

A theoretical model for the use of participatory budgeting in implementing an environmental policy and combating climate change

Teoretyczny model wykorzystania budżetu partycypacyjnego we wdrażaniu polityki środowiskowej i przeciwdziałaniu zmianom klimatu

Теоретическая модель использования партисипативного бюджета при реализации политики в области охраны окружающей среды и предотвращения климатических изменений

Теоретична модель використання бюджету участі в реалізації екологічної політики та протидії зміні клімату

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Summary: Modern states have a responsibility to run an effective climate policy by adapting solutions that will have a long-term positive impact on the surrounding environment. This also applies to the state of the law, which must respond to the changing reality. An important research problem addressed in this study is whether there is a regulation in Polish legislation that allows the functioning of so-called green participatory budgeting. With this in mind, I present the following research questions: Can participatory budgeting as a public participation tool be a basis for an effective model of engaging residents in the fight against climate change? Does the Polish legal system stipulate the creation of climate-related participatory budgeting? Does the Polish legislation need a new regulation on green participatory budgeting, through which only pro-climate projects will be created? Providing answers to these research questions was possible after conducting an analysis based on the following research methods: interpretation of the law in force and an analysis of the evolution of law in time. This allowed the following conclusions: participatory budgeting (PB) is an appropriate form of public participation, thanks to which pro-climate tasks can be developed. The current legal regulations in Poland relating to participatory budgeting should be described as general, which, based on the analysis carried out here, was found to be insufficient and incompatible with the social reality, which aims to have pro-climate proposals and to implement them. Therefore, the legislator must intervene and allow citizens to submit such projects under a separate procedure for climate participatory budgeting.

Key words: participatory budgeting; green participatory budgeting; public participation; environmental policy

Streszczenie: Współczesne państwa mają obowiązek prowadzenia skutecznej polityki klimatycznej poprzez adaptację rozwiązań, które będą miały długofalowy i pozytywny wpływ na środowisko. Dotyczy to również porządku prawnego, który musi reagować na zmieniającą się rzeczywistość. Istotnym problemem badawczym podjętym w niniejszym opracowaniu jest pytanie, czy w polskim ustawodawstwie istnieje regulacja prawna umożliwiająca funkcjonowanie tzw. zielonego budżetu partycypacyjnego. Mając to na uwadze, przedstawiam następujące pytania badawcze: Czy budżet partycypacyjny jako narzędzie partycypacji społecznej może być podstawą skutecznego modelu angażowania mieszkańców w walkę ze zmianami klimatu? Czy polski system prawny przewiduje tworzenie budżetów partycypacyjnych związanych z klimatem? Czy polskie prawodawstwo potrzebuje nowej legislacji w zakresie tzw. zielonego budżetu partycypacyjnego, dzięki któremu powstawać będą wyłącznie projekty proklamacyjne? Udzielenie odpowiedzi na postawione pytania badawcze było

możliwe dzięki przeprowadzonej analizie opartej na następującej metodzie badawczej – interpretacji obowiązującego prawa oraz analizie ewolucji prawa w czasie. Pozwoliło to na sformułowanie następujących wniosków: budżet partycypacyjny jest odpowiednią formą partycypacji społecznej, dzięki której mogą powstawać projekty proklimatyczne, zmieniające naszą rzeczywistość. Ponadto obecne regulacje prawne w polskim ustawodawstwie odnoszące się do budżetu partycypacyjnego należy określić jako ogólne, co na podstawie przeprowadzonej analizy uznano za niewystarczające i niedostosowane do obecnych realiów społecznych, których celem jest realizacja propozycji proklimatycznych. Niniejsze studium wieńczy konkluzja, iż polski ustawodawca musi interweniować i umożliwić obywatelom składanie takich projektów w ramach odrębnej procedury klimatycznego budżetu partycypacyjnego.

Słowa kluczowe: budżet partycypacyjny, zielony budżet partycypacyjny, partycypacja społeczna, polityka środowiskowa

Резюме: Современные государства обязаны проводить эффективную климатическую политику, адаптируя решения, которые окажут долгосрочное и положительное воздействие на окружающую среду. Это касается и правового порядка, который должен реагировать на меняющуюся реальность. Важной исследовательской проблемой, рассматриваемой в данной статье, является вопрос о том, существует ли в польском законодательстве правовая норма, позволяющая функционировать так называемому зеленому партисипативному бюджету. Исходя из этого, выносятся на обсуждение следующие вопросы: Может ли партисипативный бюджет как инструмент общественного участия стать основой для эффективной модели вовлечения граждан в борьбу с изменением климата? Предусматривает ли польская правовая система создание партисипативных бюджетов, связанных с климатом? Нужен ли польскому законодательству новый закон о так называемом зеленом партисипативном бюджете, благодаря которому будут создаваться только проекты, направленные на защиту климата? Ответить на поставленные исследовательские вопросы стало возможным благодаря анализу, основанному на следующем методе исследования – интерпретации существующего законодательства и анализе его эволюции во времени. Это позволило сформулировать следующие выводы: партисипативный бюджет является подходящей формой общественного участия, благодаря которой могут быть созданы поддерживающие климат проекты, меняющие нашу реальность. Кроме того, существующие в польском законодательстве правовые нормы, касающиеся партиципаторного бюджета, следует характеризовать как общие, которые, на основании проведенного анализа, были признаны недостаточными и не адаптированными к современным социальным реалиям, направленным на реализацию предложений в области защиты климата. В данном исследовании формулируется вывод о том, что польскому законодателю необходимо принять меры и предоставить гражданам возможность представлять такие проекты в рамках отдельной процедуры климатического партисипативного бюджета.

Ключевые слова: партисипативный бюджет, зеленый партисипативный бюджет, общественное участие, политика в области климата

Резюме: Сучасні країни зобов'язані проводити ефективну кліматичну політику, адаптуючи рішення, які матимуть довгостроковий позитивний вплив на навколишнє середовище. Це стосується також і правового порядку, який повинен реагувати на реальність, що зазнає змін. Важливою дослідницькою проблемою, яка розглядається в цьому дослідженні, є питання, чи існує в польському законодавстві правове регулювання, яке уможливило б функціонування т. зв. "зеленого" бюджету участі. Зважаючи на це, я пропоную такі дослідницькі запитання: Чи бюджет участі, як інструмент соціальної участі, може бути основою для ефективної моделі залучення громадян до боротьби зі зміною клімату? Чи польська правова система передбачає створення таких бюджетів участі, які могли б бути пов'язаними із кліматом? Чи польське законодавство потребує нового законодавства щодо т. зв. "зеленого" бюджету участі, завдяки якому створюватимуться лише прокліматичні проекти? Відповіді на так сформульовані дослідницькі запитання стало можливим завдяки аналізу, основаному на дослідницькому методі, яким є тлумачення чинного права та аналіз еволюції права з плином часу. Це дозволило сформулювати наступні висновки: бюджет участі є відповідною формою соціальної участі, завдяки якій можна створювати прокліматичні проекти, які дадуть можливість змінити нашу реальність. Крім того слід зважити, що чинні правові норми польського законодавства, що стосуються бюджету участі, слід охарактеризувати як загальні, які, на основі проведенного аналізу, вважаються недостатніми та непристосованими до сьогоденних соціальних реалій, спрямованих

на реалізацію прокліматичних ініціатив. Дане дослідження дозволяє зробити висновок, що польський законодавець повинен втрутитися і дозволити громадянам подавати такі проекти у рамках окремої процедури кліматичного бюджету участі.

Ключові слова: бюджет участі, зелений бюджет участі, соціальна участь, екологічна політика

Introduction

The subject matter of environmental protection is a permanent element of fundamental laws of modern countries. In the Constitution of the Republic of Poland,¹ the obligation to protect the environment is in Chapter II, dealing with freedoms, rights and obligations of persons and citizens. However, from the point of view of this study, special emphasis should be given to Article 74 (4), which stipulates that public authorities support the activities of citizens to protect and improve the quality of the environment. Moreover, environmental protection is the responsibility of public authorities, and each citizen has the right to obtain information on the condition and protection of the environment. Such an approach from the legislator takes into account the idea of good governance, which stipulates citizen participation of citizens (or, more broadly, society) in environmental protection management based on partnership and equality.² The statutory regulation, which is an extension of the provisions of the Polish Constitution when it comes to public participation in environmental protection, is based on institutional assumptions, that is, on allowing participation of ecological organisations in administrative proceedings in a relevant mode and also on granting control powers to question acts or omissions that violate environmental laws.

As is accepted by legal scholars and commentators, the right to a healthy environment is one of the solidarity rights that belong to third-generation human rights.³ Identifying climate problems with human rights means we need to address the question of implementation of goals of the policy for fighting climate change in the context of how local authorities and civil society can achieve them. The Polish legislator has not directly indicated in any Polish law the possibilities of mitigating

¹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws [Dziennik Ustaw] 1997 no. 78, item 483.

² M. Górski, *Online Commentary on art. 74*, in: *Konstytucja RP*, vol. 1. *Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, Warszawa 2016, <https://sip.legalis.pl/document-view.seam?documentId=mjxw62zogizdkmjsha2tsmroobqxlrsqu4tgmq#> [access: 10.08.2022].

³ J. Marszałek, *Prawo do czystego środowiska jako wartość konstytucyjna*, *Gdańskie Studia Prawnicze* 2021, vol. 25, no. 3 (51), p. 156.

the effects of the changing climate resulting from participatory democracy. As pointed out in the literature, this process allows public authorities to use all – legal and non-legal – available participatory tools to manage public matters in a local government community.⁴ The most popular participatory tools include referendum, public consultation, public discussion and participatory budgeting (PB).

1. Research objective, problem and specific questions

In the face of climate and energy challenges faced by the EU and the world, we need to present proposals for bottom-up efforts that will engage residents locally in achieving global goals. Such a proposal ultimately involves introducing regulation in the Polish legal system in Article 5a of the Commune Self-Government Law⁵ and, possibly in the EU Member States, common participatory budgeting relating to climate in self-governing communities. This form of public participation allows citizens to gain an effective tool for submitting projects that may prevent the consequences of climate change. Local communities may take tangible steps to limit climate consequences using this legal solution. Such actions will result in the creation of climate-friendly investments and improve the citizens' climate awareness.

Considering the context and direction which countries and their self-governing communities should follow to take local actions to fight climate change, we must ask the following research questions, which will allow us to verify the research hypothesis that the Article 5a (3–7) of the Commune Self-Government Law, which regulates participatory budgeting in Polish cities and provides for a climate participatory budget focused exclusively on pro-climate and energy-saving projects:

1. Can participatory budgeting as a public participation tool be a basis for an effective model of engaging residents in the fight against climate change?
2. Does the Polish legal system stipulate the creation of climate-related participatory budgeting?
3. Does the Polish legislation need a new regulation on climate participatory budgeting, through which only pro-climate projects will be created?

⁴ M. Augustyniak, *Partycypacja społeczna w samorządzie terytorialnym w Polsce i we Francji. Studium administracyjnoprawne na tle porównawczym*, Warszawa 2017, p. 49.

⁵ Article 5a (1–7) of the commune self-government law of 8 March 1990, consolidated text: Journal of Laws 2022 items 559, 583, 1005, 1079, 1561.

2. Research methods

The analysis carried out to determine the impact of participatory budgeting on the inclusion of citizens in conducting environmental policy and combating climate change is theoretical. Proposing a separate legal regulation to address climate participatory budgeting in Article 5a of the Commune Self-Government Law first requires presenting the legal basis for the traditional PB model. A deeper understanding of the above issue is expected to evaluate the need – or lack thereof – for a new legal regulation for PB focused exclusively on the fight against climate change. The analysis of the principles and procedure of the operation of participatory budgeting in Poland will be based on Article 5a of the Commune Self-Government Law, where a commune is a basic unit of local government in Poland. The investigation is based on research typical to the study of law, which is part of social science. Considering the subject matter presented in the article, the method of interpretation of the law in force and the method of description of the development of law in time were chosen. The first method should be understood as using the content of the law in force *ipso iure*, which is the subject of this research. The law interpretation method is based on a logical and linguistic interpretation, known among legal scholars and commentators as the interpretation of law.⁶ When using the interpretation of law, we must refer to the achievements of Zieliński, the creator of the derivative interpretation of law founded on the principle of *omnia sunt interpretanda*. Zieliński anchors his derivative concept on the systemic, functional and teleological phases. Moreover, this paper also uses the method of description of the development of the law in time, which allows a fuller approach. In this context, this historical method aims to show the origins of the emergence of the institution of participatory budgeting.

The methods used in this paper are intended to prove whether Article 5a (3–7) of the Commune Self-Government Law, which is the basis for Polish participatory budgeting, is sufficient to create a climate participatory budget or whether a legislative change is required to directly indicate the basis for a special type of participatory budget focused exclusively on climate and energy issues.

⁶ T. Barankiewicz, *Metody myślenia, badania prawa i systematyzacji wiedzy w naukach prawnych*, in: *Metodologia dysertacji doktorskiej dla prawników. Teoria i praktyka*, eds. H. Izdebski, A. Łazarska, Warszawa 2012, pp. 113 and 122.

3. Definition considerations and location of participatory budgeting on Arnstein's ladder of participation

Participatory budgeting⁷ is a form of public participation in which citizens play an active role in helping authorities identify a given community's needs. Participatory budgeting is a decision-making process in which residents co-determine the distribution of a specific pool of funds.⁸ In other terms, participatory budgeting refers to a bottom-up procedure for residents to define the expenses to be implemented in a given year.⁹ According to Misiejko, the primary goal of participatory budgeting is to involve residents in the affairs of a given local government unit.¹⁰ By implementing the idea of participatory management of public affairs, participatory budgeting creates a public space for an exchange of ideas and public debate, in which community needs are discussed, and proposals of projects that could be implemented under this procedure are put forward.¹¹ PB allows citizens to co-decide how some of the budget is spent on the proposals they submit.¹² This means that projects chosen by citizens are to be executed by the public authorities without much interference in the proposals, thus participatory budgeting has a decision-making character.

Participatory budgeting, as a tool involving people co-deciding on public affairs, is a type of public participation described by Arnstein as "delegated power."¹³ According to the ladder of public participation she created, the delegated power rung is a consequence of the ongoing negotiations between citizens and the public authority, whereby citizens are given the opportunity to make decisions about a specific programme, plan or action. It is a rung on the ladder of participation in which citizens have decision-making power and must bear responsibility for the actions taken. PB is a procedure whereby public authorities put some of the financial resources in the hands of citizens, who can make independent decisions about which projects are to be executed.

Despite the fact that under Article 5a (3) of the Commune Self-Government Law, participatory budgeting is considered a special form of public consultation,

⁷ Since the term 'participatory budget' is used in foreign doctrine, it will be used in this article.

⁸ W. Kęblowski, *Budżet partycypacyjny – krótka instrukcja obsługi*, Warszawa 2013, p. 8.

⁹ Z. Dolewka, *Budżet partycypacyjny w teorii i w praktyce*, Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu 2015, no. 408, p. 63.

¹⁰ A. Misiejko, *Budżet obywatelski w praktyce samorządów*, Warszawa 2020, p. 17.

¹¹ G. Mattei, V. Santolamazza, G.F. Grandis, *Design of the Participatory Budget: How to Turn Citizens into Process Protagonists*, International Journal of Public Sector Management 2022, vol. 35, no. 3, p. 296.

¹² J. Gomez, D. Insua Rios, C. Alfaro, *A Participatory Budget Model under Uncertainty*, European Journal of Operational Research 2016, vol. 249, no. 1, p. 352.

¹³ S.R. Arnstein, *A Ladder of Citizen Participation*, AIP Journal, July 1969, pp. 217, 222–223.

we need to move away from such an understanding of this institution. It is because certain features of participatory budgeting have emerged, which make it markedly different from the traditional form of public consultation. The latter's essence is to inform or collect opinions on a specific, significantly public topic, which are then forwarded to public authorities so that they can analyse them and perhaps agree to implement them. The consultation mode allows the authorities to hear the citizens but does not oblige them to enforce their voice. This is contrary to the idea behind the public participation process. It is a participatory decision-making process in which citizens have a significant voice by submitting and voting on projects. Unlike the usual mode of consultation, public authorities should not change citizens' decisions in the voting procedure. In addition, if participatory budgeting is to become a permanent part of the participatory primer of a given local government unit, it must be regular, preferably yearly, while consultations may be one-off and not continuous.

The choice of the type of public participation that attempts to engage citizens in the fight against climate change must be the form that has decision-making and authority-related features in its essence. Elections or referendums cannot come into play here because the legislation precisely describes their role. Most of all, they are held only in the cases and at the times prescribed by law. Participatory budgeting is the only form of public participation that can be effectively and continuously used to combat climate change.

4. Introduction and evolution of participatory budgeting in Poland

For the needs of this paper, we need to present the Polish context and the conditions in which the Polish model of participatory budgeting was introduced. In 2011, the first edition of participatory budgeting was introduced in Sopot. The Polish legal system did not offer such an institution then. Participatory budgeting was understood as part of another public participation tool – public consultation. However, under this procedure, citizens may decide how an allocated amount is spent on proposals that have been submitted and reviewed. What is more, in contrast to the regular mode of public consultation, the results of participatory budgeting are binding on local government bodies.¹⁴ From the legal point of view, at the level of

¹⁴ J. Baranowski, *Participatory Budget and the Sars-Cov-2 Pandemic in Poland*, *Transylvanian Review of Administrative Sciences* 2020, Special issue, p. 27.

the commune as a basic local government unit, participatory budgeting was organised under Article 5a (1) and (2) of the Commune Self-Government Law, which is the procedure for public consultation.

As pointed out by Sobol, the number of participatory budgeting procedures in 2011–2015 clearly shows the direction that Polish cities are following – joining in the creation of participatory budgeting due to the growing interest in them:

- 1) 2011 – 1 participatory budgeting procedure;
- 2) 2012 – 3 participatory budgeting procedures
- 3) 2013 – 16 participatory budgeting procedures;
- 4) 2014 – 92 participatory budgeting procedures;
- 5) 2015 – 171 participatory budgeting procedures.¹⁵

5. Participatory budgeting under Polish law

The Polish legislator introduced the institution of general participatory budgeting in the Act of 11 January 2018 on amending certain acts in order to increase the participation of citizens in the process of selecting, operating and controlling certain public bodies. Since then, the legal basis for the participatory budget in Polish cities is Article 5a (3–7) of the Commune Self-Government Law. The participatory budget was not introduced in a separate law, such as in Peru,¹⁶ for example, which gives rise to certain consequences. Despite the introduction of the new law, it is not comprehensive. It does not address some crucial problems, i.e. protecting the legal interest of a citizen who has submitted a project to the participatory budget, which won but the city authorities do not want to implement it,¹⁷ or continuing the investment projects already created under the participatory budget. As a result, the current normative form equates the participatory budget with public consultations, unequivocally diminishing its status as a decision-making form of public participation.

The most significant legislative change in Article 5a of the Commune Self-Government Law, from the point of view of local authorities and residents, was the

¹⁵ A. Sobol, *Budżet obywatelski jako narzędzie rozwoju lokalnego*, Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach 2017, no. 316, p. 175.

¹⁶ L.S. McNulty, *Barriers to Participation: Exploring Gender in Peru's Participatory Budget Process*, The Journal of Development Studies 2015, vol. 51, no. 11, p. 1432.

¹⁷ For more, see J. Baranowski, *Problematyka ochrony interesu prawnego w procedurze budżetu partycypacyjnego*, Acta Iuris Stetinensis 2023, vol. 46, no. 5, pp. 7–20.

introduction in the largest Polish cities of the obligation to hold the PB procedure annually at least 0.5% of the community's expenses included in the latest PB report. Importantly, the legislator did not stipulate any exceptions in this process. Participatory budgeting may differ depending on the decision of the regulatory authority of a given local government unit. In one, the rules may be more complex than in another. This exclusive competence to establish rules and procedures for holding participatory budgeting transferred onto the decision-making body has both flaws and advantages. The advantage is that a local government body, looking at its specific characteristics and needs, may model rules that suit them. The flaw is that despite general rules for participatory budgeting, the same proposal may be assessed differently in different cities.

6. Green participatory budgeting as an effective tool of public participation in environmental policy and combating climate change – a case study of selected Polish cities

In the current legal status based on Article 5a (6) of the Commune Self-Government Law, funds spent under participatory budgeting in Polish cities may be grouped into wallets that cover the entire commune or its parts or amount-based categories of proposals that apply to the whole territory of a commune or its part. Such a provision yields ambiguous results. The Polish legislator did not directly prescribe setting aside a certain amount of funds for the so-called thematic PB processes, including green participatory budgeting. Under the legalism principle, this means that without a clear legal basis, public authorities cannot take any action. A commune, as an entity exercising public authority – according to Article 169 of the Polish Constitution – is obliged to act on the basis and within the limits of the law. The laconic content of Article 5a (6) of the Commune Self-Government Law results in the fact that not all Polish cities have decided to introduce thematic participatory budgets due to the fear of invalidating such measures by the Polish supervisory authority over local government units, which is the province governor (voivode). Despite this, due to the prevailing social realities and citizens' green attitudes, Polish cities have decided to organise green participatory budgeting without a clear legal basis. Such actions show that we need such processes, which means that the Polish legislator must interfere and that the legal status must be prescribed in Article 5a of the Commune Self-Government Law. Supplementing Article 5a with additional normative content will enable Polish cities to launch a climate participatory budget

procedure separate from the traditional participatory budget, focusing exclusively on pro-climate and energy-saving projects. Thus, the scope of application of the supplemented Article 5a will not raise doubts about interpretation.

Even though today's legislature has no legal standard that would allow Polish local governments to create participatory budgeting dedicated to climate change, some cities decided to allocate a certain amount of funds to do so. Katowice and Lublin will serve as examples here.

The second edition of the "Green participatory budgeting" of Katowice was held based on the ordinance of the President of the City of Katowice.¹⁸ It lays down that public consultation on green participatory budgeting of Katowice is intended to diagnose the needs of residents in terms of broadly understood technology and environmental protection¹⁹ (§ 2). Residents had PLN 3 million (EUR 700,000), which they could use to create flower meadows, revive squares or parks or set up rain gardens. The most important element in the proposal assessment procedure was the proposal's feasibility, which was examined by officials who deal with green areas in their day-to-day work. The procedure led to the following result: during the second edition, residents submitted more than 164 proposals for tasks to be carried out, of which 84 were chosen for implementation. Examples of such projects include:

planting trees,

- 1) setting up a community garden on the roof of an underground car park,
- 2) organising ecological educational panels.²⁰

In Lublin, green participatory budgeting was launched in 2017, and residents may propose projects (except 2020, the first year of the SARS-CoV-2 pandemic). Like in Katowice, the project aims to encourage residents to participate locally by submitting a general proposal for greening parts of the city. Projects proposed by residents must be consistent with local zoning plans, the design of underground and above-ground infrastructure, and applicable laws. In consideration of the fight against climate change, experts who evaluate green projects do so on the basis of the following criteria:

¹⁸ Ordinance no. 1504/2021 of the President of the city of Katowice of 26 February 2021 on holding public consultation on proposing projects for the second edition of Katowice's Green Budgeting, <https://www.katowice.eu/SiteAssets/dla-mieszkańca/zaangażuj-się/konsultacje-społeczne/zielony-budżet/ii-edycja-2021/pliki-do-pobrania/1.%20zarządzenie%20Prezydenta%20Miasta.pdf> [access: 30.08.2022].

¹⁹ Ibidem.

²⁰ Projects selected for implementation as part of the second edition of Katowice's Green Budgeting, <https://archiwumbo.katowice.eu/Aktualnosci/Documents/Zadania%20wybrane%20do%20realizacji%20w%20ramach%20II%20edycji%20Zielonego%20Bud%5bcetu.pdf> [access: 30.08.2022].

- 1) availability and environmental context – an absence of an organised green area within a 5–7 minute walking distance is especially important;
- 2) functionality, resourcefulness, innovativeness – understanding of capabilities to satisfy the needs of self-governing communities, including an effect on social integration and how greenery in urban space is viewed;
- 3) share of green areas – the greatest emphasis is placed on creating new green areas, renovating degraded terrains and increasing biodiversity.²¹

Since the introduction of green participatory budgeting in Lublin, 68 green projects have been selected for implementation, which has crucially improved the city's greenery.

Despite the lack of a legal basis in Article 5a of the Commune Self-Government Law, green PB in Poland is no longer a theoretical model of bottom-up public participation but a tangible benefit for a local community. The launching of this procedure means that Polish cities gain new green areas, which may aid actions for climate.

7. The theoretical model for climate participatory budgeting in Poland – new regulation

This discussion of participatory budgeting in Poland leads to the conclusion that the current provisions of Article 5a of the Commune Self-Government Law are insufficient to introduce a dedicated participatory budget for climate change. The above indicates the laconic nature of the Polish participatory budget regulations, which raises interpretive doubts for Polish cities. Therefore, Article 5a of the Commune Self-Government Law needs a new legal regulation focusing exclusively on climate participatory budgeting. The current regulation allows citizens to submit a wide range of projects – from school- or health-related projects to transport- and climate-oriented ones. This procedure may mean that the percentage of pro-climate projects that pass the review stage and citizens' voting will not be satisfactory. Taking up the subject of the introduction of a new regulation into Polish legislation through the establishment of provisions on climate participatory budgeting should be considered necessary. It will allow citizens to submit only proposals focused on

²¹ Information for residents of Lublin about the assessment criteria for green participatory budgeting projects, <https://lublin.eu/mieszkanicy/partycypacja/zielony-budzet-obywatelski/informacje/> [access: 30.08.2022].

climate, with the tangible consequence that only such projects will be selected for implementation.

Creating a new regulation on climate participatory budgeting for each city in Poland may provide a solution for enhancing residents' involvement in improving the quality of green areas and local actions for climate and energy. A climate participatory budget in every Polish city will contribute to improving the environment through civic projects, improved awareness of climate change, and educational activities for climate and energy conservation. Correctly constructed principles of such a process will allow residents to submit proposals intended to positively impact their local community, and their usefulness will affect the fight against climate change. The aim is to introduce obligatory climate PB in each Polish city, which is crucial for the trend of green participatory budgeting and energy-related subjects.

The legal basis for introducing climate participatory budgeting in Polish cities should be found in Article 5a of the Commune Self-Government Law. In the future, the issue of climate participatory budget should be an integral part of this legislation. The procedure of climate participatory budgeting should be as simple as possible. It should be considered reasonable to leave the detailed rules for the climate participatory budgets to each Polish city – as in the case of the traditional participatory budget. This procedure should also include examples of thematic areas that will help residents submit proposals on combating climate change, such as for example:

- 1) urban green stops – intensifying plantings in stretches along roads and effective retention of rainwater;
- 2) new tree plantings in urban spaces;
- 3) creating new green spaces – pocket-sized parks;
- 4) eco-waste collection points, where small waste, such as batteries, light bulbs or small electronics, may be disposed of.

An essential fact is that Polish public authorities have noticed the problem of a lack of a legal basis for creating participatory budgeting intended to combat climate change. The website of the Government Legislation Centre posted a draft law amending certain acts to strengthen the climate-related dimension of municipal policy, which includes provisions on participatory budgeting.²² This draft law directly responds to an increasingly popular practice of local governments where green participatory budgeting is created. It was decided that the trend followed by more

²² Draft law on amending certain acts to strengthen the climate-related dimension of the municipal policy. Draft law along with reasoning available online: <https://legislacja.rcl.gov.pl/projekt/12350802> [access: 31.08.2022].

and more Polish cities should be formalised. Under the statutory proposal, the existing Article 5a of the Commune Self-Government Law will read as follows: “Communes referred to in Article 5 (communes which are towns with district rights, that is the biggest Polish cities), should, as part of funds spent on the implementation of participatory budgeting, allocate sums dedicated to projects associated with the protection of urban natural environment and whose implementation should lead to an increase of the surface area of a biologically active zone and of retention of rainwater and snowmelt.” The reasoning for the statute is that the essence of this amendment is intended to “green” participatory budgeting, which also aspires to have a positive impact on the local community.²³

It must be remembered that the draft law, submitted for reading by the Polish parliament, may be amended after a parliamentary discussion. However, the direction of changes presented by the Ministry of the Environment and Climate leads to one positive conclusion. Polish local governments will be able to introduce special participatory budgeting dedicated to climate change, and the largest Polish cities will be obliged to do it. It is not an optimal move. From the author’s point of view, in order to bring about the first effects of a local climate fight as quickly as possible, that is, to carry out as many climate-focused projects as possible, climate participatory budgeting should be introduced in each Polish city. Only a quick and efficient response from the legislator, as well as appropriately construed laws that regulate issues of prompt execution of climate projects, may yield measurable results that the community expects. It should be noted that the above solution, proposed by the Polish authorities, is not a sufficient response to the demand arising from the interest of citizens in pro-climate solutions within participatory budgeting. The above proposal should be supplemented with the solutions presented in this article, relating to the introduction of a mandatory climate participatory budget in every Polish city (not only in the cities with district rights – i.e. the largest Polish cities), as well as to allowing the submission of energy-saving projects, which does not directly follow from the proposed changes.

Conclusions

To answer the first research question, it must be pointed out that participatory budgeting is perceived as a participatory decision-making process through which citizens get involved and co-decide on local matters. I use Arnstein’s research and

²³ Ibidem.

participation ladder to place the role of participatory budgeting in the structure of public participation. In view of this analysis, I have concluded that PB is most suitable for the delegated power rung and is about a balance between delegating specific activities by public authorities (delegating funds and creating legal provisions that allow it) and by citizens (involvement by proposing tasks and participating in voting). A participatory budget is, therefore, an ideal tool in the hands of public authorities to effectively encourage people to take an interest in public affairs. However, given the climate challenges that global societies face, it is essential to address the issue of selecting a separate thematic category for the participatory budget.

The analysis of PB as a participatory process that co-creates the policy of fighting climate change points to the fact that it may effectively co-participate in executing this policy. The use of human potential to develop solutions and raise awareness of climate threats is an appropriate step towards green participation at a local level. PB is not an aged and worn-out process; it is an innovative and interesting method of involving residents in matters most important to them. The Polish cities where green participatory budgeting operates could be enticing factors and could initiate similar actions on a global scale, broader than to date, which will mean new climate-friendly places and also greater knowledge about the progressing climate change.

To answer the second research question, creating green or climate participatory budgeting is not possible under current regulations in Poland. Public administration operates according to the principle of legalism and is based on the foundation of the law in force. From this point of view, we must conclude that there is no legal norm in Article 5a of the Commune Self-Government Law that would vest any entity with the power to create such participatory budgeting. Admittedly, this analysis with case studies of Polish cities also demonstrates that participatory budgeting dedicated to combating climate change is introduced in the form of green participatory budgeting, but it is done so through legally dubious means. Referring to the research problem posed in the introduction, it should be stated that the current wording of Article 5a of the Act on Commune Self-Government, which is the legal basis for the participatory budget in Polish cities, is insufficient.

To answer the third research question, it must be pointed out that – based on case studies of Polish cities that have introduced green participatory budgets without a clear legal basis – the Polish legislation needs a new regulation on climate participatory budgeting. In order to meet public expectations, the Polish legislator should make the same decision as in 2018 – when the legal regulation of the traditional participatory budget was introduced into legal order – and introduce the

legal regulation of the climate participatory budget in Article 5a of the Commune Self-Government Law. Such an act will positively impact climate policy-making at the local level. If the Polish legislator enacts a separate law on participatory budgeting, given the need for detailed legal regulation of this institution, climate participatory budgeting should have its place in Polish cities.

Approval must be expressed that current legislative works, despite previous criticism for too much reserve towards the amendments introduced, are a step towards formalising a good practice of using participatory budgeting for environmental protection and fighting climate change. This real legislative action shows that public authorities see this form of public participation as an effective tool for a local fight against climate change. Adequate requirements must be met for it to work well, both for the authorities and residents. Citizens must be ensured access to climate education and supported in submitting and promoting climate projects to participatory budgeting.

However, the above legislative proposal should not be considered sufficient. After the introduction of proposed legislative changes by the Polish government based on directions of changes presented by the Ministry of the Environment and Climate, the largest Polish cities will create participatory budgeting every year to carry out climate-friendly projects. Smaller Polish cities will be able to decide whether to make this tool available for residents. The author believes that such action will not be sufficient. We need to consider making this instrument accessible to all Polish citizens by making climate participatory budgeting obligatory at the level of each Polish city. Such a move may bring tangible benefits. There will be more pro-climate ideas, which will also involve greater interest in climate education and the effects of climate change.

This analysis attempted to prove whether PB as a public participation tool may be a basis for an effective model of engaging residents in the fight against climate change. This efficiency is expressed in hundreds of proposals submitted under Polish green participatory budgeting, translating into tens of projects in the Polish cities presented in this paper. Effects of the transformation of Polish cities into green enclaves and climate-friendly places will stay with local communities for the years to come, while the awareness of improvement of the fate of our planet by executing a climate PB may boost local climate appreciation and awareness.

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