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## Shaping Public Space by the Local Community: Development of Legal Mechanisms

**Abstract:** Over the last few years the idea of civil society in Poland have grown substantially. This increase allowed local communities to influence the legal and administrative changes leading to a gradual shift in the decision-making processes of local governments. The article presents system of public participation in spatial planning, Revitalisation Statute and Participatory Budget to show how legal changes increase possibilities of local community participating in Poland.

**Keywords:** *participation budget; public consultation; revitalization; spatial planning; local communities; common space*

### Introduction

In Poland over the last few years the public awareness and the idea of civil society have grown substantially. This increase allowed local communities to influence the legal and administrative changes leading to a gradual shift in the decision-making processes of local governments. The tendency to prevalence the executive action in the area of shaping common space has been replaced by the public consultation and expert debate. There has been a noticeable emergence of new associations and foundations, which are responsible for shaping the idea of public space according to the needs of the residents as well as the interest of the citizens themselves, creating a social movement against decisions of municipal authorities. Monuments protection, aesthetics planning and urban governments all have encountered a common problem of collusion between art, contemporary politics, ideology and business that has led to the abusive treatment of works of art as a tool for the pursuit of individual interests. Various institutions of a democratic country, created to prevent such exploitation,

have allowed nevertheless a wide subjectivity to the decision-making bodies, leading to an authority – citizen conflict. As counteractive measures there has been a greater pressure for legal and administrative changes, granting local communities a valid opinion. These changes, however new to the Polish society, have been received with widespread approval as evidenced by the growing popularity of the civil budget and public consultation carried out under the spatial planning processes and Revitalisation Statute. The aim of this paper is to take a closer look at the functioning of these mechanisms.

### **Citizen participation in spatial planning processes**

Citizen participation is a process of public members contributing to shaping and implementation of regional and trans-regional projects by local administration. The extent of this participation, in its most basic form, involves providing information and knowledge. At a more advanced level, it includes consultations and even decision-making. This process is administered through the subsidiarity procedures within legal and political framework (Its applicable to refer to the law of democratic country, social dialogue rule and free economy). These procedures, being some of the main rules constitutionalising the European Union (Art. 5 of the Treaty on European Union), have been also adopted by the 1997 Constitution of Poland<sup>1</sup>. Due to being mentioned only in the preamble without defining its content in the main articles, there are difficulties in adopting their legal definition<sup>2</sup> and executive guidelines. Poland ratified on April 26, 1993 the European Charter of Local Self-Government, however is bound to follow the subsidiarity directions determined by this act (Krasnowolski, 2012, p.9). According to its articles, in a situation where a member state does not need to intervene, it should allow local community to make decisions and consult all relevant matters with them, maximising their autonomy (Parszewski, 2006). As a supplement, the regional legal regulations determine procedures for social consultation within any regional unit (Ostaszewski, 2013). Regulations increasing the elements of public participation<sup>3</sup> in urban planning appeared in the spatial planning statute from July, 7

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<sup>1</sup> References to social participation can be found in other articles of constitution: art. 20 about social dialogue; art.61 about the information rights; art.63 about authority verification; art. 125 and 170 about referendum.

<sup>2</sup> Most common idea for supportiveness rule is the one created by Ewa Popławska, where the relationship between individual-country-society refers to these concepts: as much freedom as possible, as much society as necessary and possible, as much country as necessary (Popławska, 1996, p. 139).

<sup>3</sup> On the genesis of social participations in spatial planning, see: Siemiński, 2007, pp. 37–59.

1994. Following the democratic processes for allocating local territories for particular investments, the local authorities gained the freedom to make such decisions. Since public participation in spatial planning is an integral part of democratic governance, it enhanced the local decision-making involvement of the society. It also guaranteed partaking in pre-ratification procedures of those projects through the means of: information (from the municipal governments) about creating the plans and for these projects; presenting the projects for public insight; accepting suggestions for corrective measures; and considering objections (art. 18(2)) (Leoński et al., 2002, p. 48–49). In the spatial planning statute 2003 the public participation has been modified. The planning processes have been granted to the professional bodies, with an idea of territorial and developmental balance. In addition to information and planning insight into the local investment projects, it introduced the possibility of public discussions (art. 11(10), art. 17(10)).

The scientific community's and non-governmental organisations' conclusions suggest a merely symbolic influence of local society's participation (Pudliszak et al., 2011; *Partycypacja społeczna...*, 2004). It is caused by inadequate legal regulations and the approach of interested parties. Special attention is put on:

- replacing complaints with suggestions
- no obligation for the authorities to provide explanation for its decisions whether to include the suggestions or not
- no possibility to sue the decision in case the public suggestion have not been taken into account
- inadequate, out of date means of providing the information
- the form of the consulted document (being to formal, without much explanatory elements for the participants of the discussion)
- insufficient awareness about rights of participants, caused by lack of information and publicity encouraging to participate in the meeting.

This does not mean the demands for statute changes are put forward. Increasing the social participation in shaping local projects requires a shift in municipalities' approach to social dialogue and development of appropriate practice. City of Poznan is a good example to follow. In 2010 resolution for consultation procedures (art. 5(5)), public activity and voluntary work), the district councils have been guaranteed an active involvement in that process (Wudarski, 2014, p. 66–69). An operative role of those units is one of the main contributors to increasing local societies influence over shaping regional projects (As demonstrated in Kraków case, Jaśkowiec, p. 41–60). The other factor is the participation of non-governmental and social institutions. Such policy, aimed at improvement of urban territory, has been adopted by some organisations: Katowice's foundation *Napraw Sobie Miasto* (has been by implementing

urban management projects, social consultations, providing workshops, researches and social campaigns and debates); or Gdansk Innovation Foundation (together with Gdansk University of Technology and Sopot School for Higher Education), organised a project “Quo Vadis, Gdansk? Citizens are planning its own city” aimed at strengthening the activities of local communities for improvement of quality of local district territories (Rembarz et al., 2014). Intensive activity of third sector is helping with interaction between municipalities and local societies, especially with the use of technologies. There have been platforms created more commonly for dialogue with citizens, such as social communication portal *Wroclaw Rozmawia* and *Citizenship Laboratories* initiative. They allow citizens to initiate municipal development concepts and to find out about co-deciding opportunities in regard to cities and districts development projects.

### **Revitalisation Statute**

In the initial period after Polish democratisation, the country was hit by urban and architectural chaos, which, according to some is still present (see Springer, 2014). On one hand, liberal economic growth allowed the expansion of construction sector and uncontrolled development of suburban areas, as well as commercial investments (large shops). On the other, the city centres (with its ruined infrastructure and technical objects), become depopulated, creating “sleeping” districts with no public structures. In accordance with EU policy aimed at revitalisation of downgraded areas, from 2003 onward the regeneration projects have been implemented through Local Revitalisation Programs and financed by the EU. It has been a subject of criticism though for lack of cohesion between concepts and revitalisation projects (see Siemiński, 2009). The common problem for the urban policy has been the fact of consulting development projects more often with construction companies and investors, rather than considering citizens and their needs. There have been consequences of such approach: closing down parks and transforming areas into shopping malls (Zebrzydowska Street in Rybnik in 2014); dismantling old tenement houses and monuments to raise new multi-storey flats; re-adapting XIX century buildings into offices. This process might be at least partially reversed by 2015 statute that provides, for the first time, legal guidelines for revitalisation in Poland<sup>4</sup>.

As article 2 of Revitalisation Statute indicate, its goal is to change the downgraded areas' status through complex and integrated actions of incorporating citizens' and

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<sup>4</sup> Until 31 of December 2023 there is possibility to choose the formal way of implementing revitalization – according to the new regulation or on art. 2 no 6 municipal council statute

territorial needs, with economic factors. Those actions have been divided territorially, based on municipalities' revitalisation agendas, and undertaken by interested parties. The statute puts high attention on social participation in these projects, identifying interested parties – subjects potentially influencing preparation, undertaking and reviewing stages. Those subjects are usually picked from the owners, tenants, users of building in affected areas, as well as social communities and voluntary bodies. Other individuals who might become the interested party include: other citizens, organisation planning to invest in the area, local councils, and local regulatory bodies (the list is not closed, art. 2). The art.3 points out rules for the revitalisation projects, including the fair and open social participation, with inclusion of interested parties at all stages. The next article suggests the forms in which the projects can be prepared, undertaken and reviewed through consultations and Revitalisation Committee's works<sup>5</sup> (Leszczyński et al., 2016):

- discovering the needs of interested parties
- aiming at cohesion of projects and those needs
- provision of information and education about revitalisation processes
- supporting the dialogue between interested parties and their integration with on-going projects
- participation of interested parties in the preparation of documentation for revitalisation projects
- supporting initiatives aimed at increased public participation
- possibility for interested parties to express opinions about revitalisation projects.

“Only complex, focused and planned, with the participation of local communities, actions can ensure the effectiveness of revitalisation projects, and in turn a significant improvement of the quality of life on relevant territories. The solutions proposed in the status can enhance this process. Municipal authorities spoke of such legal regulations for a while” – as commented Maria Wasiak, in the years 2014–2015 the ministry of infrastructure and development (Ministerstwo Rozwoju, 2015).

Territories that are subject of revitalisation are usually neglected and inhabited by the least wealthy community, not interested in shaping common area, as they are focused on the basic life provision. Revitalisation processes lead both to the improvement of living conditions, increased attractiveness of the land, peoples' flow and interest in social responsibility. They also teach responsibility for common space. One positive example of such processes, that led to a bigger interest in social participation is the transformation of Wrocław's district Nadodrze, that started in 2005 through a Local

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<sup>5</sup> Committee for Revitalisation, opinion and advice body

Revitalisation Program. Ten years from when the works commenced many buildings have been regenerated, empty spaces have been adapted into art galleries, commercial service and culinary facilities. Inhabitants gained new squares for social and artistic initiatives (e.g. Nadodrże Night, European Neighbour Day, Nadodrże Film Night), and many non-government organisations (like Professional Development Centre “Krzywy Komin”, Infopunkt Nadodrże, Nadodrże Support Centre, Eco-developent foundation), providing education and social empowerment services, have found their offices within the district area.

### Participation budget

Participation budget, is a form of involved democracy, where citizens (or members) decide on how to spend the public funds. The foundations for this idea have been linked with the concept of involvement of socially and economically divided citizens, who join forces in order to partially manage the public resources. The goal is to promote integration, a common responsibility for social areas, and an increase of safety and trust in local administrative organs. South American nations were pioneers in this form of democracy. Brazil implemented such strategy in 1989 (Wampler, 2007, p.23), and its rapid popularity resulted in its prompt import to Europe. Poland implemented it in 2011 in Sopot and it has been part of the budget in many other cities since. Participation budget in Poland is not however regulated by law, it is being implemented through municipal authorities decisions based on article 5a of the municipal statute. As Dr Kazimierz Bandarzewski points out in his report prepared for Stefan Batory Foundation for the purpose of program *Masz Głos, Masz Wybór* (Bandarzewski, 2013), it is merely an optional mean of providing the supportive units with decision-making power in regard to what the citizen budget can be spent on. The legal principles regulating budgets do not include a possibility of participation budget. The budget statute proposal is submitted by the mayor, governor or president of the city, but the budget can be approved only by the council. There are no legal regulations allowing the local community, not represented by supportive units, to have a say in deciding on the municipal budget. Hence the citizen budget principle is based purely on a social agreement and requires the creation of a legal regulation (Bandarzewski, 2013, p. 1–12).

The participation budget, introduced in Poland in 2011, represents the European version of Porto Alegre model – the initiative is aimed at individual citizens. The city of Plock is only an exemption as the model adopted there is based on public-private negotiations, with contribution of international and private companies’ capital (Sorychta-Wojaszczyk, 2015, p. 425). In 2015 citizen budgets appeared in 80 municipal units across Poland (Budżety Obywatelskie, 2015).

In the period of democratic values crisis and lack of trust for local administration, there has been and increased interest in this fresh way of decision-making and it has influenced the process of shaping the citizen society. It allows citizens to get involved in public affairs, so far restricted only for politicians, and participate in the processes of fulfilling communal needs from generating ideas from inception to its implementation. Statistics show an increased interest in participation budget, which can be observed in Wrocław. In 2015 local elections there have been 168,278 votes cast (160,176 were legitimate), in 2014 only a bit more than 137 thousand people<sup>6</sup>, and 188 projects have been proposed. This is an interesting example as we can compare a citizen budget interest through 2015 local referendum participation with the national one of the same period. The participation totalled at 10.58% (with 490,347 eligible voters, there were 52 thousand votes)<sup>7</sup>, and 11.91% (494,140 eligible, 58,846 voted)<sup>8</sup> respectively.

One of the possible reasons for high participation in the citizen budget referendum in Wrocław was the way of casting votes – via the internet (127 thousand people used this option), and ten days to make the decision. The voting procedure also played a role – any eligible person, who lived in Wrocław (so no registration requirement) could have participated. In the local and national elections however, only registered citizens, or those that applied based on President's decision, were allowed to partake. Nevertheless, procedures are not the only factor in the popularity of this form of democracy. The other reasons being: effectiveness – the financed projects have a direct influence on citizens lives; improved communication – common projects unite local society; a possibility of shaping social identity – growth of citizen society. The need of human rivalry should not be underestimated either. In many cases, local community gets united with a goal to have their initiative overcome that of the neighbouring district.

As the effects of citizen budget for Wrocław proved, however, the participation budget does have some negatives. Typically for elections, the stronger candidacy usually wins. That is the case with strong and weak districts. Bigger players can prepare and distribute leaflets to increase their social reach, as to the opposite of simple message in social media and city websites. Some consolation came in 2015 with the idea of dividing projects based on required costs. In Wrocław, voters could cast one vote for each of the projects grouped in three financial categories: >150k PLN, >500k PLN, >2m PLN. Another disadvantage is still insufficient social awareness. It possibly contributed to 8102 votes casted illegally due to the double provision of the same

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<sup>6</sup> See: Statystyki głosowania WBO, 2015.

<sup>7</sup> Referendum results, see: Wyniki referendum lokalnego, 2015.

<sup>8</sup> Referendum results, see: Państwowa Komisja Wyborcza, 2015.

PESEL number<sup>9</sup> – most likely the people voted via the internet and then on paper as well, or filled in the paper form twice influenced by agitating candidates. Citizens have also had problems with understanding a formal and technical administration language -evidence supported by difficulties with general election paper forms. It is not only uneducated people who lack social awareness though. As observations of registering votes at the University of Wrocław Faculty of Law, Administration and Economy showed, many students did not know the procedures for elections and needed explanation. The public debate on citizen budget is not free of ambiguities. Among the winning projects, there are many covering the renovation of infrastructure that belongs to scholar organisation – sports pitches and playgrounds in schools and kindergartens. There are doubts whether they are relevant to the citizen budget, or whether they just take the burden away of authorities' hands in choosing projects. Projects that should have been financed by the public budget anyway. Analysis shows that many of these problems could have been solved by incorporating municipalities supportive units, such as councils (usually deprived of any real influence) into representing citizens interests (see Kraszewski et al., 2014). Units that operate based on the municipal statute do not have their own budgets, but are financed by resources designated for their functionality (sometimes they receive finances for various investments, for instance, 150k PLN in Szczecin, or 40k PLN in Wrocław). Granting some executive powers to those units would simplify the functionality of citizen budget both in the legal and social way.

## Summary

Joining the European Union increased an interests in social participation in Poland, evidenced by intensification of social activity and legal mechanisms. It is rather interesting that increased popularity of such form of democracy has clashed with the crisis of democratic environment on a national and international level. Local participation, especially when aimed at reshaping common areas is becoming more popular among citizens, than involvement in national parliamentary democracy. This results in the development of local awareness, citizen society and regional identity. These processes fit in well with the EU's strategy for regional development<sup>10</sup>. The social participation

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<sup>9</sup> PESEL (*Powszechny Elektroniczny System Ewidencji Ludności*) – the citizen's identification number contains personal data (date of birth, sex).

<sup>10</sup> The statute for regional development with local society inclusion ratified on February 20, 2015, came to life on , April 2 later that year, it implemented European Parliament and EU Council's decision no 1303/2013 from December 17, 2013 into Polish legal system.



is visibly being increased within the legal system. Citizens are not only being informed of the ongoing projects but are also involved in making decisions. Unfortunately, the regional authorities are rather sceptical in following their legal obligations in sharing the executive powers. The elements influencing the change of such perception of non-governmental organisations inclusion, include intensive growth in social movements and increased awareness of citizens, who co-operate together in social media starting protests against authorities in matters like monuments preservation (conflict with a public conservator in Wrocław, 2015), or participating in meetings with experts for shaping urban areas. Examples coming from Latin America together with Guillermo Penalosa (founder of not for profit organisation 880 Cities) have been gaining more and more popularity in Poland. Penalosa helped to reform urban area in Bogota and his philosophy can be explained in one sentence: if you create a large city for 8-year-olds and 80-year-olds, you are creating a magnificent city for everyone.

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