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PARTICIPATORY BUDGET AND THE SARS-COV-2 PANDEMIC IN POLAND

Jakub BARANOWSKI

Jakub BARANOWSKI

Research assistant, Research Team for the Organization and Functioning of the Municipal Economy, Faculty of Law and Administration, University of Szczecin, Szczecin, Poland Tel.: 0048-787-227.628 E-mail: jakub.baranowski@usz.edu.pl https://orcid.org/0000-0002-9863-7864

Abstract

The SARS-CoV-2 pandemic has affected almost every aspect of social life. Public authorities are trying to combat the effects of the pandemic by introducing specific legal regulations. Even though the Polish legislature has established a number of regulations to combat the epidemiological threat, they have not regulated the participatory budget process. The obligation to establish it, especially in cities with powiat rights (a city with powiat rights should be understood as a city with over 100,000 residents, governed by a mayor), at a time when local government units seek savings, may result in some important investments not being made. On the other hand, maintaining the involvement of residents in the development of local communities can have a positive impact on participation in the community.

In this article, the author attempts to analyze the legal situation of participatory budgets during the SARS-CoV-2 pandemic under Polish legislation, at the same time indicating the possibilities of developing this form of civic participation by using, among other things, technologies that enable remote communication.

Keywords: administrative law, local government law, SARS-CoV-2, participatory budget.



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1. Introduction

The global SARS-CoV-2 pandemic continues to affect many aspects of social activity. The restrictions introduced by the authorities of European countries related to everyday life meant that certain legal participatory mechanisms in local government units had to be adapted to the new circumstances, thus activities under the broadly understood social participation had to be redirected.

Numerous references in the literature confirm that social participation is an ambiguous term. Within the legal sciences, the concept should be understood primarily as participation in the life of a particular community. Within the Polish legal system, the term participation derives from one of the main principles of the Constitution of the Republic of Poland – the principle of democratic rule of law (Augustyniak, 2017, p. 49). According to this principle, the law is a value in itself, and in the material aspect, the law is intended to implement the ideas of justice (Tuleja, 2016, p. 2). The principle of citizens' trust in the state is also directly connected with social participation, which is also linked to the principle of citizens' legal security. The Constitutional Tribunal ruled that the principle of trust in the state and law enacted is based in essence on legal certainty, which also ensures the safety of a given individual (Judgment of the Constitutional Tribunal, 2000).

The theory of public participation provides for the possibility of citizens' involvement in making political decisions with a sense of collective responsibility (Zittel, 2007, p. 49). Therefore, as it results from numerous references in the literature, one of the basic elements of democracy in the context of people's power is the participation of citizens in the exercise of power (Augustyniak, 2017, p. 49). Participatory democracy is the basis for citizens' participation in governing a given community, and public authorities should strive to exercise this participation for the common good.

Social participation is also the direct involvement of residents in local community affairs. So far, the basis for conducting participatory processes has been direct meetings of residents with public administration bodies. This type of interaction was considered the most effective for building and maintaining a special bond between social activists and the administrative unit. The situation related to the SARS-CoV-2 virus meant that in a very short time it was necessary to change by 180 degrees the way of thinking about social participation. This is due to the special role of social participation in local government units.

This article attempts to present the problematic aspects of organizing the participatory budget process in Poland, understood as one of the most important tools of public participation, during the global SARS-CoV-2 pandemic. The research explores legal regulations in force at the time of the epidemiological threat in the country, attempts at legislative changes, and the procedure of conducting a civic budget illustrated by the example of one of the cities in Poland during the pandemic, Szczecin. An attempt will be made to answer the question of the extent to which Polish legislation was prepared for such an exceptional situation and whether legal mechanisms currently in place enable an effective and safe participatory process. In an effort to answer the above questions, the article uses a legal-dogmatic method, which involves examining the legislation in force in Poland in the field of the participatory budget, as well as an empirical method that includes an analysis of the principles of the functioning of the participatory budget exemplified by one of the largest cities in Poland. The analysis was carried out on the basis of resolutions of the city council, as well as orders of the city mayor and internal regulations. Additionally, the historical-legal method was used, indicating the origin of the participatory budget process and its evolution in recent years.

2. The essence of the participatory budget and legal regulations in Poland

A civic budget is a form of social consultation conducted with residents of a given local community. It is characterized by flexibility in implementation in a given unit (Gilman, 2016, p. 3), due also to different geopolitical locations. It is a method by which residents decide on the allocation of a specific pool of the unit's budget to the purposes of their choice.

The participatory budget¹ dates back to the early 1990s; Brazil should be considered as the precursor of this form of participation. As confirmed by numerous references in the literature, at that time Brazil was one of the countries with the greatest income disparity in the world (Sintomer, Herzberg and Röcke, 2008, pp. 2–3), but the city of Porto Alegre did not follow this rule to a large extent. In addition, Porto Alegre was a center of opposition that initiated a change of policy in the city's sphere: to intensify efforts to improve relations and cooperation with residents (Kęszczyk, 2018, p. 2). Initially, the most important participatory tools to encourage the citizens of Porto Alegre to get involved in the participatory budget process were meetings in different parts of the city. At such meetings, every resident over the age of 16 could speak up and propose their own solution for the development of the local community. Gradually, the idea of a civic budget moved to Europe, including Poland. The first edition of a participatory budget took place in 2011 in Sopot (Maciąg, 2018, p. 3) and then the process was popularized in municipalities and large cities.

Until 2018, legal regulations of the civic budget were very poor. Noticeably, the only basis for conducting the participatory budget process in the municipality was the regulations governing the procedure of launching the public consultation procedure. The constant growth of interest and the development of civic budgets in Poland made it necessary to provide a legal framework for the institution of the participatory budget in the Polish law. Such provisions were laid down in early 2018 (Act of January 11, 2018).

One of the most important legislative changes was the regulation of the legal nature of the participatory budget. The introduction of a specific type of social con-

¹ In the article the author uses the terms 'participatory budget' and 'civic budget' interchangeably.

sultation was correlated with a clear indication of the obligatory carrying out of this form of social consultation in a given local government unit (Article 5a(5) of the Act of March 8, 1990 on the Municipal Government, 1990²). The particular nature of the participatory budget is supposed to point to an extremely important element, which is consulting the allocation of certain budget amounts for public purposes with the residents of a given local community (Ziółkowski, 2018, p. 13). According to the legislature, the legal nature of conducting a participatory budget in a given unit depends on the legal status of this unit. Cities with powiat rights have to create a participatory budget to the amount of at least 0.5% of the expenses resulting from the last submitted report on budget execution, whereas in the case of entities which are not classed as cities with powiat rights, carrying out the process of social consultations with residents has been made optional by the legislature. This change imposed on the largest urban centers an obligation to create a participatory budget each year and to provide residents with the opportunity to choose specific projects in a participatory procedure. This is an important novelty since it is coupled with the binding nature of social consultations: since 2018 the residents' choice has become an obligation for the local government unit to fulfill.

The SARS-CoV-2 pandemic caused the municipalities to face a serious dilemma: whether to implement the participatory budget procedure and continue the dialogue with residents at a time of epidemiological threat or, on the contrary, to look for additional money to help in the fight against the pandemic through participatory procedures. Those municipalities which were not obliged by the legislature to create an annual civic budget could decide not to launch a participatory budget procedure in a given year due to the economic consequences of the pandemic. At the same time, the obligation to create a civic budget continued to apply to cities with powiat rights, with a simultaneous correlation of spending a certain percentage of the city's budget.

This has led to a number of discussions among civic participation practitioners. The unexpected threat of a long-term lockdown of the municipality and its residents led to the necessity of securing additional funds in the already existing budget of a given unit. This, in turn, meant that any subsequent unexpected spending of funds which, from the perspective of the purpose and social reasons, would not be necessary to ensure the proper functioning of the unit, potentially entailed negative financial consequences for this unit.

The situation caused by the SARS-CoV-2 virus and COVID-19 has generated increasing costs and more and more funds have been allocated to support, among others, micro and small businesses as well as non-governmental organizations. It was found that as a result of this situation some local government units may have problems with financing current expenses and maintaining already started investments.

² Hereinafter referred to as the Act on Local Government.

The legal solution introduced by the Polish legislature concerning the crisis situation caused by COVID-19 (Act of March 2, 2020³) provided tools which were supposed to lead to an effective fight against the pandemic. In Article 15zn(1) of the above-mentioned act, the mayor was granted the right to transfer financial resources among given sections of the budget classification by means of orders. However, in view of Article 5a(5) of the Act on Local Government, special provisions, including i.e. Article 15zn of the Anti-Crisis Act, cannot be interpreted broadly as applicable to the provisions regulating the issue of the participatory budget.

The only legally effective solution that could regulate the situation of the obligation to create a civic budget in a city with powiat rights in 2020 would be to introduce a derogation from the previously-mentioned mandatory rule. This problem could be regulated in the amendment to the Anti-Crisis Shield by allowing the units which are under the obligation to create a civic budget to suspend the application of the procedure in 2020 and thus transfer the funds saved to the fight against COVID-19.

Such a solution was proposed during the works of the Committee on National Economy and Innovation and the Committee on Budget and Public Finance of the Senate of the Republic of Poland (2020) of the 10th term of office during the debate held on March 30, 2020 on the Act amending the Act on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases, and crisis situations caused by them, and some other acts. In item 59, an entirely new Article 31zka was proposed after Article 31 zk. Paragraph 4 of Article 31 zka was to be replaced by the following: 'In 2020, a decision-making authority of a local government unit may suspend the implementation of the civic budget as well as preparations for the civic budget for 2021'. The provision proposed thereby left the decision-making authority responsible for the fate of the participatory budget in principle for two years, 2020 and 2021. At the same time, the very adoption of the resolution to suspend the implementation of the civic budget meant only stopping the participatory procedure. The provision proposed did not directly grant the power to earmark the funds allocated for the creation of the participatory budget. Ultimately, the regulation proposed was rejected by the Sejm RP⁴ and did not enter into force.

The changes proposed should be viewed positively, if only because an attempt has been made to resolve this difficult issue. Unfortunately, the final lack of legal solutions allowing for the suspension of the establishment of the civic budget in 2020 meant that cities with powiat rights had to take appropriate steps to start the entire participatory procedure. The procedure was exceptional, due to the fact that local governments had to try to find their bearings in a completely new reality in a very short time.

³ Hereinafter referred to as the Anti-Crisis Shield.

⁴ The Sejm RP should be understood as the lower chamber of the Polish Parliament, which adopts acts of law.

3. Organization of the participatory budget process during the COVID-19 pandemic in Poland with the example of the Szczecin City Municipality

3.1. Stage of the call for proposals for the 2021 participatory budget

The formal beginning of the call for submission of applications for the participatory budget of a given edition is the Ordinance of the Mayor of the City of Szczecin on conducting public consultations with residents of the City of Szczecin (Ordinance no. 272/20, 2020). This obligation results directly from the Rules of Procedure of Participatory Budgets (Rules of Procedure of conducting public consultations concerning the Szczecin Civic Budget, 2019⁵). It is the mayor who is competent to start a given edition of the civic budget, determine the amount allocated to this process and the territorial division of the city. Two models of organizing the participatory budget have been adopted in the Polish legislative practice. The first of them is a mechanism in which the main legal act regulating the mode and principles of the participatory process is adopted and is binding every year. In this mode, a resolution does not contain detailed information on the amount allocated to the civic budget in a given year or the territorial division of the unit – such information is specified in a legal act issued by the executive body. The second method is the annual adoption of resolutions for individual editions, which regulate the rules and procedures for each edition separately. It should be pointed out that due to the COVID-19 pandemic, the second model would be much more flexible in terms of adjusting the regulations to the prevailing epidemiological threat.

As a city with powiat rights, due to the lack of specific regulations concerning the suspension of the participatory budget, Szczecin had to prepare for the call for submission of projects for 2021. The COVID-19 threat caused the activity of the Szczecin City Hall to be limited and therefore direct contact between residents and officials remains difficult. The form of the Rules of Procedure remained unchanged, which meant that the residents of the city could submit projects both electronically through an ICT system dedicated to a given edition of the participatory budget, and in a traditional paper form (§12(2) of the Rules of Procedure). Additionally, each project submitted to the civic budget had to include a list of support. This requirement is not particularly difficult to meet, as the list of support must contain signatures of at least 10 city residents. In this respect, there may be doubts as to whether, in the event of a real epidemiological threat, residents should be exposed to direct contact when collecting support for their project; however, it appears that with caution and appropriate sanitary measures, such a statutory requirement can be met under the COVID-19 threat.

A much bigger problem is the lack of direct contact with officials who specialize in a given matter and residents who want to submit a proposal for a project to a partici-

⁵ Hereinafter referred to as the Rules of Procedure.

patory budget. It should be recalled that the civic budget is one of the most important processes that build participatory attitudes in a given local community, therefore it is extremely important to accept every idea and assist the residents with its implementation. The good practice so far has been that a resident has had the opportunity to meet in person with an official in order to consult relevant matters and to clarify any problematic issues, such as the cost estimate of a given project or the implementation of a given investment in a specific location. Unfortunately, due to the epidemiological threat, the Head of the City Hall decided to close the building to residents (Ordinance no. 146/20, 2020). This decision resulted in the necessity to replace the previous direct contact with a remote one.

One of the main elements of the call for submission of the proposals stage is the 'SBO⁶ Academy' initiative launched by the City of Szczecin. This venture is aimed at supporting residents involved in the participatory budget process both at the stage of submitting project proposals and during voting. The main task of the 'SBO Academy' at the stage of the call for submission of proposals is to assist the applicants during the process of writing a project proposal. Each year, a grant is awarded through a call for tenders for a public task to carry out an information and education campaign on the civic budget in Szczecin. The information campaign for this year's edition is also a particular one due to the threat of COVID-19. Previously, personal meetings were organized in different parts of the city. In the 2020 edition, the 'SBO Academy' moved mainly into virtual space. Remote workshops on writing proposals for projects for the participatory budget and consultations on individual projects and webinars were held (SBO 2021 Academy). A special event was an online meeting with Katerina Zavizhenets - President of the Mi-Gracja Association, during which the topic of encouraging migrants to submit applications to the participatory budget and to vote was discussed. As can be seen, such an important element of the process as the information campaign has completely moved into the virtual sphere.

The call for participatory budget proposals in Szczecin started on June 1 and ended on July 1, 2020. As part of the first stage of the participatory procedure, 192 projects were submitted to the Szczecin City Hall, including 15 paper applications (Press release of Szczecin City). This means that the number of projects for the civic budget, despite the epidemiological risk caused by COVID-19, remains at the same level as in the previous year⁷.

3.2. Social factors as part of the participatory budget process during the pandemic

Social sensitization of participatory processes should be one of the most important tasks for local government units. Although the legislature has equipped the units

⁶ SBO should be understood as an abbreviation of the participatory budget in Szczecin.

⁷ In the 2020 edition, 199 projects were submitted.

with legal tools for organizing the civic budget, the active involvement of citizens in this process is the biggest challenge for them. Continuous popularization of participatory democracy should be a priority for local authorities. For many years now, the issue of encouraging citizens to co-determination has been a problem faced by units. Focusing only on the institution of the civic budget, we can see that every year since 2011, interest in this form of civic participation has been growing (both in the case of submitting projects and at the voting stage), but the turnout during voting at the level of 5-6% (with all residents of a given unit being entitled to vote) is much below expectations. Therefore, it is extremely important to keep building trust in the participatory budget process and to try to involve residents in shared decision-making with respect to it.

In the Szczecin City Municipality, which in this article serves as an example of the implementation of the social factor in the process of the civic budget, attempts have been made to solve this problem almost from the very beginning of the existence of this institution in the city. To ensure this, 2 years after the first edition of the process in 2015, a special community team called the Assessment Panel was established⁸. Its main task was to approve the list of projects submitted to the participatory budget to be voted on by the city's residents. In addition, the purpose of the creation of this Panel was to include the social factor in the process of the participatory budget as a body independent of officials, which being the community's representation, will be able to verify the actions of specialists from the City Hall. Initially, the Assessment Panel consisted of city residents, members of the City Council, and representatives of non-governmental organizations. The Panel enjoyed great social support, which was illustrated by the results of the evaluation process conducted by institutions independent of the city (Evaluation of the Szczecin 2019 edition participatory budget, 2018, p. 20). Gradually, the role of the Panel grew, which was reflected in the process of introducing significant changes to the Rules of Procedure of the participatory budget. After the Act on Local Government was amended, it was decided to amend the provisions of the Rules of Procedure. As a result of the amendment, two social groups were formed: the Assessment Panel with the same competencies as before was maintained and a new body, the Appeals Panel, was created. As regards the former Panel, clear criteria of its composition were indicated: its members may be residents, representatives of housing estate councils, representatives of non-governmental organizations, and representatives of the youth city council. The members of the Appeals Panel may be the authors of the winning projects of previous editions of the participatory budget and members of the Assessment Panel of previous editions of the civic budget. As the name of the Panel suggests, its role is to consider appeals filed by residents against the negative decision of the Assessment Panel in putting a project on the voting list.

⁸ Initially called the Szczecin Civic Budget Panel.

The role of social teams during the COVID-19 pandemic is even more significant; until now, the rule was that team meetings were held *in situ*. The author whose project has been negatively assessed by specialized municipal units, has the right to participate in the Panel's work and present their position. On more than one occasion during Panel meetings, attended by both the authors of the task and representatives of the city units, a compromise was reached and changes were made to the project so it could be included on the voting list. Therefore, these direct meetings were treated as a kind of opportunity for mediation and dialogue between residents and officials. A significant role was played here by the members of the Panel as community activists who looked at a given state of affairs from a completely different perspective. At present, during the COVID-19 pandemic, face-to-face meetings are not possible and re-modeling the work of the Panels should be a priority for those supervising the participatory budget process in the city.

Just as in the case of remote work and along the lines of distance communication, during an epidemiological threat, the Panel's work should rely on the use of available technological tools such as Zoom, Microsoft Teams, or GoogleMeets. Naturally, such a solution has its pros and cons. The biggest advantage of using technological tools in the work of social panels is the possibility of a panel member attending a meeting with the use of modern technologies from practically any place. It is very convenient for those community activists who combine social work with their professional life. Additionally, remote work in an ICT system dedicated to the city participatory budget will allow for faster and safer work for residents. The disadvantage is, naturally, the lack of direct contact and talk about problematic issues. However, for safety reasons, the risk of SARS-CoV-2 infection should be minimized. In the future, when the pandemic is over, consideration should be given to good practices of remote work of panels and proposing the so-called hybrid mode of working.

3.3. Stage of project selection by residents in a general vote

The voting stage is the culmination of the entire participatory budget procedure in a given calendar year. After many months of work of both the officials reviewing the projects in the city units and the social panels working on rejected applications and appeals, the list of projects is ready and the city residents can decide how they want their local community to change.

The voting procedure is governed by Chapter 4 of the Rules of Procedure. It should be noted again that the provisions of the above-mentioned Rules of Procedure have not been fully adapted to the prevailing epidemiological threat, therefore the provisions concerning the voting procedure have not changed. Under § 21(4) of the Rules of Procedure, voting on projects is conducted in electronic and paper form. Voting in electronic form should be understood as a city resident voting in an ICT system dedicated to a given edition of the participatory budget. In the case of paper ballots, the City Hall makes the voting card available on the Internet and in the specially designated places intended for voting only in the traditional manner. Every resident of the city has the right to vote.

By analyzing the voting rules and trying to adapt them to the current constraints of the COVID-19 pandemic, two conclusions can be drawn. Firstly, a broad information campaign should be conducted to encourage residents to use the ICT system and thus vote in electronic form. In the previous edition of the participatory budget, almost 94% of the voting cards were those cast in the ICT system (Evaluation of the Szczecin 2020 edition participatory budget, 2020, p. 46). This shows that the vast majority of residents participating in the vote make use of new technologies. However, in the current situation, it is necessary to pay special attention to this and additionally encourage those social groups which most often vote in the paper form (mainly seniors) to use this form of voting.

The second point to consider is that it is not legally possible to bypass the second voting method, the traditional paper form. The provisions of the Rules of Procedure are precise on this issue: anyone who would like to cast their vote in the traditional way should be able to do so. A problem arises ere as to how to carry out this form of voting. At the turn of June and July this year, presidential elections were held in Poland in a hybrid form, i.e. traditional in polling stations and by post. To this end, guidelines (Guidelines of the Minister of Health and the Chief Sanitary Inspector, 2020) were created to indicate clear sanitary rules for the elections conducted. On the one hand, it is not possible to compare presidential elections in which, according to official data of the State Election Commission, more than 20 million Polish citizens took part (Announcement of 13 July 2020, State Election Commission, 2020), to a participatory procedure in a city of almost 400 thousand inhabitants and which lasts for 14 days. However, it seems reasonable for the District Sanitary Inspector to provide general guidelines on epidemiological safety during voting in a participatory budget. This is all the more important because most often it is the seniors who are the beneficiaries of the traditional form of voting. This is particularly important from the point of view of this year's participatory budget schedule (Schedule of the Szczecin 2021 edition participatory budget, 2020), which indicates that the vote is to take place in November and, as epidemiologists claim, a return of the SARS-CoV-2 pandemic and an increase in the incidence of COVID-19 can be expected at that time.

4. Summary

Polish rules on the participatory budget are not geared to the current epidemiological situation related to COVID-19. The attempt to change the current legal status was not effective. As a result, individuals faced the difficult task of organizing the participatory process during the real threat of SARS-CoV-2 infection and deteriorating public finances.

Cities with powiat rights, on which the legislature has imposed an obligation to create an annual civic budget, must try to adapt the current situation to the conditions prevailing in a given unit. The process of a participatory budget is characterized by a high degree of complexity, starting with the preparation of legal acts for a given budget edition and ending with the residents voting on specific proposals.

This article attempted to analyze how the process is organized by one of the largest cities in Poland, Szczecin. The considerations undertaken suggest that, despite the lack of possibility to suspend the participatory budget in 2020 and the lack of changes in the Rules of Procedure, the process can continue smoothly. Obviously, the inconveniences connected with the continuing restrictions associated with COVID-19 make it necessary for both units and residents to develop a new level of cooperation.

The use of new technologies, both at the stage of the call for the submission of projects, the participation of the social factor in the verification of tasks and finally at the voting stage, should be a priority for units carrying out the civil budget process during the pandemic. A positive effect of the restrictions introduced, in the form of a ban on direct contact, should be the development of remote forms of communication. In the future, the remote way of conducting the sessions of the Assessment Panel or the Appeals Panel could be a permanent element of the civic budget process; additionally, maintaining an appropriate sanitary regime will allow for the safe conduct of voting in the traditional form.

The SARS-CoV-2 virus pandemic shows that the legislature should, to an extent not provided for in the existing regulations, respond to changes much quicker. The author is critical of the failure to allow units to suspend the creation of participatory budgets in 2020. The situation in each unit is different as some of them pay much more attention to providing help to business, others to the finalization of key public investments. The money originally earmarked for the civic budget could be used to help those who need it much more.

However, an analysis of the current situation shows that the legislature, while maintaining the current regulations, caused the participatory budget process in larger units not to be stopped. Citizens can still get involved in the affairs of the local community, which has a positive impact on building a sense of community. At this difficult time of the pandemic, this can have a positive effect on building civic society and ultimately pay off in the future.

The consequences of the current state of the pandemic in Poland, and also in the whole world, should be legislative changes in the area of dialogue with residents. The methods used so far, which were mostly based on direct contact between residents and officials, should be supplemented by the widest possible use of remote instruments. Consideration should be given to the participatory budget process taking place in a hybrid way; where possible, direct contact should be replaced by virtual contact. As indicated in the article, this has its pros and cons but the current situation related to the SARS-CoV-2 pandemic shows that the legislature should introduce such legal tools, albeit of a temporary nature, which will prepare cities to carry out the participatory budget process also only remotely. It can also be assumed that once the pandemic is over, the question of assessing whether some of these virtual elements of the procedure can be permanently maintained will become a legitimate one.

Furthermore, despite the mandatory nature of the participatory budget, provisions should be made for the possibility of suspending the implementation of the civic budget in a given year in the event of an urgent and unpredictable situation. Such situations undoubtedly include a state of natural disaster or an epidemic that paralyzes the work of the entire state. Making the participatory process more flexible will mean that in cases of a state of emergency, in which local authorities decide whether to allocate specific funds to help people or to transfer them to the participatory process, this decision should be made by local authorities.

The above experience shows that the legislature should be prepared for every crisis situation regardless of its specific nature. This means that it is reasonable, and even necessary, to create a wide range of legal instruments which, depending on the specific nature of the crisis situation, would reduce the risk of being unable to carry out the procedures required by law, such as the participatory budget analyzed in this article. This statement stems from the conviction that the world after the SARS-CoV-2 pandemic will no longer be the same, but the implementation of tasks, which are based on dialogue with residents and which are important for local communities (such as the participatory budget, consultations, and referendums) must be guaranteed. To this end, it is necessary to introduce legal tools that will enable the proper and safe realization of the interests of residents in the event of a crisis.

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