (ed.), *Ustawa o samorządzie gminnym. Komentarz*, Warszawa 2013, pp. 756–760.

³⁶ Act of 27 August 2009 on Public Finance, consolidated text: Dz.U. (Journal of Laws) of 2019, item 869.

³⁷ Glumińska-Pawlic, J., *Commentary to Article 58*, in: Dolnicki, B., *Ustawa o samorządzie gminnym. Komentarz*, Warszawa 2016, pp. 1012–1014.

be treated as the source of the obligation addressed to the inhabitants of the commune which exercises the right to the resolution-passing initiative. Therefore, a question arises regarding an actual possibility of specifying the sources of funds for covering the financial commitments by the initiators of the resolution-passing proceedings. It may be expected that strict compliance with the above-mentioned obligation will weaken the willingness of the inhabitants to initiate the resolution-passing procedure and hence limit their activities.

The obligations resulting from the essence of the citizens' resolution-passing initiative are not only for the inhabitants of the local government units, but also for the decision-making bodies in the self-governing communities. The council and regional council are obliged to examine the bill submitted as part of the resolution-passing procedure. In compliance with the regulations of the local government organisational acts, the bill becomes the subject of the meeting of the decision-making body at the upcoming session, after its submission, yet not later than upon expiry of 3 months from date of filing such bill. The adopted legal solution eliminates the risk that the decision-making body will amend the bill before the meeting of such body. The bill should be immediately put on the agenda for the meeting of the decision-making body. On the other hand, at the subsequent stages of the resolution-passing procedure, the council or regional council may interfere with the text of the submitted bill. The implementation of the bill proposed by the inhabitants will depend on its substance and elements of local policy, which determine acceptance or rejection of specific solutions, including legal solutions.³⁸ The deadline for commencing the bill procedure by the decision-making body of the self-governing community was outlined in general terms. The time limit starts to run at the time of the first session commenced upon submission of the bill and ends upon expiry of the third month, counting from the date of filing such bill. The legislator failed to specify the consequences of failure to meet deadline and to act by the decision-making body. One of the deficiencies of the analysed legal solution is the fact that the inhabitants who proposed the citizens' resolution-passing initiative were deprived of legal remedies in the discussed situation. Even though the representatives of science stressed the fact that the initiators of the bill put forward by the inhabitants should be provided with a possibility of filing a complaint with the administrative court on the

³⁸ Uziębło, P., *Inicjatywa uchwalodawcza mieszkańców gminy. Glosa do wyroku WSA z dnia 28 października 2008 r., II SA/OI 737/08*, "Gdańskie Studia Prawnicze – Przegląd Orzecznictwa" 2011, No. 2, 53–62, p. 58.

grounds that the decision-making body failed to act, the argument was not taken into consideration.³⁹

The initiation of the resolution-passing proceedings as part of the citizens' initiative and its continuation requires a number of activities, in case of which members of the self-governing communities must organise themselves. The resolution-passing initiative committee is established to ensure appropriateness of the undertaken activities and improve their efficiency. The rules of creating such committees should be specified in the resolution of the decision-making body. To specify such rules, it might be helpful to use the solutions included in the Act on the Exercise of the Citizens' Legislative Initiative, subject to the consideration of differences between the legislative initiative and resolution-passing initiative. The literature shows that the rules for creating, acting and financing the committee of the citizens' resolution-passing initiative should not limit the possibilities of its establishment or significantly hinder its operations in practice.⁴⁰ In accordance with the will of the legislator, the aforesaid committee is entitled to appoint persons authorised to represent the committee during the activities of the decision-making body. Generally, a specific member of the committee should be appointed to represent the committee based on a resolution passed thereby.⁴¹ The court and administrative case law show that the decision-making body is not competent to determine the rules of representing the committee, since such powers are outside the scope of authorisation to "establish specific rules for proposing citizens' initiatives".⁴²

By regulating the institution of the citizens' resolution-passing initiative in the organisational acts, the legislator set out its general framework. In addition, the legislator obliged the decision-making bodies of the self-governing communities to specify the following issues by way of a resolution: detailed rules of proposing citizens' legislative initiatives, rules of creating committees of citizens' resolution-passing initiatives, rules of promoting citizens' resolution-passing initiatives,

³⁹ Kisiel, W., *Udział jednostki w procedurze uchwalodawczej rady gminy (pytania de lege ferenda)*, in: Stec, M., et al. (eds.), *Partycypacja obywateli i podmiotów obywatelskich w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*, Warszawa 2012, p. 105; Augustyniak, M., *Inicjatywa...*, p. 378.

⁴⁰ Ziółkowski, D., *Commentary to Article 41a*, in: Gajewski, S. and Jakubowski, A., *Ustawa o samorządzie gminnym. Komentarz*, Legalis, accessed on: 25.10.2019.

⁴¹ *Ibidem*.

⁴² Decision of the Supreme Court of 04 July 2019 III SA/Gd 333/19, LEX no. 2698392.

formal requirements which the submitted bills must satisfy. The decision-making body is obliged to exhaust the scope of its statutory authority by regulating all issues considered material by the legislator. Failure to fulfil this obligation will constitute flagrant breach of the law and hence make the act null and void.⁴³

Summary

The citizens' resolution-passing initiative supplemented the catalogue of legal instruments for participation of residents of the local government units in solving issues that are material for a given community. Moving the regulation on the resolution-passing initiative from basic level to the statutory level should be considered positive. Thanks to such legislative treatment, the inhabitants of all local government units were granted the right to implement the resolution-passing initiative and the present legal solutions related thereto were harmonised. The regulations introduced by the legislator allowed to distinguish main elements of the analysed institution, such as: subjective scope, objective scope and mode of procedure.

While shaping the citizens' resolution-passing initiative, the legislator used certain legal solutions that standardise the citizens' legislative initiative. To invoke such solutions, it was crucial to consider both the conditions and specificity of the functioning of the self-governing communities, hence, only some of them could be applied.

Literature

Augustyniak M., *Inicjatywa uchwalodawcza mieszkańców jako forma partycypacji społecznej w jednostkach samorządu terytorialnego – wnioski de lege lata i postulaty de lege ferenda*, in: Dolnicki, B. (ed.), *Partycypacja społeczna w samorządzie terytorialnym*. Warszawa 2014.

Borski M., *Inicjatywa ludowa instrumentem presji na ustawodawcę?*, "Przegląd Prawa Publicznego" 2016, No. 7–8.

Bylaws of the Youth Council of the City in Łódź. https://uml.lodz.pl/files/public/dla_mieszkanca/Statut_ujednolicony_MRM_pdf.pdf. Accessed on: 25.10.2019.

Czerw J., Krześnicki I., *Działalność uchwalodawcza rady gminy ze wzorami uchwał, procedur i pism*. Warszawa 2007.

Czerw J., *Procedury podejmowania uchwał przez radę gminy i powiatu. Poradnik dla praktyków*. Warszawa 2010.

Czerw J., *Stanowienie uchwał przez radę gminy*, "Samorząd Terytorialny" 2015, No. 12.

⁴³ Decision of the Voivodeship Administrative Court of 25 June 2019, III SA/GI 435/19, LEX no. 2706767.

- Dąbek D., *Prawo miejscowe*. Warszawa 2007.
- Dolnicki B., *Obywatelska inicjatywa uchwalodawcza jako forma partycypacji obywateli w podejmowaniu rozstrzygnięć na poziomie lokalnym*, in: Stec, M., et al. (eds.), *Partycypacja obywateli i podmiotów obywatelskich w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*. Warszawa 2012.
- Dolnicki, B., *Commentary to Article 1*, in: Dolnicki, B. (ed.), *Ustawa o samorządzie gminnym. Komentarz*. Warszawa 2016.
- Kisiel W., *Udział jednostki w procedurze uchwalodawczej rady gminy (pytania de lege ferenda)*, in: Stec, M., et al. (eds.), *Partycypacja obywateli i podmiotów obywatelskich w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*. Warszawa 2012.
- Kłucińska P., Sześciło D., Wilk B., *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018*, “Samorząd Terytorialny” 2018, No. 10.
- Koniuszewska E., *Inicjatywa uchwalodawcza członków wspólnoty samorządowej jako narzędzie partycypacji społecznej*, in: Dolnicki, B., (ed.), *Partycypacja społeczna w samorządzie terytorialnym*. Warszawa 2014.
- Kryczko P., *Commentary to Article 58*, in: Chmielnicki P. (ed.), *Ustawa o samorządzie gminnym. Komentarz*. Warszawa 2013.
- Marchaj R., *Commentary to Article 41a*, in: Dolnicki, B. *Ustawa o samorządzie gminnym. Komentarz*, publ. II, WKP 2018, LEX/el.
- Mączyński M., *Commentary to Article 5b*, in: Chmielnicki, P. (ed.), *Ustawa o samorządzie gminnym. Komentarz*. Warszawa 2013.
- Szewc A., Szewc T., *Uchwalodawcza działalność organów samorządu terytorialnego*. Warszawa 1999.
- Szewc A., *Commentary to Article 1*, in: Szewc, A., et al. *Ustawa o samorządzie gminnym. Komentarz*. Warszawa 2012.
- Szmyt A., *Obywatelska inicjatywa ustawodawcza*, “Gdańskie Studia Prawnicze” 1998, volume III.
- Uziębło P., *Inicjatywa ustawodawcza obywateli. Act of 24 June 1999 with commentary*. Warszawa 2008.
- Uziębło P., *Inicjatywa uchwalodawcza mieszkańców gminy*, “Gdańskie Studia Prawnicze – Przegląd Orzecznictwa” 2011, No. 2.
- Wierzbica A., *Referendum i wybory oraz zarządzenia i uchwały jednostek samorządu terytorialnego*. Warszawa 2014.
- Ziółkowski D., *Commentary to Article 41a*, in: Gajewski, S., Jakubowski, A., *Ustawa o samorządzie gminnym. Commentary*, Legalis. Accessed on: 25.10.2019.

Legislation

- Act of 23 April 1964, Civil Code, consolidated text: Dz.U. (Journal of Laws) of 2019, item 1145.
- Act of 8 March 1990 on Local Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 506, as amended.
- Act of 5 June 1998 on District Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 511, as amended.
- Act of 5 June 1998 on Voivodeship Self-Government, consolidated text: Dz.U. (Journal of Laws) of 2019, item 512, as amended.
- Act of 24 June 1999 on the Exercise of the Citizens' Legislative Initiative, consolidated text: Dz.U. (Journal of Laws) of 2018, item 2120.
- Act of 15 September 2000 on Local Referendum, consolidated text: Dz.U. (Journal of Laws) of 2019, item 741.
- Act of 27 August 2009 on Public Finance, consolidated text: Dz.U. (Journal of Laws) of 2019, item 869.
- Act of 5 January 2011, Election Code, consolidated text: Dz.U. (Journal of Laws) of 2019, item 684, as amended.
- Act of 11 January 2018 Amending Certain Laws to Increase Citizens' Participation in the Process of Election, Operation and Control of Some Public Bodies, Dz.U. (Journal of Laws) of 2018, item 130.
- Constitution of the Republic of Poland of 2 April 1997, Dz.U. (Journal of Laws) of 2003, No. 78, item 483, as amended.
- Regulation of the Prime Minister dated 20 June 2002 on "The Principles of Legislative Technique", consolidated text: Dz.U. (Journal of Laws) of 2016, item 283.

Judicial decisions

- Decision of the Voivodeship Administrative Court of 25 June 2019, III SA/GI 435/19, LEX no. 2706767.
- Decision of the Voivodeship Administrative Court of 04 July 2019, III SA/Gd 333/19, LEX no. 2698392.
- Supervising authority's resolution no. NPII.4131.1.656.2018 of the Śląskie Voivodeship Governor of 14 December 2018, Official Journal of Śląskie Voivodeship of 2018, item 8074.