

ICEST 2021**II International Conference on Economic and Social Trends for Sustainability of Modern Society****PARTICIPATORY BUDGETING IN RUSSIA: PROBLEMS AND
PERSPECTIVES OF NATIONAL LEGAL REGULATION**

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Abstract

In 2020, the Russian Federation at the national level adopted amendments to the Federal Law of 06.10.2003, №131-FZ "On general principles of local self-government", regulating the issues of participatory budgeting. That was an important step in the development of citizens, commercial and non-profit organizations participation practices in local government. Nowadays in Russia there is a contradictory tendency: the state itself initiates and supports the development of practices for involving the population in local self-government, but, the adopted amendments demonstrate the reluctance of the authorities to delegate to the population the authority to make budget decisions. This is expressed in endowing the local administration with broad powers to reject proposed projects at the stage of their examination, in establishing such a procedure for the formation of the composition of tender commissions, in which at least half of their composition should consist of representatives of local administrations, as well as in the absence of involvement of the population in the process of placing orders for municipal needs, and in the process of monitoring and control over the implementation of participatory projects. There are also a number of technical and legal problems related to the complexity of implementing mechanisms based on direct participation of citizens in large cities, with the ratio of participatory payments and self-taxation, which is mainly available only in sparsely populated municipalities, as well as the final integration of participatory budgeting procedures into the budget process.

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Keywords: Municipal entities, participatory budgeting, participatory payments, local administrations, self-taxation



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1. Introduction

Participatory budgeting has become one of the modern tools for the development of urban infrastructure, which makes it possible to increase the involvement of citizens in local self-government, as well as to find additional financial resources necessary for the development of urban infrastructure. Participatory budgeting in various forms has been developing in Russia since 2007, however, over the past thirteen years, the legal regulation of participatory budgeting has remained fragmentary and was carried out only at the regional and local levels. In 2020, Russia adopted amendments to the Federal Law of 06.10.2003, №131-FZ “On general principles of local self-government”, as well as to the Budget Code of the Russian Federation, which legitimized the main provisions concerning participatory budgeting. Nevertheless, in the legal regulation of participatory budgeting, there are quite a lot of gaps that require additional attention of the legislator. First of all, this concerns the classification of types of participatory interaction between public law structures and citizens, procedural aspects of participatory budgeting, as well as its integration into the budget process.

2. Problem Statement

From a scientific-theoretical and from an expert point of view, a large number of studies are devoted to participatory budgeting, both in Russia and abroad. Some of the most complete works on the Russian experience were studies by Shulga, Vagin, and others (Hachatryan et al., 2020; Sintomer et al., 2012), prepared within the framework of the joint Project "Development of participatory budgeting in the Russian Federation" implemented by the Ministry of Finance of Russia and the International Bank for Reconstruction and Development research by the Center for participatory budgeting of the Research Financial Institute (hereinafter - RFI), which has prepared a base of practices for civil initiatives to address issues of local importance with the direct participation of citizens (Cabannes, 2020), as well as research from the European University in St. Petersburg and other researchers. According to foreign experience, the broadest cross-country review is presented in the study of the International Atlas of participatory budgeting (Nelson & Sahsil, 2019) and a number of other studies (Dias, 2018); as well as a number of highly specialized studies on the impact of participatory budgeting on climate (Cabannes, 2020), the situation of people with disabilities (Glasgow Disability Alliance..., 2021), the development of educational institutions (RFI) and other typical areas of participatory budgeting (Budgeting for Equality..., 2021). At the same time, there are still few studies devoted to the legal regulation of participatory budgeting: most authors concentrate their efforts on reviewing and classifying the practices of implementing specific projects that can be classified as “participatory budgeting”. Taking this into account, one of the key problems of the study was to identify the prospects and areas for the further development of legal regulation of participatory budgeting.

3. Research Questions

In the course of the study, we tried to answer the questions about what are the reasons for the insufficiently detailed legal regulation of issues related to participatory budgeting in Russia and in the

world; whether the detailed procedural regulation of the implementation of initiative projects is expedient; how can the level of legal regulation of participatory budgeting be assessed in Russia, in comparison with foreign countries; and also what are the problems and immediate prospects for the development of the legal framework for participatory budgeting in Russia.

4. Purpose of the Study

The purpose of the study was to analyze modern problems of legal support for participatory budgeting in Russia and identify ways to solve them in the light of the adoption in 2020 of national legislation governing participatory budgeting issues.

5. Research Methods

In the course of the research, a comparative legal analysis of the practices and legal regulation of participatory budgeting in foreign countries was carried out, as well as an analysis of the current Russian legislation and expert opinions regarding its inherent problems and prospects for its nearest development. The research showed that participatory budgeting, in contrast to other financial and legal institutions such as tax administration, public procurement, budget planning, intergovernmental transfers, etc. does not have a standard regulation developed in detail at the international level, which the interested state could borrow with little adaptation to national peculiarities. There are a number of participatory budgeting projects (the initiators of the projects, in particular, actively used the experience of Brazil, Portugal, South Korea), which are modified by each of the public law entities, taking into account local peculiarities. There are also attempts to scientifically and theoretically generalize and classify the models used in the world participatory budgeting (Sintomer et al., 2012), however, it is premature to talk about the presence of a set of “ready-made solutions” in this area based on the best practice of legal regulation. Moreover, the legislation itself in the field of participatory budgeting at the national level is in most cases insufficiently developed. Its development is much lagging behind in comparison with the practice of implementing specific projects. This problem is typical not only for Russia, where the corresponding changes in federal legislation for the majority appeared only 13 years after the appearance of the first projects, but also for most foreign countries. Thus, in the countries of the European Union, which account for 39% of the global number of initiative projects, national legislation has been adopted only in two countries. Most of the largest federations (USA, Canada, Germany, Brazil, India and a number of others) also have not yet developed uniform national requirements for participatory budgeting procedures: issues related to the implementation of projects are mostly regulated at the regional and local levels (and not in all regions, but fragmentarily), as well as through the adoption of individual acts aimed at the implementation of specific projects. Countries that use the common law system, such as New Zealand, Australia and the United Kingdom, do not have national participatory budgeting legislation. At the same time, the latter has a developed practice and legal regulation of participatory budgeting at the regional level, in Scotland. Among the countries that can be classified as economic leaders, only South Korea, Japan, Poland and Portugal have developed national legislation in the field of participatory budgeting. At the same time, national legislation affecting participatory budgeting issues is present in a number of countries that can be classified as actively developing, but not among the

world's leading economies. In particular, legislative acts on participatory budgeting are present in the national legislation of such states as: Dominican Republic, Panama, Peru, Ecuador, Chile, Colombia, Indonesia, Angola, Niger. The lack of aspiration for the early development of national legislation on participatory budgeting both in Russia and in most other countries, in our opinion, was primarily due to the fact that the presence of strict legal regulation can limit the variety of participatory budgeting practices and hinder the establishment of this institution. as such. At the same time, in countries that have a developed practice of contractual regulation of public-private relations, including countries whose legal model is based on the principles of precedent regulation, as a rule, there are enough managerial decisions made in relation to individual projects, as well as contracts concluded in connection with their implementation. The experts distinguish two models of the development of legislation on participatory budgeting (Hachatryan et al., 2020; Shul'ga et al., 2017). The first is based on a bottom-up initiative. In this case, the legislator generalizes and legitimizes the practice that has developed on the basis of private initiative. The second model is based on the initiative "from above" and assumes the development of both the institution of participatory budgeting and the legal norms regulating it by the national government, including with the assistance of international organizations. In the first case, there is a rather serious lag in the development of the legal framework from practice, an example of which is the development of participatory budgeting in the USA, Canada and the UK, but at the same time the dispositive nature of legal relations remains, and the norms governing participatory budgeting, including at the regional level, as a rule, remain advisory in nature. In the second, the legal basis for participatory budgeting is formed faster, but at the same time it can limit the variety of practices used and even have a discouraging effect on the development of the institution of participatory budgeting itself. Examples of this are Indonesia, Peru and, in part, Japan and South Korea. For example, in Peru, at the national level, the Law on Local Self-Government adopted in 2003 (Ley Organica de Municipalidades Ley №27972) obligatory participation of municipalities in initiative projects was established, as well as the subsidies to local self-government were provided. At the same time, the system of local self-government itself at the time of the introduction of the practice of participatory budgeting was insufficiently developed: it began to develop only in 2000. As a result, participatory budgeting turned into a formal way of approving a part of local expenditures and did not allow developing mechanisms of direct influence of the population on budget policy (Hachatryan et al., 2020). Indonesia also has participatory budgeting regulation at the national level (Law №6 of 2014 "On Countryside") and Law №60 of 2014 "On the Countryside Budget" (an analogue of laws on local self-government adopted in other countries) and subsidies from the national budget provided to municipalities that use information and advisory procedures when determining budget policy priorities (Wampler et al., 2018), did not lead to a significant increase in the role of the population in making budget decisions. Instead, according to experts, participatory budgeting has become one of the formal stages of approval of acts on the local budget. In Japan and South Korea, despite the adoption of national laws defining general requirements for participatory budgeting, according to a number of experts (Nelson & Sahsil, 2019), there are contradictory trends: on the one hand, the national government seeks to increase the level of participation of the population in the development of budgetary policy, on the other hand, local administrations strive to maintain full control over themselves by embedding participatory budgeting mechanisms in the budget process, which prevents the expansion of participation of the population in making budget decisions.

Speaking about the conditions for the development of both the practices of participatory budgeting in the world and the legislation regulating participatory budgeting, it should be noted that these processes were largely due to: lack of budgetary resources at the local level. For example, in Japan, local government accounts for only 10% consolidated budget (Sintomer et al., 2012), a reduction in public spending on the needs of local communities as a result of economic crises (Brazil, Portugal, Scotland, etc.) (Nelson & Sahsil, 2019), and/or insufficient development of democratic institutions and initial the stage of development of local self-government institutions. Most countries that have adopted legislation on participatory budgeting at the national level have indicators of the Democracy Index, Corruption Perceptions Index (CPI), Human Development Index (HDI), as well as the Happiness Index (HPI) at a level not exceeding the average one (Nelson & Sahsil, 2019). And, on the contrary, the rather late, in comparison with other countries, the start of participatory budgeting in the United States can be explained precisely by the high degree of development of the basic institutions of local self-government, including the broad powers of local authorities to establish taxes necessary for the implementation of projects in the interests of local communities. Thus, before the global crisis of 2008, the economic prerequisites for the active development of participatory budgeting in the United States simply did not arise.

The features listed above were fully typical for the Russian Federation as well. On the one hand, it certainly should be attributed to the number of countries in which participatory budgeting was introduced “top down”, since 2007 through the implementation of pilot programs of the Ministry of Finance and the International Bank for Reconstruction and Development (the first in 2007 was launched “The Program for Supporting Local Initiatives” of the World Bank in the Stavropol Territory), and later, since 2014 the program “Public finance management and regulation of financial markets” (Decree of the Government of the Russian Federation of April 15, 2014 №320), since 2017 also the Federal Project “Development of a comfortable urban environment” (Passport of the Priority Project “Development of a comfortable urban environment” was approved by the Presidium of the Council under the President of the Russian Federation for Strategic Development and Priority Projects, Protocol of April 18, 2017 №5). All program documents of the federal level adopted in Russia took into account the fact that in Russia the local budgetary policy is in fact a continuation of the regional one: the budgets of most municipalities depend on inter-budgetary transfers from the budget of a higher level (according to the Ministry of Finance of Russia, their share in local budgets for 2018- 2019, on average, was about 66%, but for the settlement level it is significantly higher [7, 8]), and, as a result, their funds are spent mainly for purposes determined by federal and regional legislation. Municipalities do not have the authority to introduce local taxes that are not provided for by the Tax Code of the Russian Federation; the property base is limited, the right to borrow is limited for all subsidized municipalities (which are the majority) by the conditions for the provision of intergovernmental transfers. For subsidized public law entities, the right to assume expenditure obligations that do not belong to the category of “mandatory” is also limited without the consent of the higher financial authorities. In the presence of such legal restrictions, the possibilities for financing their own initiatives by local governments were initially limited, which excluded the possibility of developing participatory budgeting in Russia on the initiative “down up”. Under these conditions, only the federal financial body and the regions that approved the corresponding programs to support local initiatives and allocated subsidies for their implementation on a competitive basis could become the driver of participatory budgeting in Russia. On

the other hand, a lot of time has passed since the start of using participatory budgeting until the adoption of amendments to federal legislation aimed at the final legalization of this institution in the system of Russian law, which made it possible to form a certain experience of independent interaction of local administrations with the population. So, as of the beginning of 2021, 69 constituent entities in Russia announced the implementation of participatory budgeting practices on their territory.

6. Findings

With regard to the changes made to the current Russian legislation, the following conclusions can be drawn. The adopted novelties did not create fundamentally new conditions for participants in participatory budgeting, but at the same time made it possible to: a) legalize participatory payments in the system of non-tax budget payments; b) systematize and summarize the established practices of participatory budgeting. The legal framework for participatory budgeting in Russia as of 2021 combines mandatory rules that define general requirements for the conditions of participatory budgeting, as well as recommendations developed by the Ministry of Finance of Russia that bear the main regulatory burden. In particular, in 2020, the Federal Law “On the general principles of organization of local self-government in the Russian Federation” was supplemented with Articles 26.1 and 56.1 (Federal Law of 20.07. self-government in the Russian Federation”), amendments were also made to the Budget Code of the Russian Federation aimed at legalizing initiative payments, which in Russia are not accumulated in specialized funds, but are credited to the corresponding accounts of the local budget. At the same time, however, the legislator did not go further than a simple mention of this type of non-tax revenues, disregarding the issue of integrating participatory budgeting cycles into the budget process, as well as procedural aspects related to the administration of initiative payments, including the issue of the procedure for their payment, accounting and a possible return to citizens in the event that the spending of funds is subsequently recognized as inappropriate and / or the project is not implemented: such an opportunity is provided for in paragraph 3 of Art. 56.1, however, it did not receive procedural regulations. Among the documents approved by the Ministry of Finance: Methodological Recommendations for the Preparation and Implementation of Participatory Budgeting Practices in the Russian Federation dated December 30, 2020 and Order of the Ministry of Finance of Russia dated December 15, 2020 №1101 “On approval of methodological recommendations for planning expenditures of the budgets of subjects of the Russian Federation (local budgets) to implement initiative projects”, as well as the Methodology for monitoring participatory budgeting in the constituent entities of the Russian Federation, jointly prepared by the Ministry of Finance and RFI. On the one hand, these amendments create prerequisites for further intensifying the involvement of the population in the process of making budget decisions, including the basics for classifying the recommended participatory budgeting tools depending on the size and type of the municipality that uses them, as well as the standard documents necessary for organizing the participatory budgeting process. On the other hand, one of the significant issues related to the development of the legal framework for participatory budgeting is to what extent the adopted novelties put the participatory budgeting process under the control of local governments, from a procedural point of view, and create preconditions for turning participatory budgeting into a routine bureaucratic procedure into within the budgetary process. It seems that local administrations have received enough leverage that allows a) limiting the scope of initiative

projects and the territories in which they can be implemented, b) rejecting projects at the stage of their expert assessment (paragraph 7 of Article 26.1), and at the stage of competitive selection. Including, at the stage of expert assessment of the project, refusal is allowed on such grounds as lack of budgetary funds and the presence of more effective ways to solve the problem to which the project is directed (subparagraphs 4, 5, paragraph 7 of Article 26.1), and at the stage of the competition, the members of the competition commission representing the local administration have a key influence (they should be at least half of the total). Thus, the final decision on the implementation of the project in most cases (with the exception of small settlements, where, on the basis of the Methodological Recommendations of the Ministry of Finance, the selection of projects can be carried out at a general meeting of citizens) should be made by local authorities. This suggests that the risks of bureaucratization of participatory budgeting in Russia may turn out to be quite high, as in some other countries that have introduced this tool on the initiative of the “top”. It should also be noted that Article 26.1 of the Law “On general principles of local self-government” does not clearly define the concept of participatory budgeting and does not contain prerequisites for a clear distinction between the practice of participatory budgeting and other instruments of public participation in local government. The Ministry of Finance in its Guidelines for the preparation and implementation of participatory budgeting practices, the Ministry of Finance defines participatory budgeting as “a general name used to denote a set of practices for involving citizens in the budget process in the Russian Federation, united by the ideology of civic participation, as well as the sphere of state and municipal regulation of public participation in determination and selection of projects financed from the funds of the respective budgets and subsequent control over the implementation of the selected projects by citizens”. Such a definition does not allow to distinguish between practices aimed at the implementation of initiative projects themselves, and related practices, and also does not allow forming a legally defined classification of types of participatory budgeting. At first glance, the problem is purely theoretical and has practical implications. In particular, the lack of a clear legislative definition of what, in fact, is participatory budgeting, does not allow us to speak of the need to simplify and expand access to the use of a number of tools by citizens, which in foreign practice are considered as its elements, but in the Russian legal field turned out to be it is formally excluded. This is, first of all, about the self-taxation of citizens. Self-taxation, like initiative payments, is used to implement projects that were initiated by the population, i.e., from the point of view of the theory of participatory budgeting, they belong to this category. Moreover, experts indicate that until 2021 a significant part of initiative projects were implemented precisely with the use of self-taxation (Shul'ga et al., 2017, p. 23-40). Currently, these two practices have begun to be differentiated legally, including those mentioned in the Budget Code of the Russian Federation as two different types of non-tax revenues. Indeed, there is one significant difference between them: self-taxation is a kind of mandatory non-tax payments, and, if the corresponding decision is made, it is mandatory for all residents of the municipality, and initiative payments of citizens, NGOs and commercial organizations (project sponsors) remain voluntary, even in the case of when local governments started to implement the initiative project. Self-taxation is understood as one-time payments of citizens, established in absolute terms, collected in order to resolve specific issues of local importance (paragraph 1 of article 56 of the Law “On general principles of local self-government”). As a rule, these are traditional for participatory budgeting areas: repair of roads, water pipelines, cultural institutions, communications, etc. In this case, the decision on self-

taxation is made at a referendum or gathering of citizens, which is much more difficult to initiate and organize than to achieve consideration of an initiative project within the framework of the participatory budgeting procedure and receive allocations from the budget. It can be argued that due to the complexity of initiating a local referendum procedure or a gathering of citizens, self-taxation in Russia remains available only for settlements with a small number of residents, while this tool is difficult to use for large cities. Thus, the first task in terms of legal support for self-taxation is to simplify its administration and adapt this tool to the conditions of large cities. The second task is to clarify the role of self-taxation among other forms of financing initiative projects, because, as shown above, it was used for these purposes, and the practice of self-taxation in the regions, according to the Ministry of Finance for 2018-2019, was constantly expanding. At the same time, due to the complexity of organizing local referendums or general meetings of residents necessary for self-taxation of citizens, it remains a tool that is available only in small settlements and is difficult to apply in urban conditions, which makes the task of simplifying its administration actual. The third task is to resolve the issue of co-financing the costs of implementing projects implemented through self-taxation by the local administration, since initiative projects implemented for similar purposes based on voluntary payments of citizens can participate in competitions for the right to receive budgetary appropriations (Methodology of the Ministry of Finance dated December 30. 2020). The issue of the relationship between participatory budgeting and measures to support socially oriented non-profit organizations, which also implement projects significant for local self-government, with the involvement of grants from budgets of various levels, has not been resolved either. As a result, municipalities retain a choice of several options for the implementation of the same projects with the involvement of extra-budgetary sources of funding, including options for public-private partnerships, subsidizing NGOs, self-taxation and participatory budgeting. It seems that in these conditions it is advisable to use a unified approach to the issue of selecting projects that receive support through various channels and reasons.

7. Conclusion

The research showed that the presence of legal regulation of participatory budgeting at the national level is not a prerequisite for the development of participatory budgeting practices; in most cases, its adoption is caused by the desire of the national government to compensate by participatory budgeting for the insufficient level of development and / or independence of local self-government, as well as the lack of resources that local administrations could spend on the implementation of projects. In Russia, at the legislative level, the final legalization of participatory budgeting took place as one of the forms of interaction of local administrations with citizens. However, the procedural aspects were not sufficiently regulated, the issue of developing standards for participatory budgeting was left to the discretion of the federal financial bodies that develop methodological recommendations, as well as regions that are adopting their own legislation in the field of participatory budgeting. Both the procedural issues of participatory budgeting and the issue of its relationship with related practices that act as an alternative to participatory budgeting are still in need of legislative elaboration.

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