

Krzysztof Sidorkiewicz<sup>1</sup>

Piotr Uziębło<sup>2</sup>

## **Implementation of the Legislative Regulation of the Civic Resolution Initiative on the Example of the City of Elbląg**

**Keywords:** civic resolution initiative, participative democracy, Elbląg

**Słowa kluczowe:** inicjatywa uchwałodawcza obywateli, demokracja partycypacyjna, Elbląg

### **Abstract**

The main goal of that article is to assess the impact of the new solutions on changes in the legal regulation of Elbląg, where such an initiative has been already in place since 2014, and examine whether the practice of using this mechanism of social participation has led to new changes. The amendment of the Act on the Commune Self-Government has not caused a significant qualitative change. Admittedly, the number of signatures required for a civic proposal was reduced, and – although only after the voivode’s intervention – the time limit for their collection was removed, negative elements can still be observed, such as the lack of imposing an obligation on city officials to assist in preparing a draft resolution. In addition to that, attention should be paid to the need for introducing educational and information activities, the lack of which can often lead to non-application of regulations in practice, even those that are of high quality.

---

<sup>1</sup> ORCID ID: 0000-0002-6130-2526, Assoc. Prof., Institute of Economics, State University of Applied Sciences in Elbląg. E-mail: k.sidorkiewicz@pwsz.elblag.pl.

<sup>2</sup> ORCID ID: 0000-0003-2473-9240, Assoc. Prof., The Department of Constitutional Law and Political Institutions, Faculty Law and Administration, University of Gdansk. E-mail: piotr.uzieblo@ug.edu.pl.

**Streszczenie****Implementacja ustawowej regulacji instytucji obywatelskiej inicjatywy uchwałodawczej na przykładzie miasta Elbląga**

Celem niniejszego artykułu jest ocena wpływu jaki nowe rozwiązania w zakresie inicjatywy uchwałodawczej mieszkańców miały na zmiany w regulacji prawnej Elbląga. W mieście tym inicjatywa taka występowała już od 2014 r. Kluczowe znaczenie ma odpowiedź na pytanie, czy dzięki zmianom legislacyjnym doszło do zmian w praktyce korzystania z tego mechanizmu partycypacji społecznej. Badania potwierdzają, że nowelizacja ustawy o samorządzie gminnym nie spowodowała istotnego „skoku” jakościowego. Co prawda zmniejszoną wymaganą liczbę podpisów pod projektem obywatelskim i – choć dopiero po interwencji wojewody – zlikwidowano limit czasowy na ich zebranie, to pojawiły się też elementy negatywne, chociażby brak nałożenia na urzędników miejskich obowiązku pomocy przy przygotowaniu projektu uchwały. Dla zwiększenia znaczenia tej instytucji, poza ukształtowaniem normatywnym, konieczne jest też poszerzenie działalności edukacyjnej czy informacyjnej, gdyż jej brak prowadzi do braku stosowania obecnych regulacji w praktyce ustrojowej, nawet jeśli będą się one wyróżniały pozytywnie.

✱

In January 2018, the Act of 11 January 2018 on Amending Certain Acts to Increase the Participation of Citizens in the Process of Selecting, Operating and Controlling Certain Public Bodies<sup>3</sup> was adopted. It regulates, among others, the institution of the *civic resolution initiative*. Previously, this mechanism had not had a legislative basis. However, many communes (municipalities) introduced it to their legal systems at the local legal enactments, despite legal doubts that could be observed in the jurisprudence of voivodes or administrative courts. The new regulation – dispelling these doubts – has brought about a certain uniformity of the initiative, which does not always have to correspond to local conditions in a given local government unit. The purpose of this article is to assess the impact of the new solutions on changes in the legal regulation of Elbląg, where such an initiative has been already

---

<sup>3</sup> Dz.U. 2018, item 130.

in place since 2014<sup>4</sup>, and examine whether the practice of using this mechanism of social participation has led to new changes.

Due to the purpose of this article, the authors focus on the dogmatic-legal method, comparing the existing and current regulations, and analyzing also the potential changes in the frequency of using the resolution initiative by the inhabitants of the commune (municipality). The consequence of these studies is to confirm or deny the legislator's assumption that the said amendment will be a tool for activating citizens, increasing their influence on the creation of law in the commune (municipality). It should be added that the results of such studies have not been presented yet in Poland.

At the outset, it is worth mentioning that the legal regulation of the civic resolution initiative is relatively general. Without subjecting it to detailed analysis, it should be noted that, under the Art. 41a(1) of the Act on the Commune Self-Government (hereinafter referred to as 'USG')<sup>5</sup> a "group of municipality residents who have active voting rights in the selection of decision-making bodies may submit a citizens' initiative for a resolution". It may only be noted that the notion of "civic" was incorrectly used in the name of the institution, as the initiative can also be submitted by foreigners who are citizens of an EU Member State, living in a given municipality. For communes with more than 20.000 residents, a fixed number of the required signatures has been introduced. Consequently, at least 300 voters must declare their support for the initiative<sup>6</sup>. The Act also emphasizes that the initiator of a citizens' proposal must be the Resolution Initiative Committee, which has the right to indicate the persons authorized to represent the Committee during the work of the Municipality Council<sup>7</sup>. On the other hand, issues such as de-

---

<sup>4</sup> Resolution No. XXXI/906/2014 of the City Council in Elbląg of 30 September 2014 regarding the adoption of the Statute of the City of Elbląg (Dz.Urz.Woj.Warm.-Maz. of 2017, item 1711).

<sup>5</sup> Act of 8 March 1990 on the Commune Self-Government (Dz.U. 2019, item 506 as amended).

<sup>6</sup> D. Ziółkowski, *Obywatelska inicjatywa uchwałodawcza jako instrument partycypacji społecznej*, "Studia Iuridica" 2018, No. 77, p. 342.

<sup>7</sup> One can doubt whether the need to set up the Committee is actually necessary in this case. See P. Glejt-Uziębło, P. Uziębło, *Kilka uwag o „nowych” instrumentach partycypacji mieszkańców na poziomie samorządowym*, [in:] *Dookoła Wojtek...: księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018, p. 399.

tailed rules for submitting civic initiatives, rules for establishing Resolution Initiative Committees, rules for promoting civic resolution initiatives, and formal requirements that must be met by submitted proposals are to be determined by the Municipality Councils in a separate resolution<sup>8</sup>. This is also a significant change compared to the previous state of affairs when these issues were regulated at the local legal enactments level.

In Elbląg, the legislative instruction was implemented in 2018–2019. First, on 13 September 2018, the relevant resolution amendments were introduced<sup>9</sup>, and then, on 18 May 2019, the resolution concerning this issue was adopted<sup>10</sup>. At the local legal enactments level, the legislative solution was repeated, according to which a “group of residents of at least 300 people who have active electoral rights in elections to the City Council in Elbląg” may submit a legislative initiative (§ 17(1) item 5). However, under § 17(6) of the Statute, the said executive resolution is aimed to regulate the requirements arising from the legislative authorization. The new solution may be considered a change facilitating such initiatives because the previous law required the support of the proposal by at least 750 voters<sup>11</sup>.

According to the Procedure for the Implementation of Civic Resolution Initiatives by a Group of Residents of the City of Elbląg (hereinafter referred to as “the Procedure”), constituting an Annex to the Resolution of 18 April 2019, activities related to the resolution initiative brought by residents are carried out by the Civic Resolution Initiative Committee, created by at least 5 voters, who submitted a written declaration of joining the Committee, which is made on one form, along with a statement on the establishment of the Committee. It may also indicate persons authorized to represent the Committee

---

<sup>8</sup> Similarly: W. Baranowska-Zajac, *Instytucje społeczeństwa obywatelskiego w świetle nowelizacji samorządowych ustaw ustrojowych z 11 stycznia 2018 r.*, “Studia Prawnoustrojowe” 2019, No. 44, pp. 16–17.

<sup>9</sup> Resolution No. V/137/2019 of the City Council in Elbląg of 18 April 2019 regarding the adoption of the Statute of the City of Elbląg (Dz.Urz.Woj.Warm.-Maz., item 4486).

<sup>10</sup> Resolution No. V/137/2019 of the City Council in Elbląg of 18 April 2019 regarding civic resolution initiatives (Dz.Urz.Woj.Warm.-Maz., item 3567).

<sup>11</sup> It is worth noting that the original draft amendment to the Statute of 2014 provided that the initiative was to be vested in at least 1.000 voters residing in Elbląg. See <https://www.info.elblag.pl/28,37908,Mieszkanicy-moga-zglaszac-inicjatywe-uchwalodawcza.html> (28.02.2020).

in the course of further legislative works. The earlier solutions provided for a similar legal entity called an Initiative Group, except that it was created by a larger number of at least 15 people who had active voting rights in the election of the legislative body.

The procedure for the implementation of the resolution initiative by residents is initiated at the request of the Committee, which informs the Head of the Municipality Council thereabout by submitting an application that consists of a statement on the establishment of the Committee, a draft resolution containing its text, legal basis, the operative part of the resolution, an indication of the body responsible for its potential implementation, determining the date of its entry into force as well as a written justification containing, in particular, an indication of the need to adopt a resolution<sup>12</sup>. The way of submitting the application may be considered similar to the previous regulation. Nonetheless, it is worse regulated from the legislative point of view, since the concept of the resolution includes other elements, which unambiguously results from the principles of the legislative technique. As a result, this provision unnecessarily complicates its understanding by the potential recipients.

Moreover, the procedure of initiative registration has been modified. Although it is still carried out by the Head of the Council, after having formally and legally verified the application, currently, the decision should be made immediately, and not within 21 days from the day of submitting the request. Of course, these deadlines should be considered instructive. However, since the President issuing opinions on the draft has 14 days – counted from the date of submitting the documentation by the Head of the Council – to present his position, it is difficult to talk about any significant acceleration of this procedure<sup>13</sup>. The further proceedings remained unchanged. In case of deficiencies,

---

<sup>12</sup> In the supervisory decision, the voivode also removed the obligation to include in the justification the expected social effects, as well as the financial effects and sources of their coverage, recognizing that these limits, or at least hinders, the implementation of the civic resolution initiative. See Supervisory decision No. PN.4131.270.2019 of the Warmian-Masurian Voivode of 21 May 2019 (Dz.Urz.Woj.Warm.-Maz., item 2686); for a different opinion concerning the financial coverage requirement. R. Marchaj, *Uwaga 8 do art. 41a*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. II, ed. B. Dolnicki, Warsaw 2018.

<sup>13</sup> Until 2019, the President had no deadline to present his opinion, although he had to fit within the general deadline for examining the application. See § 17(S) of the previous version of the Statute.

the applicants have 7 days from the receipt of the request to complete the application (this is a limitation period). Failure to meet the deadline or sending an incomplete application will terminate the procedure, which, however, does not close the way to its possible re-initiation regarding the same matter.

As a change, the acceptance of the application means the registration of the resolution initiative, which is done in the Register of Resolutions Initiatives kept by the Municipality Council's Office. The scope of data disclosed in the Register has not significantly changed. They include the registration number, full name of the Committee, details of the proxy, and his deputy if any, and the content of the draft resolution. At the same time, a statement on the creation of a Committee, a draft resolution together with a justification thereto, as well as the date for starting and completing the collection of signatures are published on the Public Information Bulletin (BIP) website of the City Hall. The Head of the Council shall immediately inform the Committee about the registration and data disclosed on the BIP website. It is worth emphasizing that from the date of adopting the application, it is not possible to change the content of the draft resolution. However, it must be acknowledged that this regulation is not precise, as – in fact – the change cannot be made in relation to this content of the draft that was the basis for the registration of the application by the Head of the Council.

The registration allows the Committee to start collecting signatures of residents who support the draft resolution. In the supervisory decision (supervisory authority's resolution) referred to earlier, the voivode considered it unacceptable to introduce a monthly deadline for collecting signatures<sup>14</sup>. He noted that “in the opinion of the supervisory authority, setting a 30-day deadline for collecting signatures supporting the initiative, as well as imposing a sanction for exceeding this deadline in the form of ending the procedure, is contrary to the idea of the institution introduced by the law”. In our opinion, the position of the voivode is too far-reaching here, although the monthly deadline for collecting signatures should be considered too short, especially for residents who are not related to political or social organizations. It should also be emphasized that it was noted in the literature that the general statutory authori-

---

<sup>14</sup> Until 2019, in Elbląg, the signatures for a draft resolution of residents had to be collected within two months from the date of the registration of the initiative (§ 18(1) of the Statute of 2014).

zation for the decision-making body causes “the risk of excessive formalization of the procedure, which may discourage residents from using this form of involvement in public affairs, especially when they can propose changes in law using other instruments”<sup>15</sup>.

The collection of signatures is carried out at the place of submitting the proposal for inspection. The signatures are collected on sheets that are designed following the template attached to the procedure. By supporting the proposal, the voter is to give his name and address, as well as to put a legible signature underneath. It is worth emphasizing that he is no longer obliged to provide a personal identification number (*PESEL*), which was the case in the previous legal status. Giving support also authorizes the Committee to represent the proposal in the legislative work, which includes withdrawing the draft, without any restrictions as to the reasons for this decision. After completing the collection, the lists with signatures are forwarded to the Mayor (President of the City), who is obliged to verify them within 14 days from their receipt. In this case, the deadline is also instructive, and the failure to meet it may not result in the initiative being considered correctly submitted.

The lack of the legally required number of signatures ends the proceedings since the Committee has no way to remedy this deficiency. On the other hand, the positive verification is directed by the Head of the Council to the appropriate Committee, or the appropriate Council’s Committees for their opinion. This takes place during their next meetings. After presenting such opinions, the Head of the Council is obliged to put the draft on the agenda of the next Council’s session and to inform in writing the Committee about the date. Pursuant to Art. 41a (3) USG, this cannot take place later than within 3 months from the date of the proposal submission. In the course of the proceedings, the draft is discussed simultaneously with other proposals<sup>16</sup>. One cannot ignore the fact that draft resolutions submitted by the residents in Elbląg are not subject to the principle of discontinuation, because if the resolution proceedings are not completed by the Council within its term of office,

---

<sup>15</sup> P. Kłucińska, D. Sześciło, B. Wilk, *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018 r.*, “Samorząd Terytorialny” 2018, No. 10, p. 35.

<sup>16</sup> It is difficult to agree with R. Marchaj’s view that it can be voted only without amendments. R. Marchaj, *Uwaga 3 do art. 41a [in:]*, *Ustawa o samorządzie...*

the draft is by law considered by the Council during its next term of office, without the need to restart the procedure. This provision should *de facto* only apply to proposals that were submitted at the end of the Council's term, because – according with the Act – the works on a citizens' proposal should not be postponed, which, unfortunately, is theoretically possible<sup>17</sup>.

In a particularly laconic way, the procedure regulates the issues of the promotional campaign, previously omitted in Elbląg's legal order. It is limited to § 11 which states that the dissemination of draft resolutions and the promotional campaign for a civic resolution initiative is carried out by the Committee. This takes place after the Head of the Council publishes the information in the BIP and on the website of the City Hall in Elbląg that the application for the citizens' initiative has been registered. However, the procedure does not regulate either the rules of conducting such promotional campaigns or the sole proceedings, although, in the case of the latter, it should be reckoned that this solution leaves the Committee free to conduct such campaigns. However, the issue concerning the support of the municipal clerical apparatus while running promotional campaigns was not specified<sup>18</sup>.

On 17 March 2015, the first resolution initiative was submitted in Elbląg. This was a consequence of the 2015 solutions. At that time, an initiative group was registered that sought to reduce the salary of the President of the City and Councilors (Resolution on the Rules for Granting Monthly Allowances to Councilors of the City Council in Elbląg; Resolution on Determining the Remuneration of the President of Elbląg). In the case of the President, the salary was to be reduced from PLN 12.030 to PLN 7.920, and in the context of the Councilors, it was proposed to reduce the diet by half. The funds saved in this way were proposed to be allocated to extra-curricular activities at schools. In the case of a positive impact stemming from the group's proposal, similar actions were announced in the context of directors of municipal companies and a part of the budgetary sphere. The representatives of the initiative group were disappointed with the actions of the city authorities. The undertaken measures were justified by the difficult financial situation of Elbląg and

---

<sup>17</sup> P. Glejt-Uziębło, P. Uziębło, *op.cit.*, p. 400.

<sup>18</sup> In the earlier legal status, the Initiative Group could ask the President for help in creating a draft resolution, so that it would contain the elements required by the Statute and be consistent with the legislative technique.



the need for solidarity of the Councilors with the residents of Elbląg. After almost two months, the signatures were delivered to the Municipality Council's Office<sup>19</sup>. Due to formal shortcomings, the materials were returned to the initiators. No further actions related to the proposed resolutions were taken<sup>20</sup>.

In the following years, no residents' initiatives were received (until the end of March 2020). On the other hand, the City Councilors were submitting their initiatives. In 2018, there were six such initiatives, which concerned various problems (regarding the name of a roundabout in Elbląg; regarding the residents of Elbląg; regarding Councilors' diets; regarding apiaries in the city; regarding scholarships, and regarding the amount and conditions for granting discounts on one-time fees for the transformation of the perpetual right of land owned by the Municipality of Elbląg into the right of ownership of such land). Then, in 2019, the Councilors submitted two initiatives (on the fluvial railway, and on naming 2020 as the Year of the 30th Anniversary of Self-Governance and the Year of the 75th Anniversary of the end of World War II). To supplement this information, it may be mentioned that since 2015, as many as 34 petitions have been received by the Municipality Council's Office (22 of them concerned the lighting)<sup>21</sup>.

The new regulation regarding the civic resolution initiative in Elbląg entered into force in the middle of 2019. It did not change the activity of Elbląg residents in this respect. Until the end of March 2020, no initiative proposal was submitted to the Municipality Council's Office in Elbląg. What might be the reason for such a state of affairs? The failed attempt of 2015 could have a daunting effect on others. It proved that collecting a sufficient number of signatures did not make the City Council act. The initiative should also be well prepared in legal terms. At no stage, the regulation included the possibility of consulting city officials, who could help in the preparation of such a resolution during an early phase. It was not an easy task since the Elbląg Councilors proposed a total of 8 resolutions in 2018–2019, while having the support of the clerical apparatus. Thus, assistance at the stage of preparing a civic resolution initiative would be very important. Similarly, in the case of the dis-

---

<sup>19</sup> K. Sidorkiewicz, *Partycypacja mieszkańców na poziomie lokalnym - przykład Elbląga*, "Środkowoeuropejskie Studia Polityczne" 2016, No. 4, pp. 48–50.

<sup>20</sup> Municipality Council's Office in Elbląg.

<sup>21</sup> *Ibidem*.

semination of the proposal and the promotional campaign, all the effort was shifted to the Civic Resolution Initiative Committee. The promotional activities are also a difficult task and require financial outlays which are entirely burdened by applicants. Therefore, the civic activity, presenting own ideas, and collecting signatures were also associated with bearing financial costs. This was not encouraging for residents who had ideas. It would be suggested to change this state of affairs by introducing provisions that would force the municipal services to become more active to publicize the draft, or even join the proposal and its implementation. It would be a good practice to use the enforced instruments concerning the implementation of the Elbląg civic budget. In fact, the residents have the support of city officials at every stage. Budgetary matters are publicized by the Elbląg media, and officials, including the Mayor, are involved in its implementation<sup>22</sup>. Only the use of some of these instruments could help execute the resolution initiative.

Another aspect affecting the negligible activity of the inhabitants of Elbląg is probably the significant number of signatures necessary to submit a citizens' resolution initiative. Despite lowering the threshold to at least 300 signatures, it seems to be a serious barrier. Since it is a requirement imposed by the law, the legislator may be appealed for changes in this respect to reduce the number of necessary signatures for the draft resolution. This would be one of the elements that could increase the activity of the residents.

It would also be very important to publicize the very idea of a resolution initiative among the residents of Elbląg. One of the instruments should be promotional campaigns for all civic attitudes, including the possibility of a resolution initiative. The case requires a lot of commitment at the clerical, media, and educational level. Schools, teachers, students, parents, and people involved in local activities can play a significant role in this respect. On the example of the aforementioned civic budget, it may be observed that there is a very high interest in the Elbląg school environment. Although one may not compare these two problems, this example, as well as the schools' activities in the framework of the Great Orchestra of Christmas Charity (*Wielka Orkiestra Świątecznej Pomocy*), prove about the great civic potential of the Elbląg

---

<sup>22</sup> <http://www.budzetobywatelski.elblag.eu> (29.03.2020).

community. There would have to be long-range educational activities, and their effects could be visible in the long term<sup>23</sup>.

The knowledge of the possibilities offered by the civic resolution initiative is fundamental. The campaign informing about the initiative among the residents of the city is necessary to encourage the use of this instrument. The second matter is the clerical and legal support of the initiative initiators at every stage of its implementation. Without these activities, a civic resolution initiative will only be a document illustrating that such a possibility exists. This was probably not the legislator's goal.

In conclusion, it should be noted that from Elbląg's perspective, the USG amendment has not caused a significant qualitative change. Admittedly, the number of signatures required for a civic proposal was reduced, and – although only after the voivode's intervention – the time limit for their collection was removed, negative elements can still be observed, such as the lack of imposing an obligation on city officials to assist in preparing a draft resolution. In addition to that, attention should be paid to the need to introduce educational and information activities, the lack of which can often lead to non-application of regulations in practice, even those that are of high quality.

## Literature

- Baranowska-Zajac W., *Instytucje społeczeństwa obywatelskiego w świetle nowelizacji samorządowych ustaw ustrojowych z 11 stycznia 2018 r.*, "Studia Prawnoustrojowe" 2019, No. 44.
- Glejt-Uziębło P., Uziębło P., *Kilka uwag o „nowych” instrumentach partycypacji mieszkańców na poziomie samorządowym*, [in:] *Dookoła Wojtek...: księga pamiątkowa poświęcona Doktorowi Arturowi Wojciechowi Preisnerowi*, eds. R. Balicki, M. Jabłoński, Wrocław 2018.
- Kłucińska P., Sześciło D., Wilk B., *Nowy model demokracji samorządowej – uwagi na tle zmian w ustawach samorządowych wprowadzonych ustawą z 11 stycznia 2018 r.*, "Samorząd Terytorialny" 2018, No. 10.
- Marchaj R., *Uwagi do art. 41a*, [in:] *Ustawa o samorządzie gminnym. Komentarz*, ed. II, ed. B. Dolnicki, Warsaw 2018.

---

<sup>23</sup> P. Śwital, *Prawne formy włączenia obywateli w tworzenie aktów prawa miejscowego*, "Civitas et Lex" 2019, vol. 24, No. 4, p. 28.

- Sidorkiewicz K., *Partycypacja mieszkańców na poziomie lokalnym – przykład Elbląga*, “Środkowoeuropejskie Studia Polityczne” 2016, No. 4.
- Śwital P., *Prawne formy włączenia obywateli w tworzenie aktów prawa miejscowego*, “Civitas et Lex” 2019, vol. 24, No. 4.
- Ziółkowski D., *Obywatelska inicjatywa uchwałodawcza jako instrument partycypacji społecznej*, “Studia Iuridica” 2018, No. 77.