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Citizens' Resolution Initiative of the Inhabitants of Local Government Units in Poland

Obywatelska inicjatywa uchwałodawcza mieszkańców jednostek samorządu terytorialnego w Polsce

ABSTRACT

One of the consequences of the political changes in Poland after 1989 was granting citizens the right to initiate legal acts. It has activated society's participation in public life and contributed to building a civil society. In 1994, a citizens' constitutional initiative was established, and, in 1997, a citizens' legislative initiative was undertaken. The aim of the study was to present the citizens' initiative of resolution of the inhabitants of local government units in Poland. Originally, it functioned without a statutory basis and was established by the local government units themselves. This raised doubts as to its legitimacy, which was also reflected in the judgments of voivodeship administrative courts. The practice was in favor of its universal establishment, and it also became increasingly popular, especially in communes. In 2018, all local government laws were amended to grant the residents of

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all local government units in Poland the option of submitting a citizens' initiative, and it is only up to their activity whether they will exercise this right.

Keywords: political changes; citizens' resolution initiative; local government unit; local government; civil society

INTRODUCTION

In 1989, Poland was the first country in Central and Eastern Europe to begin the process of systemically transforming and moving away from the socialist system towards a sovereign democratic state. It covered all spheres of social, political and economic life. It is a question for discussion regarding which of these areas has realized the greatest success. Despite the individual divergent assessments, there is a rather unanimous view that among them (and in one of the first places) is the reconstruction of local government, which functioned with great success during the period between World Wars I and II, and the roots of which go back to much earlier times.

The restoration of local government took place in stages. Already in 1990, it happened at the lowest level of administrative and territorial division, namely in communes. This was done on the basis of the Act of 8 March 1990 on local self-government,[1] which, on 29 December 1998, received the title of the Act on commune self-government[2] and which has been amended many times to this day.[3] Establishing local self-government at other levels in 1990 was not possible, as it was not known what the administrative-territorial division of the state would look like. Poland was then divided into communes and 49 small voivodeships, and it was obvious that this had to be changed. That it was not an easy task is best proved by the fact that it was not even settled in the Constitution of the Republic of Poland of 2 April 1997,[4] which states in Article 164 (1) that the commune is the basic unit of local government and in Article 164 (2) supplements, that other units of regional or local and regional self-government are specified by statute. Thus, local government did not have to function at every level of the administrative and territorial division of the state. Finally, after many discussions, a three-tier administrative-territorial

[1] Journal of Laws 1990, no. 16, item 95.

[2] Act of 29 December 1998 amending certain acts in connection with the implementation of the state system reform (Journal of Laws 1998, no 162, item 1126).

[3] Consolidated text, Journal of Laws 2022, item 559, 583.

[4] Journal of Laws 1997, no. 78, item 483, as amended, hereinafter: the 1997 Constitution. English translation of the Constitution at: https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.12.2022). See amendments to the 1997 Constitution: Journal of Laws 2001, no. 28, item 319; Journal of Laws 2006, no. 200, item 1471; Journal of Laws 2009, no. 114, item 946.

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division was adopted in Poland: commune, poviat and voivodeship.[5] This division has been in operation since 1 January 1998. Importantly, it was also decided that the local government would be at all levels of this division. Therefore, the Act of 5 June 1998 on poviat self-government[6] and the Act of 5 June 1998 on voivodeship self-government[7] were adopted.

According to Article 169 (1) of the 1997 Constitution, local government units perform their tasks through decision-making and executive bodies. In a commune, the decision-making body is the municipal council, while the executive body, depending on the number of inhabitants, is the head of the commune, mayor or city president. In the poviat, the decision-making body is the poviat council, and the executive body is the poviat council headed by the starost. Finally, in the voivodeship, the decision-making body is the voivodeship parliament and the voivodeship board headed by the voivodeship marshal.[8]

Since the beginning of the political transition in Poland, more attention began to be attached to increasing the participation of society in fulfilling public functions. It was remembered that the Solidarity trade union, which at one point had 10 million members, led to the collapse of socialist Poland and the change of the political system. This social activity could not be wasted. Democratization of social life is closely related to social participation, which is why various forms of direct democracy have become increasingly active. In addition to elections, public consultations or national and local referenda or citizens' meetings, the possibility for citizens or residents to initiate legislation through a formal initiative has also begun to be applied. These were important steps in building a civil society, a society engaged in the exercise of public authority.

The aim of the paper is to present the institution of the legislative initiative of the inhabitants of local government units as a form of their participation in the creation of local law. It will show the way to its establishment, the legal basis, the views of the representatives of the doctrine, judicial decisions and, to a small extent, also practice. The research problem is indicated in the postulates *de lege ferenda*. They concern the shortcomings of the current regulations such as its generality, the problems of citizens of countries that do not belong to the European

[5] Act of 24 July 1998 on a divided division of a three-tier state (Journal of Laws 1998, no. 96, item 603, as amended).

[6] Consolidated text, Journal of Laws 2022, item 528, 583. Currently (as of 1 January 2022), there are 16 voivodeships, 380 poviats (including 66 cities with poviat rights) and 2,477 communes: 302 urban communes (including 66 communes which are also cities with poviat rights), 662 urban-rural and 1,513 rural.

[7] Consolidated text, Journal of Laws 2022, item 547, 583.

[8] There is also a government administration in the voivodeship headed by the voivode, who, in accordance with Article 152 (1) of the 1997 Constitution, is the representative of the Council of Ministers in the voivodeship.

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Union, who are residents of a commune, poviat or voivodeship, the question of the scope of the initiative or the requirement to sign a resolution draft for at least 100 inhabitants. However, this will be preceded by a short description of the citizens' constitutional initiative and the citizen' legislative initiative. Without them, it would not be possible for residents to submit draft resolutions by the inhabitants to the decision-making bodies of local government units.

The research was conducted primarily on the basis of legal-dogmatic method, legal-comparative method in its historical aspect and partly on the basis of research methods appropriate for other social sciences.

THE CITIZENS' CONSTITUTIONAL INITIATIVE AND THE CITIZENS' LEGISLATIVE INITIATIVE

Considerations should be preceded by a brief reference to the institution of popular initiative. This institution is defined as the right of a group of members of a collective subject of sovereignty (nation, people, citizens, inhabitants) to submit a draft of a normative act or a motion for a decision in another matter to a competent public authoritative body.[9] As it is known, it is not at the same time an institution of a uniform character and, depending on the adopted distinguishing criterion, it can also be classified in various ways. Due to the territorial scope of the initiative, we distinguish between a nationwide and a local initiative. In terms of the subject matter, we can distinguish between the initiative to submit a draft normative act and the referendum initiative. With regard to the procedure for further proceedings, we distinguish between a direct initiative and an indirect initiative. In turn, due to the form, we distinguish between a formulated initiative, meaning the submission of a ready draft of a legal act, and an unformulated (simple) initiative consisting only of presenting the idea of adopting such an act. Due to the moment when the application is made, it is primary initiative and secondary initiative. There are also other classifications.[10]

The first opportunity in this area for citizens in Poland was the possibility to submit a draft constitution. It happened in 1994 in a rather peculiar situation. On 23 April 1992, the Constitutional Act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland[11] was passed. However, the

[9] Cf. *Leksykon politologii*, eds. A. Antoszewski, R. Herbut, Wrocław 2002, p. 138; S. Grabowska, *Instytucja ogólnokrajowej inicjatywy ludowej w wybranych państwach europejskich. Studium prawno-porównawcze*, Rzeszów 2005, p. 19, 46; J. Kuciński, *Obywatelska inicjatywa ustawodawcza jako instytucja ustroju Rzeczypospolitej Polskiej. Studium prawno-politologiczne*, Warszawa 2018, p. 10.

[10] More broadly, see S. Grabowska, *op. cit.*, pp. 20–22; P. Uziębło, *Inicjatywa ustawodawcza obywateli w Polsce na tle rozwiązań ustrojowych państw obcych*, Warszawa 2006, pp. 31–33.

[11] Journal of Laws 1992, no. 67, item 336, as amended.

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work was interrupted by the dissolution of the Sejm in 1993. The elections held in the autumn significantly changed the political composition of the Sejm and the Senat. Power was won by previously opposition left-wing groups, while the right--wing political parties and their candidates, who started separately, did not enter the first and second chambers of parliament. It even gave rise to the problem of the National Assembly's[12] legitimacy to pass the Constitution. In this situation, efforts were made to find a solution that would alleviate this situation and minimize the allegation that the body that will adopt the Constitution is not representative. Therefore, on 22 April 1994, the Constitutional Act amending the Constitutional Act on the procedure for the preparation and adoption of the Constitution of the Republic of Poland[13] was passed, which amended the legislative procedure. The introduced changes included the right of constitutional initiative established for a group of at least 500,000 citizens who have the right to vote in elections to the Sejm. In this way, for the first time in the history of Poland, the right to submit a normative act was granted to citizens. It was the duty of the citizens to submit a full draft constitution, so that it was a formulated initiative.[14]

The 1997 Constitution, however, no longer provides for the possibility for citizens to initiate its change. Instead, it established in Article 118 (2) for the first time in the history of Poland the right of citizens to initiate legislation, granting that right to a group of at least 100,000 citizens entitled to vote in elections to the Sejm.[15] The procedure to be followed in this matter is determined by law. Details regarding this procedure are regulated by the Act of 24 June 1999 on the execution of legislative initiative by citizens[16] (amended twice). However, citizens may not initiate changes to the 1997 Constitution with regard to issues related to the budget act and state revenues and expenditures. To submit a citizens' legislative initiative, a legislative initiative committee must be established by a group of at least 15 Polish citizens. The legislative drafts prepared by the legislative committee must meet all formal requirements that are imposed on drafts submitted by other entities. In practice, there have been many attempts in Poland by citizens to come up with a legislative initiative. However, only a few of them are formally transferred to the Sejm, which is due mainly to the absence of the required 100,000 signatures of citizens having

[12] In the cases specified in the 1997 Constitution, the Sejm and the Senat, deliberating jointly under the chairmanship of the Speaker of the Sejm or, in his place, the Speaker of the Senate, act as the National Assembly.

[13] Journal of Laws 1994, no. 61, item 251.

[14] In practice, only one civil draft constitution was introduced. It took place on 5 September 1994 and it was done by the Social Constitutional Commission, which was under the patronage and support of the trade union Solidarity; 959,270 citizens with voting rights signed the draft.

[15] The right of legislative initiative is also vested in deputies, the Senate, the President and the Council of Ministers (Article 118 (1) of the 1997 Constitution).

[16] Journal of Laws 2018, item 2120.

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the right to vote in elections to the Sejm. Until now, fewer than 70 legislative drafts were submitted to the Sejm, but only a dozen of them were adopted,[17] including the cases when another draft on the same subject was submitted – usually developed by the Council of Ministers.

THE BEGINNINGS OF THE RESOLUTION INITIATIVE OF THE INHABITANTS OF LOCAL GOVERNMENT UNITS

A resolution initiative should be understood as the power to start the process of enacting local law by a local government.[18] Thus, one of the stages of the resolution procedure is understood as a series of actions and events leading to a legal resolution.[19] The laws on local self-government and voivodeship self-government, i.e., the so-called system law, did not provide in their original wording for the possibility for inhabitants of communes, districts, voivodeships, communes, and poviats to submit a resolution initiative to their decision-making bodies. Thus, the legislator did not forbid such a solution (no negative regulation) and did not explicitly envisage such a possibility (positive normalization). However, such a possibility began to be derived from Article 169 (4) of the 1997 Constitution, which states that the internal system of local government units is determined, within the limits of statutes, by their constitutive organs.[20] Hence, the right of citizens to initiate draft resolutions was granted in the statutes of communes[21], which establish, i.a., the number of inhabitants who may submit a draft resolution and the procedure for submitting the draft. In general, the statutes clarified, that the resident must have an active electoral right in local elections. It is widely pointed out that, for the first time, the right of citizens to take a resolution initiative took place previously in Toruń in 1991.[22]

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[17] An example may be the Act of 10 January 2018 on the restriction of trading on Sundays, holidays and some other days (Journal of Laws 2021, item 936, as amended).

[18] See W. Staszczak, *Instytucje demokracji bezpośredniej a wpływ mieszkańców na zarządzanie gminą*, [in:] *Demokracja bezpośrednia w samorządzie terytorialnym*, eds. M. Marczewska-Rytko, S. Michałowski, Lublin 2012, p. 296.

[19] See A. Szewc, T. Szewc, *Uchwałodawcza działalność organów samorządu terytorialnego*, Warszawa 1999, p. 56.

[20] See H. Izdebski, *Prawne podstawy obywatelskiej inicjatywy uchwałodawczej*, [in:] *Obywatelska inicjatywa uchwałodawcza w procesie stanowienia aktów prawa miejscowego*, eds. P.B. Zientarski, E. Mreńca, Warszawa 2018.

[21] B. Dolnicki, *Obywatelska inicjatywa uchwałodawcza jako nowa forma partycypacji obywateli w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*, [in:] *Partycypacja obywateli i podmiotów obywatelskich w podejmowaniu rozstrzygnięć publicznych na poziomie lokalnym*, eds. M. Stec, M. Mączyński, Warszawa 2012, p. 113 ff.

[22] Available at: https://mamprawowiedziec.pl (access: 30.4.2021).

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The introduction of the right to initiate draft resolutions by residents by other communes, including large cities such as Łódź, Poznań, Gdańsk and Gorzów Wielkopolski, met with different opinions from both the courts and representatives of the doctrine. The Voivodeship Administrative Court in Wrocław was the first to judge on this subject in the judgment of 3 April 2006.[23] It considered that, due to the fact that the legislator is silent in the Municipal Self-Government Act on such rights of residents, in that case, it should be interpreted as the lack of consent to this form of exercising power by the residents of the commune. The fact that the legislator omitted such a strong measure of influencing the commune's organ by the inhabitants should not be treated as leaving the statutory regulations open to such an interpretation, but as a conscious exclusion of this institution from the rights of the commune's inhabitants. In the following years, other voivodeship administrative courts, e.g. in Szczecin, Gorzów Wielkopolski or Kraków, expressed their views on this subject many times. For example, the Voivodeship Administrative Court in Olsztyn stated that, "since the legislator treated as the statutory matter the conduct of consultations with the inhabitants of the commune and gave the commune the possibility of defining of this rules, it is difficult to accept that such an important matter, as the initiative of the resolution (undoubtedly a right that goes beyond the right to consult on important matters of the commune) and the way in which it is implemented, could be self-regulated in the commune's statute".[24] Gradually, however, the jurisprudence began to change partially.[25] For example, the Voivodeship Administrative Court in Kraków stated in its judgment of 8 May 2021:[26] "The legislator in the Municipal Self-Government Act explicitly grants the right of resolution initiative only to the executive body (Article 20 (5) of the Municipal Self-Government Act), but this does not mean its exclusivity for its right of resolution initiative. The doctrine assumes that a resolution initiative may also be entrusted to other entities (e.g., a group of residents or a group of councilors)".

However, only the judgment of the Supreme Administrative Court of 21 November 2013,[27] issued as a result of a cassation appeal by the Olsztyn Voivode, should be considered a breakthrough. The Court there emphasized that the most important source of legislative powers of the commune council is Article 169 (4) of the 1997 Constitution, and its possible limitations should clearly arise from the Municipal Self-Government Act. Since Article 22 (1) of this Act stipulates that the internal

[23] III SA/Wr 584/05, CBOSA (Central Database of Administrative Court Rulings).

[24] Judgment of the Voivodeship Administrative Court in Olsztyn of 28 October 2008, II SA/Ol 737/08, CBOSA.

[25] More broadly, see A. Cudak, *Analiza prawna orzecznictwa sądów administracyjnych w zakresie uregulowania obywatelskiej inicjatywy uchwałodawczej*, [in:] *Obywatelska inicjatywa uchwałodawcza…*, pp. 61–81.

[26] II SA/Kr 329/12, CBOSA.

[27] II OSK 1887/13, CBOSA.

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organization and the mode of work of the commune's organs are defined in the commune's statute, "granting groups of residents the initiative to adopt a resolution (…) is within the limits of applicable law, and thus does not violate this right".[28] This judgment was positively assessed by representatives of the legal doctrine.[29]

In the doctrine of constitutional law and administrative law, there is generally a high degree of support for institutions of the resolution initiative submitted by residents of local government units. It is not only stressed that it is included in the current legal order and is in accordance with the 1997 Constitution,[30] but that it corresponds to the desired model of the change in the law-making procedure, including local law, from discursive to negotiating, in particular through the right of citizens/residents to propose amendments to their own projects or draft resolutions submitted by other empowered entities.[31]

In practice, the right to initiate a resolution was introduced not only in small communes but even in such large cities as Łódź or Poznań, and, most importantly, it was not an unused institution.[32] In the literature, however, attention was drawn to a significant discrepancy about who can submit it and how many people are required to support such an initiative. It was established that residents or citizens could do it, and it often depended on holding the right to vote in elections to a given local government unit. Taking into account the required number of signatures of residents supporting the project, the numbers were as follows: in Łódź it was, e.g., at least 1,000 residents (which constituted slightly more than 0.17% of the population, originally it was even 6,000 residents), while in Poznań at least 5,000 so less than 1.2% of the population).[33]

[28] M. Rachwał, *Obywatelska inicjatywa uchwałodawcza w Polsce w świetle prawa – wybrane zagadnienia*, "Przegląd Politologiczny" 2016, no. 1, pp. 24–25.

[29] See B. Jaworska-Dębska, *Glosa do wyroku Naczelnego Sądu Administracyjnego z dnia 21 listopada 2013 r., sygn. akt II OSK 1887/13*", "Samorząd Terytorialny" 2015, no. 3, pp. 84–93.

[30] For example, see E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2002, p. 115; A. Miruć, *Obywatelska inicjatywa uchwałodawcza*, "Samorząd Terytorialny" 2010, no. 1–2, p. 31 ff.; A. Obrzut, *Obywatelska inicjatywa mieszkańców*, "Wspólnota" 2010, no. 13, p. 28.

[31] See P.B. Zientarski, *Aspekty aksjologiczne partycypacji społecznej a obywatelska inicjatywa uchwałodawcza*, [in:] *Obywatelska inicjatywa uchwałodawcza…*, p. 28.

[32] For an example of such initiatives, see M. Rachwał, *op. cit*., pp. 24–25; M. Niewiadomska-Cudak, *Obywatelska inicjatywa uchwałodawcza na przykładzie miasta Łodzi*, [in:] *Obywatelska inicjatywa uchwałodawcza…*, pp. 83–99; D. Fleszer, *Udział obywateli w tworzeniu prawa w wybranych gminach województwa śląskiego*, "Rocznik Administracji i Prawa" 2016, vol. 16(2), pp. 133–146.

[33] See M. Rachwał, *op. cit*., pp. 28–30.

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ESTABLISHMENT OF A RESOLUTION INITIATIVE OF RESIDENTS OF LOCAL GOVERNMENT UNITS IN LOCAL GOVERNMENT LAWS

The establishment by some communes of the opportunity for residents to initiate draft resolutions has led to the need to regulate this issue in local government laws, which was also intended to interrupt disputes regarding the legitimacy of such regulations. The first legislative initiative came from President Bronisław Komorowski, who, on 30 August 2013, introduced to the Sejm a draft act concerning the cooperation in local government for local and regional development and amending certain acts.[34] It envisaged, i.a., the right of commune inhabitants, who have the right to vote in elections to the commune council, to submit a draft resolution, whereby at least 15% of residents entitled to vote were to sign such a draft. Similar solutions were also to be established in poviats and voivodeships. This proposal was welcomed, but in the literature it was emphasized that the required number of signatures was too high.[35] Ultimately, the end of the 7th term of the Sejm interrupted works on this legislative draft because of the principle according to which works, which has not been completed before the end of the term of the Sejm are not continued during its next term (the principle of discontinuation).

In the 8th term of the Sejm, a similar legislative initiative was launched on 30 March 2017 by a group of deputies from the opposition Modern Party (whose leader was at the time Ryszard Petru; Pol. *Nowoczesna*).[36] It was a very extensive and well-prepared project, but it was rejected on 25 May 2017. Almost at the same time, on 28 April 2017, another opposition party, Democratic Left Alliance (Pol. *Sojusz Lewicy Demokratycznej*, SLD), submitted a petition to the Sejm, the aim of which was to amend the provisions of all local self-government laws to introduce the statutory possibility for inhabitants of communes, poviats and voivodeships to submit the legislative initiative to the decision-making bodies of local government units (legislative bodies).[37] This proposal was positively received, and the Parliamentary Committee on Petitions decided on 12 September 2017 to propose a legislative initiative. The proposed solutions were finally included in the parliamentary legislative draft (prepared by the deputies coming from the parliamentary majority that creates the government) amending certain acts, the aim of which was to increase the participation of citizens in the process of selecting, operating and controlling certain public bodies. This draft was submitted to the Sejm on

[34] Sejm Print no. 1699, 8th term of office.

[35] See M. Rachwał, *op. cit*., pp. 26–28.

[36] Sejm Print no. 1500, 8th term of office.

[37] According to SLD, the inhabitants of 41% of communes already had the right to initiate a resolution (see https://lewica.org.pl, access: 30.4.2021).

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10 November 2017.[38] The legislative process and the enacting of the new law was completed on 11 January 2018.[39]

Since the entry into force of the Amendment Act, i.e., from 31 January 2018, the right of residents to submit to the decision-making bodies (legislative body) the draft resolutions is granted to residents, who have active voting rights to the decision-making body: in a commune up to 5,000 residents, this is a group of at least 100 residents; in a commune of up to 20,000 inhabitants – a group of at least 200 inhabitants; in a commune of more than 20,000 inhabitants – a group of at least 300 inhabitants[40]; in a poviat of up to 100,000 inhabitants – a group of at least 300 inhabitants; in a poviat of more than 100,000 inhabitants – a group of at least 500[41] inhabitants; and in the voivodeship – a group of at least 1,000 inhabitants.[42] All amended acts also establish the principle that a draft resolution submitted by residents must be considered at the next session of the decision-making body after its submission, but not later than 3 months from the date of submission of the draft. The consequence of introducing these regulations was the introduction of appropriate changes in the statutes of communes, poviats and voivodeships.

The assessment of the establishment in the local self-government laws of the residents' right to submit a resolution-making initiative must undoubtedly be positive, as it involves residents in the process of managing local government affairs. It is understandable that these initiatives must address issues falling within the tasks of each given local government. However, there are several reservations to the regulation itself.

Firstly, it draws attention to the generality of the regulation, which, in addition to the justification for the draft law in this respect, creates the situation in which the burden of interpretation of the existing rules and the establishment of detailed regulations is transferred to the decision-making bodies (legislative bodies) of communes, poviats and voivodeships, for which they are not always well prepared.[43]

Secondly, the question arises why, in a situation where, in accordance with Article 16 (1) of the 1997 Constitution, by operation of law, a self-governing community is made up of all residents of a unit of basic territorial division, the right to take a citizens' initiative in the commune is reserved exclusively to residents

[38] Sejm Print no. 2001, 8th term of office.

[39] Act of 11 January 2018 amending certain acts in order to increase the participation of citizens in the process of electing, functioning and controlling certain public bodies (Journal of Laws 2018, items 130, 1349).

[40] Article 41a (2) of the Municipal Self-Government Act.

[41] Article 42a (2) of the Poviat Self-Government Act.

[42] Article 89a (2) of the Voivodeship Self-Government Act.

[43] See e.g., critical comments on this topic in D. Ziółkowski, *Obywatelska inicjatywa uchwałodawcza jako instrument partycypacji społecznej*, "Zeszyt Studencki Kół Naukowych Wydziału Prawa i Administracji UAM" 2018, no. 8, pp. 333.

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with an active electoral right to the decision–making body.[44] This means that, e.g., citizens of countries that do not belong to the European Union, who are residents of a commune, poviat or voivodeship, cannot exercise this right.

Thirdly, it is argued in the literature that it is not clear whether the legislator in Article 41a (2) of the Municipal Self-Government Act, indicating the number of "inhabitants of the commune", refers to the total number of inhabitants of the local government unit or only to the number of inhabitants entitled to vote in the municipal council elections.[45]

Fourthly, one might wonder whether, due to the existence of a large number of communes with a small number of inhabitants (the smallest commune, Krynica Morska, has fewer than 1,400 inhabitants, and many others are not much larger), the requirement to sign a resolution draft for at least 100 inhabitants is not too excessive.

Fifthly, although the Act does not explicitly exclude the matter that cannot be the subject of a citizens' resolution initiative, there is no doubt that such a matter exists, which results from other provisions of the Act. On the one hand, it is understandable that such an initiative may concern only matters that are within the scope of the commune's activities and that the commune council has no right to limit this scope in the case of citizens' initiatives. On the other hand, however, it should be remembered that issues such as the budget can be initiated only by the executive body.

Sixthly, it may be questioned whether the statutory regulation of the way in which the commune council is proceeding on the draft resolution submitted by the residents should not be more detailed.

Seventh, we do not share the view expressed in the literature that the commune council has no right to change the content of the citizens' resolution initiative.[46] Adopting such an interpretation of Article 43a (3) of the Municipal Self-Government Act would limit the right of the decision-making body of the commune, which is not justified in the provisions of the entire act and, above all, would limit the role of this representative body.

The systemic independence of the local government in Poland means that the more precise provisions regarding the procedure for submitting and proceeding with draft resolutions submitted by residents of local government units are laid down in the statutes of these units. The statutory regulation of this institution means that the introduction of such a provision must be included therein. Pursuant to

[44] Citizens of Poland and citizens of the European Union who are not Polish citizens, who are 18 years of age on the day of granting their support for the draft resolution, and who permanently reside in the commune, have the right to vote.

[45] See commentary on Article 41a in *Ustawa o samorządzie gminnym. Komentarz*, ed. B. Dolnicki, Warszawa 2021.

[46] Commentary on Article 41a (*ibidem*).

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Article 41a (5) of the Municipal Self-Government Act, such issues require further specification: detailed rules for submitting citizens' initiatives, rules for establishing committees for resolution initiatives, rules for promoting these initiatives and formal requirements for the submission of projects, to which the submitted projects must correspond. The process of creating such regulations in local government units has already been completed. At the same time, it is understandable that the fact that the inhabitants take up a citizens' resolution initiative does not mean that the resolution initiated in this way will be passed, as it is decided by the decision-making body of the local government unit.

CONCLUSIONS

Citizens' resolution-making initiative of the inhabitants of local government units is a very important institution that activates the society to participate in public life and contributes to building a citizens' society. It was originally introduced without a statutory basis. Although there were doubts as to whether it was permissible, as it was included in the judgments of some voivodeship administrative courts. It was quickly concluded that the lack of an explicit statutory prohibition allowed for their establishment in the statutes of local government units. Increasingly, this institution was also used in practice. The 2018 amendment of all three local self-government laws and the introduction of the opportunity for residents to submit a citizens' resolution initiative in each of them created the situation in which now the opportunity to submit such an initiative is available to residents of all local government units in Poland, and whether they we use it or not depends only on their activity.

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ABSTRAKT

Jedną z konsekwencji przemian ustrojowych w Polsce po 1989 r. było przyznanie obywatelom prawa do inicjowania aktów prawnych. Zaktywizowało to udział społeczeństwa w życiu publicznym i przyczyniło się do budowy społeczeństwa obywatelskiego. W 1994 r. ustanowiono obywatelską inicjatywę konstytucyjną, a w 1997 r. – obywatelską inicjatywę ustawodawczą. Celem opracowania było przedstawienie obywatelskiej inicjatywy uchwałodawczej mieszkańców jednostek samorządu terytorialnego w Polsce. Pierwotnie funkcjonowała ona bez podstawy ustawowej i została wprowadzona przez same jednostki samorządu terytorialnego. Budziło to wątpliwości co do jej zasadności, co znalazło odzwierciedlenie również w orzecznictwie wojewódzkich sądów administracyjnych. Praktyka sprzyjała jej powszechnemu ustanowieniu, a także stawała się coraz bardziej popularna, zwłaszcza w gminach. W 2018 r. wszystkie ustawy samorządowe zostały znowelizowane tak, aby dać mieszkańcom wszystkich jednostek samorządu terytorialnego w Polsce możliwość zgłoszenia inicjatywy obywatelskiej i tylko od ich aktywności zależy, czy z tego prawa skorzystają.

Słowa kluczowe: przemiany ustrojowe; obywatelska inicjatywa uchwałodawcza; jednostka samorządu terytorialnego; samorząd terytorialny; społeczeństwo obywatelskie