

The Legal Aspects of Participatory Governance in Local Self-government

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Abstract

The citizens' right to participate in the conducting the public affairs is accepted as one of the democracy principles constituting the base of the good governance. The members states of the European Council have to embed the participation principle in the internal laws and, if necessary, in the Constitutions. The legal aspects of participatory governance in local self-government are analysed in this article. In accordance with the documents of international organisations, international and Lithuanian acts of law, participation is one of main principles of the good governance. The analysis of participation principle helps to disclose in which way and in what forms local residents can participate in management of the public municipal affairs. It is identified, that the content of participation principle includes: direct participation of local residents in preparation of and discussion on the decisions' projects; direct participation of local residents in the meetings, rallies and polls; direct participation in the analysis of public petitions. Furthermore, the municipal institutions have to inculcate the principles of self-government in the institutions of education, cultural and in other, to support associations initiatives, which are related to the managing the public municipal affairs. Accomplished analysis of law acts allowed to establish that the implementation of residents' municipal rights is concurrent with the institutions, through which this right is implemented, and (or) with the organisation and activity of their accountable institutions.

Keywords: participatory governance, good governance, local self-government, principles of self-government, participation.

Introduction

The Government of the Republic of Lithuania in the Programme for Development of the Public Governance for 2012–2020 has emphasised that efficiency of local governance processes is conditioned by the institutions of public governance, also by the society's abilities to accept and implement the public governance decisions which most of all correspond to society requirements. The preparation of the programme has been conditioned by the growing requirements of society that public governance institutions, acting openly and responsibly, effectively using the budget of the Republic of Lithuania and

the budget of the municipalities, would accept and implement the decisions which correspond to the requirements of the society and would provide good quality administrative and public services. To ensure these requirements the active participation of the society is needed.

The theme of society participation takes acceleration both in scientific and practical debates and in global affairs (Petukiene, Tijnaitiene, Raipa, 2007). The participation as a phenomenon is discussed in various sciences: in psychology, sociology, economics, politics, law and other. According to Parada (2005), such interest is explainable by the purpose to understand the phenomenon of participation, it is needed to analyse it as a multidimensional phenomenon in various perspectives. Petukiene, Tijnaitienė, Raipa (2007) analysed the society's participation in the context of theories of social capital, democracy and rational choice. Zilinskas (2010) discussed the residents' participation principle as one of special principles of the local self-governance. Pivoras, Visockyte (2011) analysed the place and importance of participatory governance in the process of public governance.

In the Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014), there are discernible two systems of public governance: the state governance and local self-government. The state governance is organised by the Government of the Republic of Lithuania in the higher administrative units of the territory of the state, and in the lower administrative units, i.e. in the municipalities, formed the particular government of permanent local residents. In the European Charter of Local Self-Government (Zin., 1999, No. 82-2418), there is embedded the principle of subsidiary: the public responsibilities, in the order of priority, are implemented by the local government organs which are closest to the citizens. Such attitude corresponds to the attitude of the Constitution of the Republic of Lithuania that local self-government means the self-regulation and self-action, in accordance with the competence determined by the Constitution and laws, of the permanent residents'

community of a law-defined administrative unit of the state territory. The participation principle of local residents is valid on the highest level, i.e. in the act of law which holds the highest juridical power in the Constitution of the Republic of Lithuania.

It is mentioned that the principle of residents' participation is dealt with in various aspects (sociological, economical, psychological, political) but it is missing the deeper analyses of this principle from the law viewpoint in the level of local self-government.

The research object is the participatory governance of the local self-government.

The research aim is to present the legal characteristics of the participatory governance in the local self-government in accordance with international acts of law and with laws of the Republic of Lithuania.

The research objectives are the following:

1. To define participation as one of the main criteria of the good governance.
2. To present the opinion of international organisations on the principle of participation.
3. To disclose the conception of participation on the level of local self-government.
4. To analyse the forms and content of participation.
5. To disclose the unity of rights and responsibilities ensuring the principle of the participation in local self-government.

The research methods. The theoretical generalisation methods of analysis of legal acts and documentation, comparative and logical analysis as well as induction are applied in the article.

Public Participation as One of Major Criteria of the Good Governance. The Idea and Meaning. The Viewpoint of International Organisations

Local Governance comprises a set of institutions, mechanisms and processes through which citizens and their groups can articulate their interests and needs, mediate their differences and exercise their rights and obligations at the local level. There are many building blocks of good local governance: citizens' participation, partnerships among key actors at the local level, capacity of local actors across all sectors, multiple flows of information, institutions of accountability and a pro-poor orientation (Dabo, Salmon, Venancio, Keuleers, 2012). People's participation, transparency and accountability are the major areas of concern for ensuring the good governance at the local level.

Any democratic society is based on the idea that those who are immediately influenced by public decision are entitled to participate in the process of making such decisions. Genuinely democratic systems

recognise the right of the society to decide the path ways to take, while the role of elected representatives of the society and their staff is to achieve the defined objectives and goals. The notion of participation of citizens comes to underpin the fact that in public governance (including local self-government) each and every citizen has a voice, and the obligation of the government (both central and local) is to create opportunities for informing, educating and engaging in a variety of processes undertaken for public planning and implementing decisions (Tumanyan, Shahbazyan, 2011).

"Public participation" means to involve those who are affected by a decision in the decision-making process. It promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision. The practice of public participation might involve public meetings, surveys, open houses, workshops, polling, citizen's advisory committees and other forms of direct involvement with the public (International Association for Public Participation, 2012).

International Association for Public Participation (2012) states that the public participation's goals are:

- to provide the public with balanced and objective information to assist them in understanding problems, alternatives, opportunities and (or) solutions;
- to obtain public feedback on analysis, alternatives and (or) decisions;
- to work directly with the public throughout the process to ensure the public concerns and aspirations are consistently understood and considered;
- to collaborate with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution;
- to place the final decision-making in the hands of the public.

As an international leader in public participation, IAP2 has developed the "IAP2 Core Values for Public Participation" for use in the development and implementation of public participation processes. These core values were developed over a two years period with broad international input to identify those aspects of public participation which cross national, cultural and religious boundaries. The purpose of these core values is to help make better decisions which reflect the interests and concerns of potentially affected people and entities (International Association for Public Participation, 2012). These Core Values for the Practice of Public Participation are:

1. Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
2. Public participation includes the promise that the society's contribution will influence the decision.
3. Public participation promotes sustainable decisions by recognising and communicating the needs and interests of all participants, including decision-makers.
4. Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
5. Public participation seeks input from participants in designing how they participate.
6. Public participation provides participants with the information they need to participate in a meaningful way.
7. Public participation communicates to participants how their input affected the decision.

Pivoras, Visockyte (2011) state that interpretation of the good governance refers to the position of international organisations. These authors have discussed the conception of good governance explicated by the international organisations, presenting and describing all criteria of the good governance. One of the tasks of this article is to investigate the conception of participation as one of main criteria of the good governance which is presented in the documents of international organisations.

The World Bank, International Monetary Fund, Asian Development Bank, Canadian International Development Agency, Office of the United Nations High Commissioner for Human Rights and some other international organisations, within presenting the conception of the good governance, firstly emphasise the element of participation.

The World Bank in determination of the conception of the good governance has accentuated four criteria of the good governance: right's superiority, accountability, clarity and information about actions of government, accessibility (Chhotray, Stoker, 2009). Among these criteria, participation, as a separate criterion, has not been mentioned. However, referring to these abstracted principles of the World Bank, many other international organisations and the institutions which render assistance, have created very similar definitions of the good governance including some or even all these principles (Pivoras, Visockyte, 2011).

Participation, as one of ninth good governance criteria, has been abstracted in the development programme of the United Nations (1997). Here, participation has been defined as a citizens' right to have a voice in admitting the decisions, directly or through representatives. The abilities of constructive

participation and their upbringing are very important. With participation are connected other criterions of good governance - right's superiority, clearness, sensitive respondent to the clients' requests, orientation to consensus, impartiality, efficiency and effectiveness, responsibility, strategic vision (Rondinelli, 2007).

Canadian International Development Agency (CIDA) abstracts the participation as one of principles, which disclose the content of good governance. This agency emphasises, that good governance is closely related with human rights and democracy and common values: with respect for the human rights, justice, equity, participation and responsibility (CIDA, 1996).

Asian Development Bank (ADB), describing good governance, also indicates the participation. The responsibility, predictability, participation and clearness – that are four most important tasks of good governance (ADB, 2011).

Organisation of Economic and Cooperation Development abstracts active participation as one of three dimensions of relations and interactions between government and citizens, by which the good governance is implemented. Other two dimensions are briefing and consulting (OECD, 2003).

In the White Paper on European Governance (2001), the European Commission has indicated main principles of the good governance: openness, participation, responsibility, effectiveness and consecution. In the White Paper has been emphasised that each of these principles are important in pursuing to fortify the democratic governance. Each of them should be embedded in all governmental levels – world, Europe, national, regional and local self-government. The European Commission, describing the principle of participation, has indicated that seeking the good governance, it is important to ensure the participation of citizens in the processes of formation and implementation of politics (European Commission, 2001).

The Conception of Participation in the Level of Local Self-government

The citizens' right to participate in conducting the public affairs is admitted as one of the democracy principles which is the base of good governance. The European Charter of Local Self-Government (Zin., 1999, No. 82-2418) foresees that this right can be directly implemented through local government institutions which, having realistic responsibilities, can guarantee effective and directly related links with the citizens governance. The states members of European Council have to embed the participation principle in the domestic laws and, where is necessary, in the constitutions.

In the Article 119 of the Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014), there is established that the right of self-government is guaranteed for a law-defined administrative units of the state territory and is implemented through appropriate Municipal Councils. Members of Municipal Councils, citizens of the Republic of Lithuania and other permanent residents of administrative units, according to the law, shall be elected for a four-year term by universal and equal suffrage, in a secret ballot at direct elections by the citizens of the Republic of Lithuania and other permanent residents of administrative units.

In the Article 3 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290), the municipality is described as an administrative unit of the territory of the State, defined by the law, the community of which has the right to self-governance guaranteed by the Constitution and implemented through a Municipal Council elected by the permanent residents of that administrative unit of the territory of the State and through an executive institution as well as other institutions and establishments of a municipality which are formed by the latter and accountable to it. Here, local self-government is understandable as the self-regulation and self-action, in accordance with the competence determined by the Constitution and laws, of the permanent residents' community of a law-defined administrative unit of the state territory, where the community enjoys the right to self-government guaranteed by the Constitution.

In the Article 2 of the Law of the Republic of Lithuania on the Territorial Administrative Units and Their Boundaries (Zin., 1994, No. 60-1183), the municipality is also defined as a territorial administrative unit of the Republic of Lithuania which is governed by institutions of local authorities, elected by the local community pursuant to the Law on Local Self-Government of the Republic of Lithuania and other laws.

Describing the self-government's definitions which are presented in the European Charter of Local Self-Government and acts of law of the Republic of Lithuania, it is possible to state that here, firstly, the participation element is emphasised. That local self-government would correspond with international law norms and the law norms of the Republic of Lithuania, if necessary, that particular requirement would be followed:

- 1) it should be a law-defined particular administrative unit of the state territory;
- 2) this administrative unit of the state territory has to have the community of permanent residents.

Following to the Article 119 of the Constitution of the Republic of Lithuania, this community consists of:

- the citizens of the Republic of Lithuania;
 - other permanent residents of the administrative unit (not citizens of the Republic of Lithuania);
- 3) the self-government right of community has to be embedded in the Constitution;
 - 4) the community has to elect the Municipal Council;
 - 5) the Municipal Council consists of the members of the same community, i.e. the permanent residents of particular administrative unit of the state territory, who can be:
 - the citizens of the Republic of Lithuania;
 - other permanent residents of the administrative unit (not citizens of the Republic of Lithuania);
 - 6) the Municipal Council forms an executive institutions as well as other institutions and establishment of municipality which are accountable to it;
 - 7) the self-government's right of the permanent residents' community of a law-defined administrative unit of the state territory is implemented with the competence determined by the Constitution and laws.

As it is seen from the presented analysis of the local self-government's conception, it is grounded on the active participation of the permanent residents' community of a particular administrative unit of the state territory which can be shown doubly:

- the Community member has a direct **decision-making right** (other community members have elected him to the Municipality Council);
- the Community member has the **initiative decision-making right** through legal representative whom he/she has elected to the Municipality Council and who would represent his/her interests.

In case when the community member has a direct decision-making right because other members have elected him/her to the Municipality Council doesn't inspire bigger doubts regarding participation abilities. Usually the most active representatives of local community are elected to the Municipality Council because their participation abilities, leadership and initiative competences are of a very high level and who knows the participation forms and who can manipulate them. Due to this reason, this participation element will not be discussed more detail in this article.

The member of local community who is not elected to the Municipality Council has the initiative decision-making right through legal representative

whom he has elected to the Municipality Council and who should represent his/her interests. Having the purpose to use this right, the participation abilities and their upbringing are especially pointed out. To reach this aim local residents have to understand the content and the forms of participation.

The Content and Forms of Participation

In the preamble of the European Charter of Local Self-Government (Zin., 1999, No. 82-2418), it is stated that the initiative, self-regulation and self-acting which ensure the right to participate in the conduct of public affairs is one of the democratic principles. In the Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014), the right to participate in governance of his/her country, to solve the public affairs of community or of whole state is guaranteed for every person. The effective work of local self-government, i.e. decentralisation of state government, legal reinforcement of self-ordering of territorial community and self-acting of agencies of local inhabitants, the financial, economic organisational security is a necessary evidence of the democratic system. According to Jankauskas (2007), "the local self-government correspondent to the democracy standards means the exceptional right of local communities to form the representational self-government institutions, the right of local residents directly or through the democratically elected representatives to participate in conducting the public affairs, to criticise the work of municipal institutions, offices or officers, to appeal their decisions, local government's accountability to the local inhabitants, the service to the people, the legality and rationality of officers' activity, the right of municipal institution and every community member to defend his/her rights in the court, to supply the requirements and complaints, petitions and other".

In many cases the effective work of local self-government depends on participation of local residents in the public governance. Efficiency of the processes of public governance in local self-government is conditioned by the efforts and abilities of the municipal institutions and the society with the minimal expenditures to accept and implement the decisions of public governance which, most of all, correspond to the requirements of local residents (the Program for Development the Public Governance for 2012–2020).

In the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290), the principle of the participation of residents in the conducting the public affairs is embedded as one of main principles of local self-government, whereby the local self-government is based on. The analysis

of the content of the participation principle helps to disclose in which way and in which forms the local residents can participate in the conducting the public municipal affairs.

The main content of participation principle is determined in the Article 4 of this Law. It consists of:

1. The direct participation of municipal residents in the preparation and discussion of the decisions projects.
2. The direct participation of municipal residents in the meetings, rallies.
3. The direct participation of municipal residents in polls.
4. The direct participation of municipal residents in the resolve of petitions.

The publisher of the Law has provided a particular attention to the direct participation of municipal residents. In the Article 4 of the Law on the Self-Government defining the participation principle, namely the direct participation is accented, but not the participation which is implemented through the elected council members of the municipality or other institutions. According to Bevir (2010), the governance pays not so much attention to the state institutions, but more to the processes and interactions which involve the civil society too. Such emphasis on direct participation confirms the compromise opinion which has been expressed by Blaug (2002), during his analysis of the manifestation of direct participation in the different participation activities. In his opinion, "the representative democracy requires and is reinforced by participation democracy" (Blaug, 2002). Involved citizens constitute the main description of the participation democracy (Petukiene, Tijunaitiene, Raipa, 2007). According to Gaventa (2006), "such democracy is not only a kit of regulation, procedures and frames of institutions, and can't be "under-assessed" up to particular competition among the parties, although it is important. Rather it is a process by which citizens more strengthen their possibilities to control the decisions, important in their lives".

The direct participation of municipal residents in the preparation and discussion of the decisions projects is expressed in different forms:

- the possibility to participate in the sessions of Municipal Council;
- the possibility to get information about work of municipal institutions;
- the possibility to participate in Committee of Ethics which surveys the behaviour of council members;
- the right to participate in the work of working groups which are composed by the Mayor of the Municipality;

- the right to participate in commissions' work for competition of applicants to the position of a supervisor;
- the right to familiarise with sessions agendas of committees of the Municipality Council;
- the possibility to participate at work of committees and commissions of the Municipality Council;
- the right to know about sessions of Municipality Council, what kind of decisions are discussed and approved there.

The possibility for the local residents to participate in the sessions of Municipal Council is embedded in the Article 13 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) where it is foreseen that the sessions of Municipality Council are open to the public. The invited persons have a right to talk during the sessions. If the discussed question in the session of the Municipal Council is related with other persons who participate in the session, it is allowed them to ask the speakers questions and talk according to the order established in the rules of conduct of the Municipal Council. Local residents have a right to participate in the sessions of the Municipal Council, to ask the speakers questions and talk, but only in case, if the discussed question in the session is related to the citizen and if such possibility is foreseen in the Rules of Conduct of the Municipal Council. In case if the Rules of Conduct of the Municipal Council doesn't foresee the possibility to the local residents to ask the speakers questions, to talk during session of the Municipal Council, the Representative of the Government in the County should propose to the Municipal Council the presentation regarding inclusion of such attitude into the Rules of Conduct of the Municipal Council. Such responsibility to the Representative of the Government in the County is given by the Constitution of the Republic of Lithuania (Zin., 1992, No. 33-1014), where in the Part 2 of the Article 123 foresees that "the representatives who are appointed by the Government supervise, if the municipality follows the Constitution and the laws, if it executes the decisions of the Government". The Law of the Republic of Lithuania on the Administrative Supervision of the Municipalities (Zin., 2004, No.98-3626) also indicates that the representatives of the Government execute the administrative supervision of the municipalities.

The citizen's right to know when the sessions of the Municipal Council take place, what kind of decisions are discussed and approved is embedded in the Article 13 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) where it is foreseen that the Mayor not later than three working days in advance has to inform the

citizens and the representative of local community, the elder, about the time of a session and the prepared question for discussion. Such attitude corresponds to the conception of the "open Governance" which is formed by the Organisation for Economic Cooperation and Development (2003). According to this organisation, to implement the good governance, the important part falls to accessibility and dissemination of information about actions of the authorities. The Government of the Republic of Lithuania has confirmed the evaluation methodology (Zin., 2003, No. 23-975) for the influence of decisions projects where one of the main principles for the assessment of the influence of the decisions projects is pointed out by the principle of cooperation. The essence of this principle is that seeking to assess the influence of the decisions projects competently, properly and exactly, the organisers regarding intended to accept decisions' projects, which are related to the common legal society interests, have to consult with the representative organisations (associations, closed unions, representatives from other non-governmental organisations) which represent the society interests in particular fields and, in statutory cases, with the residents and their groups.

The possibility to participate in the work of the committees and commissions of the Municipality Council is another form of participation of municipal residents in the preparation and discussion of decisions' projects. In the Article 14 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) it is foreseen that the representatives of the society, i.e. elders, experts, state officers and other concerned persons (therefore, local residents too), can participate in the work of committees. It should be noted that participation of local residents in the Municipality Council work is not competent because they participate only as advisors. Following the Article 15 of the same Law, the representatives from local residential communities and from communal organisations and other members of the municipal community can be the members of the committees of the Municipality Council. It especially emphasises the possibility of local residents to participate in the Commissions of Ethics which survey the behaviour of the Municipality Council members. In the Article 6 of the Code of the Republic of Lithuania on the Behaviour of the State Politicians (Zin., 2006, No. 102-3938) it is foreseen that the Commission of Ethics is formed of the members of the Municipality Council and the representatives of local communities. The Article 15 of the Law on Local Self-Government peremptory estimates that the representatives of local communities in the Ethics Commission have to compose no less than 1/3 of all Commission members.

The right to familiarise with the sessions agendas of the committees of the Municipality Council is related to the right to participate in their work. This right is embedded in the Article 14 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290), where is foreseen, that the agendas of the committees sessions have to be announced in the municipality's website not later than at an early working day after their confirmation.

Another very important form of the direct participation of the municipal residents in the preparation and discussion of the decisions' projects – *it is the possibility to get information about the municipal institutions work*. Following the Article 12 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290), the Municipal Council not sparsely than once a year has to submit public report of their work to the community of the municipality. The Mayor of the municipality not sparsely than once a year prepares and submits the report of municipality work to the voters and to all community of the municipality (the Article 20 of the Law of the Republic of Lithuania on the Local Self-Government). The Administration Director of the municipality also not sparsely than once a year has to inform the citizens of the municipality about his work (the Article 29 of the Law of the Republic of Lithuania on the Local Self-Government). In the Republic of Lithuania the responsibility to submit the information about the office, the institution and its work is embedded in the Law of the Republic of Lithuania on the Rights to get the Information from the State and Municipal Institutions and Offices (Zin., 2005, No. 139-5008). In the Article 6 of this law is peremptory indicated, that the institution has to have the website, which corresponds the certified requirement from the Government, where it should present the information about its functions, structure, information cursor intended for submitting the information, other information established by the law acts. All the information about institutions work in the execution of the functions, which are assigned by the law acts, has to be announced in public, available to all and offered unfed, giving preference to the dispersal of information through the internet and through other electronic means.

The right to participate in the work of working groups, which are formed by the Mayor of municipality is foreseen in the Article 20 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 11-4290). Here is foreseen, that the Mayor, in the competence of his questions, can form working groups not only from the members of the Municipality Council, from the

workers of the Administration of municipality, but also from the representatives of the society.

In the Article 31 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) is embedded one more form of the direct participation of the local residents – *the right to participate in the commission work for the competition of applicant to the position of the warder*. In this article is peremptory established, that the commission for the competition of the applicants to the position of warder is formed from seven members: no less than three and no more than four members from this commission have to be from the representatives of the community of a locality situated within the territory serviced by a ward – the elders.

The direct participation of citizens of the municipality in the meetings, rallies as an element of the content of the participation of citizens in conducting the public affairs has not so big abundance of forms as the direct participation of residents of the municipality in the preparing and discussing the decisions' projects. The Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) subjects two forms of this element :

- the direct participation of municipal residents in the resolve of petitions;
- the meetings of residents with the members of Municipal Council, Warden, the Administration Director of the Municipality or with his plenipotentiary representative, with other representatives of the municipal and state institutions .

The form of the residents meetings for the election the Elders is foreseen in the Article 33 of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290). The Elder - a representative of the community of a locality situated within the territory serviced by a ward who takes care about its interests and rights. In elderships with not more than 500 residents elders shall be usually elected at the meeting of residents, which is organised by the Warden. In such meeting the Elder is elected by open ballot, and a candidate who has got the most votes of the residents voting in the meeting shall be deemed to be elected as an Elder. Though the meeting is one of the forms of democratic governance, to ensure the direct participation of residents in the public governance, a lot of discussions regarding the way of open ballot, which is established in this law, are arising. Patapas, Maculevic (2011) notice, that "the elderships are intended to increase the democracy, giving to the local community more possibilities to make the influence for the decisions of the authorities. Therefore the special attention should be given to their meetings, it is necessary to go to every possible expedients against the falsification of elections: to

protect the voter from the attempts to influence his electoral activity and decision by menaces or grafting and to ensure, that his vote will reflect his own, but not somebody's else, opinion. Moreover, a candidate who has got the most votes of the residents voting in the meeting shall be deemed to be elected as an Elder. It means, that the Elder can be elected by one person, if only he has come to the meeting”.

The other form of the direct participation of the municipality residents in the meetings and rallies, i.e. *the meetings of residents with the Municipality Council members, the Warden, the Administration Director of the Municipality or his/her plenipotentiary representative, other representatives of the municipal and state institutions*. The direct participation of municipality residents in the meetings and rallies is predicated on the active public spirit of local residents. According to Denhardt (2001), from the standpoint of democracy public spirit the person much more participate in the self-government. According to the opinion of Hansen (2001), the local municipality council members have to take care about all public municipal affairs, ensuring that the residents will have a possibility to express the opinions and interests, and no one will be disposed from the decentralised making-decision process. In the Program of Development of Public Governance the year 2012-2020 (Zin., 2012, No. 22 -1009) the aim is to motivate the society, specially nongovernmental organisations and local communities, to participate in the governance processes. To reach this aim the form of the meetings of residents with the municipality council members, with the warden, with the administration director of the municipality or with his plenipotentiary representative, with other representatives of the municipal and state institutions is very relevant, because during these meetings the most relevant problems of local residents are discussed. Moreover, in this way the leadership and the initiative competences of the representatives of community are strengthened.

The element of content for *the direct participation of the municipal residents in the poll* as the participation of residents conducting the public municipal affairs has only one express form – *the poll of residents*, which foundation is regulated by the ninth clause “Local Population Poll” of the Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290). In the Article 36 of this law is foreseen, that residents may express their opinion about the issues of conducting the public municipal affairs by taking part in a local population poll. The participation in a poll is free (voluntary) and based on general, equal right to voice the opinion directly. Following the Article 40 of the Law of the Republic of Lithuania on the Local Self-Government,

the right of initiative to announce the poll belongs to the municipal population and Municipal Council. The poll is accomplished, if no less than 25 per cent of the population who reside within the territory of a poll and who has a right to participate in a poll, and such right has the municipal residents, and who are entitled to elect the Municipal Council of an appropriate municipality, have expressed their opinion on the submitted question. All the expenses for organisation a poll are covered from the municipal budget. Though the form of the direct participation of the municipal residents in a poll is an aspect form of real democracy, however the question is, why the law on the local self-government peremptory indicates, that the results of poll are only as an advisory character. The Municipal Council admits the final decision, in which session are discussed the results of poll, where the admitting the decision regarding submitted question, it is possible to ignore. On this question Sileikis (2003) submits interesting opinion discussing a poll of local residents regarding establishment of municipalities. According to his opinion, the local resident or their group can't have absolute rights to demand, that “their inhabitant locality would be “elevated” to the municipal level. To ground such demand it is missing the constitutional basement. From this point of view it is possible to understand, why the results of “Local residents poll”, which are foreseen by the law, have no peremptory power, i.e. it is not necessary unconditionally to consider them, when admitting the appropriate acts of law” (Sileikis, 2003).

The direct participation of municipal residents in the examination of petitions is embedded in the Law of the Republic of Lithuania on the Petitions (Zin., 1999, No. 66-2128). The petition in the level of local municipality is determinable as written or electronic application to the municipal institutions with the requirements or proposals to solve the protection and implementation of human rights and freedoms, the reforming of municipal institutions or other issues important to the public, self-government questions, when for this it is needed to admit new act of law, to change, to annex or to invalidate valid act of law. With petition is possible to apply both to the Municipal Council and to the Administration Director of the municipality. The petition can be submitted by the citizen of the Republic of Lithuania or foreigner, not younger than 16 years, and permanently residing in the Republic of Lithuania, or a group of such citizens. For resolving the petition is formed the Petitions commission, which announces about the examination and time of petition in the local press and in the website of the municipality. After the resolving the petition, the commission submits the conclusions and proposals regarding questions, which

are stated in the petition, to the municipal council, which can admit the appropriate decision. According to Birmontiene (2001), during the resolving the right of petition is very important to distinguish it from the personal complaint and request, also from the citizens' initiative rights for legislation.

The Unity of the Rights and Responsibilities Ensuring the Participation Principle in the Local Self-government

The direct participation of municipal residents is ensured and protected constitutionally. The right of local community to establish the rights and responsibilities to themselves and other subjects and to implement them is secured by the law. However the participation right is not dissociate from the community, self-activity of its institutions, from constitutionally and legally embedded ability and actual faculty to be a subject of law relations.

The Constitutional Court (Zin., 2003, No. 19 - 828; Zin., 2004, No. 181-6708) more then once has stated, that the implementation of the residents self-

government rights is not dissociated from institutions, through which this right is implemented, and (or) from the organisation and activity of their accountable institutions. Thus not accidentally the concept of "municipality" in the Constitution is used not only as administrative unit with its residents (territorial communities), but also municipal institutions and (or) their accountable institutions. The Article 120 of the Constitution of the Republic of Lithuania (Zn., 1992, No. 33-1014) foresees, that the municipalities according to the Constitution and to the competence defined by the law act freely and independently. Self-government supposes certain freedom of activity and autonomy, independence, however this freedom is not unlimited. The autonomy of the self-government is restricted by the Constitution and the competence, which is settled by the laws. The direct participation of municipal residents conducting the public municipal affairs is not only a laws' kit for municipal residents. That these rights would be implemented, the municipal institutions have the responsibilities established by the Constitution and the laws (see Table 1).

Table 1

The unity of the rights and responsibilities ensuring the participation principle in the local self-government

No.	RIGHTS	RESPONSIBILITIES
1.	The right to participate in the session of Municipal Council	<ol style="list-style-type: none"> 1. The Municipal Council has to confirm the Rules of Conduct of Municipal Council, where they have to foreseen the order, by following it the local residents, when in the session are solved the questions related to them, may talk and ask the questions for the speakers. 2. The municipal institutions have to ensure the technical and material possibilities for the local residents to participate in the Municipal Council sessions (hall, chairs, microphones and other). 3. If there are technical possibilities, the Municipality Council has to establish the order, by following it the sessions should be transmitted through the internet.
2.	The right to know, when the Municipal Council sessions takes part, and what kind of decisions are discussed and admitted there.	The Municipal Council in their working regulation has to establish the order, where following it, the Mayor, not later then 3 working days before session, has to inform all council members, residents and a representative of the locality community – the Elder, if the questions are related to the locality community representative by him, about the sessions time and prepared questions with the decisions projects.
3.	The right to participate at work of committees and commissions of the Municipal Council	<ol style="list-style-type: none"> 1. The Municipal Council in their Rules of Conduct has to establish the order, how the committees and commissions should be formed, including in their composition and the representatives from locality communities and communal organisations. 2. The Municipal Council has to approve committees and commissions rules.
4.	The right to familiarise with sessions agendas of committees of Municipal Council	The municipal institutions have to ensure, that the session agendas of committees not later then within nearest working day, after their confirmation, would be announced in the website of the municipality.
5.	The right to get information about municipal institutions work	<ol style="list-style-type: none"> 1. The Mayor of Municipality, Council and Administration Director, have, not sparsely then once a year, to prepare the report about their work and to submit it to the electors and for all community of municipality. 2. The municipal institutions have to have and ensure, that their accountable companies and institutions would have the websites, which should match the requirements approved by the Government, where they would present the information about their functions, structure, information cursor to provide the information, and other information established by the law acts.

6.	The right to participate in Committee of Ethics, which survey the behaviour of council members	The Municipal Council in their Rules of Conduct and in the approved order of Ethics committee has to establish, that the representatives of the locality community have to compose no less than 1/3 of all committee members.
7.	The right to participate in the work of working groups, which are composed by Mayor of the Municipality	<ol style="list-style-type: none"> 1. The Mayor of the Municipality takes care, that the appropriate prerequisites and possibilities would be made for members of locality community to involve them into management of local affairs. 2. The Mayor, within the questions of his competence, by the decree forms the working groups, to where he involves the local residents.
8.	The right to participate in commissions work for competition of applicants to the position of Warden	<ol style="list-style-type: none"> 1. The Administration Director by the order forms the committee for competition of applicants to the position of Warden. 2. The commission is formed from 7 members: no less than 3 and no more than 4 members from this commission have to be from the representatives of the community of a locality situated within the territory serviced by a Ward – the Elders.
9.	The right to participate in residents meetings for electing the Elders	<ol style="list-style-type: none"> 1. The Warden has to organise the residents meeting, where the Elders will be elected. 2. The Administration Director has to compose the schedule of Elders' election. 3. The Elder has to appoint the date of election and announce it.
10.	The right to participate in the meetings of residents with the Municipality Council members, with the Warden, with the Administration Director of the municipality or with his plenipotentiary representative, with other representatives of the municipal and state institutions	<ol style="list-style-type: none"> 1. The Municipal Council in its Rules of Conduct has to establish the organisation order for the meetings with residents. 2. The Mayor of Municipality has to ensure the equal communication of Municipal Council members with all electors of the municipality. 3. The municipal institutions have to ensure, that it would be created appropriate conditions for the meetings with the residents (premises, organisation technique and other).
11.	The right to participate in the residents polls	<ol style="list-style-type: none"> 1. The Municipal Council confirms the order of poll and the authorisations of polls commission. 2. The Municipal Council admits the decision to announce the poll. 3. The Mayor organises the poll in accordance to the established order of Municipal Council. 4. The Municipal Council discusses the results of poll in the session. 5. The Municipal Council covers polls organisation expenditures from the budgeted of the municipality.
12.	The right to participate in the public examination of petitions	<ol style="list-style-type: none"> 1. The Municipal Council has to form the Municipal Commission for Petitions and to ratify their rules. 2. The Municipal Council admits the decision regarding meeting the requirements and proposals, which are stated in the petition.

Source: drawn by the author of the article

The Law of the Republic of Lithuania on the Local Self-Government (Zin., 2008, No. 113-4290) and other acts of law peremptory establish for the municipal institutions more responsibilities, related to the security for principle of participation of the municipal residents in the conducting the public municipal affairs, for example:

- 1) to inculcate the self-government principles in the institutions of education, culture and other;
- 2) to support the initiatives of associations, related to the conducting the public municipal affairs;
- 3) to motivate other forms of civil initiatives.

The Organisation for Economic Cooperation and Development (2003) indicates, that good governance is implemented firstly according to three dimensions of relations and interaction of government and citizens: the information, the consultation and the active participation. As it is seen from the presented table, the unity of the rights and responsibilities ensuring the participation in the local self-government depends and from active municipal institutions, and from the initiative competences and leadership of the community's representatives.

According to Bang (2010), it is difficult to answer, how effectively initiate the participatory governance: if it should be initiated by the state, or it should arise from the initiatives of the civil society. The Government of the Republic of Lithuania in the Program of Development the Public Governance the year 2012-2020 (Zin., 2012, No. 22-1009) has emphasised, that acts of law ensure the possibility to the society to participate in the decisions admission processes in the state, and in the municipal levels, however the society can't use it actively due to the lack of civil responsibility, the leaderships competences, the knowledge and the information, needed to participate in the processes of public governance. Due to this reason it is necessary to motivate the society, especially nongovernmental organisations and local communities, to participate in the processes of public governance. To reach this aim, the Government of the Republic of Lithuania in the Program of Development the Public Governance the year 2012-2020 has emphasised, that it is needed to ensure the consultations with society and expand its possibilities of participation in the processes of public governance. With local residents would be necessary to have a consultations not only regarding projects of law acts, but also in some other concerned questions (for example, local fees, taxes for heating and water, education reforms and other). That the efficiency of consultations would be ensured, the implemented proposals and proposals, received during the consultations with the society, have to be publicised.

In the Program of Development the Public Governance the year 2012-2020 (Zin., 2012, No. 22-1009) is also emphasised, though law's acts commits the municipal institutions to execute the particular responsibilities, however about them and about their rights to participate directly in the municipal governance, the residents don't know anything, while the municipal institutions use it and don't fulfil their responsibilities. For example, the municipal institutions are indisposed to initiate the universal polls of residents of the municipality, ward or populated locality. According to Maciulyte, Ragauskas (2007), the attitudes of the law on the local self-government, which fortified this institution, are "dead norms". That it would not be so, it is needed to establish and to implement the means, inspiring the residents and local communities to participate in conducting the public local affairs, to observe the process of residents participation in the conducting the public local affairs, its tendencies, to motivate new forms and ways of the participation, and when required – to improve the legal regulation of those relations. Also it is needed to strengthen the abilities of

the community members and to develop local leaders so, that the important problems for the community would be raised and solved more actively.

Conclusions

Local Governance comprises a set of institutions, mechanisms and processes, through which citizens and their groups can articulate their interests and needs, mediate their differences and exercise their rights and obligations at the local level. The building blocks of good local governance are numerous: citizens' participation, partnerships among key actors at the local level, capacity of local actors across all sectors, multiple flows of information, institutions of accountability, and a pro - poor orientation (Dabo, Salmon, Venancio, Keuleers, 2012). People's participation is one of the major areas of concern for ensuring good governance at the local level.

"Public participation" means to involve those who are affected by a decision in the decision-making process. It promotes sustainable decisions by providing participants with the information they need to be involved in a meaningful way, and it communicates to participants how their input affects the decision. The practice of public participation might involve public meetings, surveys, open houses, workshops, polling, citizen's advisory committees and other forms of direct involvement with the public (International Association for Public Participation, 2012).

After the analysis of participation conception from the international organisations viewpoint, after execution the analysis of this conception in the international and in Lithuanian acts of law, it is stated that the participation is one of the main principles of good governance, by which is seeking to make the citizens an active society members. The participatory governance is found on the open communication between local residents and municipal institutions, on the active participation in processes of public governance, on the propagation of information about the work of municipal institutions and admitted decisions.

It is established that the residents' rights to participate in conducting the public municipal affairs is accepted as one of democracy principles which is the base of good governance. This right can be directly implemented through the institutions of local authorities which, having realistic responsibilities, can guarantee effective and directly related to the citizens governance, and through the direct participation of residents conducting the public municipal affairs.

In the Law of the Republic of Lithuania on the Local Self-Government the principle of the

residents' participation in conducting the public municipal affairs is embedded as one of main principles in the local self-government, by which the local self-government is grounded. The analysis of content of participations principle helps to disclose, in what way and in what kind of forms the local residents can participate in the conducting the public municipal affairs. It is established, that the content of participation principle includes: the direct participation of municipal residents in the preparation and discussion of decisions' projects, the direct participation of municipal residents in the meetings, rallies and polls; the direct participation in the public research of petitions. Also, the municipal institutions have to inculcate the self-government principles in the institutions of education, culture and other, to support the initiatives of associations, related to the conducting the public municipal affairs.

Accomplished analysis of law acts allowed to establish that the implementation of residents' municipal rights is concurrent with the institutions through which this right is implemented and (or) with the organisation and activity of their accountable institutions. Therefore non-accidentally, in the Constitution, the concept "municipalities" is used not only in a sense of administrative unit and its residents (the territorial communities), but also in a sense of municipal institutions and (or) accountable institutions. That the rights of local residents to conduct the public municipal affairs would be implemented, the municipal institutions have the duties established by the Constitution and laws.

The acts of law give to the local residents the possibility to participate in the processes of decisions at the municipal level, but they can't use it effectively because of lack of the civil responsibility, the leaders' competence, the knowledge and information which are needed for participation in the processes of public governance. Due to this reason it is necessary to motivate the society, especially non-governmental organisations and local communities, to participate in the processes of local governance.

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Dalyvavimu grįsto valdymo vietos savivaldoje teisiniai aspektai

Santrauka

Visuomenės dalyvavimo tema įgauna pagreitį tiek moksliniuose, tiek praktiniuose debatuose, tiek globaliniuose reikaluose (Petukienė, Tijūnaitienė, Raipa, 2007). Dalyvavimas kaip reiškinys aptariamas įvairiuose moksluose: psichologijoje, sociologijoje, ekonomikoje, politologijoje, teisėje ir kt. Pasak Parada (2005), toks susidomėjimas aiškina, tu, kad, norint suprasti visuomenės dalyvavimo fenomeną, jį reikia analizuoti kaip daugiamačią fenomeną, t. y. iš skirtingų perspektyvų. Petukienė, Tijūnaitienė, Raipa (2007) išanalizavo visuomenės dalyvavimą socialinio kapitalo, demokratijos ir racionalaus pasirinkimo teorijų kontekste. Žilinskas (2010) aptarė gyventojų dalyvavimo principą kaip vieną iš specialiųjų vietos savivaldos principų. Pivoras, Visockytė (2011) analizavo dalyvavimu grįsto valdymo vietą ir svarbą viešojo valdymo procese.

Lietuvos Respublikos Konstitucijoje skiriamos dvi viešosios valdžios sistemos – valstybės valdymas ir vietos savivalda. Valstybės valdymą organizuoja Lietuvos Respublikos Vyriausybė aukštesniuose valstybės teritorijos administraciniuose vienetuose, o žemesniuose administraciniuose vienetuose – savivaldybėse – formuoja-

ma ypatinga nuolatinė vietos gyventojų valdžia. Europos vietos savivaldos chartijoje įtvirtintas subsidiarumo principas: viešas pareigas pirmumo tvarka įgyvendina arčiausiai piliečių esantys vietinės valdžios organai. Tokia nuostata atitinka Lietuvos Respublikos Konstitucijos nuostatą, kad vietos savivalda – tai įstatymo numatytų valstybės teritorijos administracinių vienetų, t. y. teritorinių arba vietos bendruomenių, kurias sudaro šių vienetų nuolatiniai gyventojai, savitvarka ir savaveiksmiškumas pagal Konstitucijos ir įstatymų apibrėžtą kompetenciją. Vietos gyventojų dalyvavimo principas įteisintas aukščiausiu lygiu, t. y. aukščiausią teisinę galią turinčiame teisės akte – Lietuvos Respublikos Konstitucijoje. Minėta, kad gyventojų dalyvavimo principas analizuotas įvairiais aspektais (sociologiniu, ekonominiu, psichologiniu, politologiniu), tačiau pasigendama gilesnės šio principo analizės teisės požiūriu vietos savivaldos lygmeniu.

Šio straipsnio **tyrimo objektas** – dalyvavimu grįstas valdymas vietos savivaldoje. **Tyrimo tikslas** – pateikti dalyvavimu grįsto valdymo vietos savivaldoje teisinę charakteristiką, remiantis tarptautiniais ir Lietuvos Respub-

likos teisės aktais. Straipsnyje taikomi teoriniai teisės aktų ir dokumentų analizės, lyginamosios ir loginės analizės, indukcijos ir apibendrinimo metodai.

Dalyvavimas – vienas pagrindinių gero valdymo principų, kuriuo siekiama piliečius padaryti aktyviais visuomenės nariais. Dalyvavimu grįstas valdymas remiasi vietos gyventojų ir savivaldybės institucijų atviru bendravimu, aktyviu dalyvavimu viešojo valdymo procesuose, informacijos apie savivaldybės institucijų veiklą ir priimtus sprendimus skleidimu.

Nustatyta, kad vietos gyventojų teisė dalyvauti tvarkant viešuosius savivaldybės reikalus pripažįstama kaip vienas iš demokratijos, kuri yra gero valdymo pagrindas, principų. Ši teisė tiesiogiai gali būti įgyvendinama per vietos valdžios institucijas, kurios, turinčios realius įsipareigojimus, gali garantuoti veiksmingą ir tiesiogiai su piliečiais susijusį valdymą, bei per tiesioginį vietos gyventojų dalyvavimą sprendžiant viešuosius savivaldybės reikalus.

Lietuvos Respublikos vietos savivaldos įstatyme gyventojų dalyvavimo, tvarkant viešuosius savivaldybės reikalus, principas įtvirtintas kaip vienas pagrindinių vietos savivaldos principų, kuriais grindžiama vietos savivalda. Kokiu būdu ir kokiomis formomis vietos gyventojai gali dalyvauti viešųjų savivaldybės reikalų tvarkyme, padeda atskleisti dalyvavimo principo turinio analizė. Nustatyta, kad dalyvavimo principo turinys apima tiesioginį

savivaldybių gyventojų dalyvavimą rengiant ir svarstant sprendimų projektus; tiesioginį savivaldybių gyventojų dalyvavimą susirinkimuose, sueigose ir apklausose; tiesioginį dalyvavimą nagrinėjant viešas peticijas. Be to, savivaldybės institucijos turi diegti savivaldos principus švietimo, kultūros ir kitose įstaigose, remti asociacijų iniciatyvas, susijusias su viešųjų savivaldybės reikalų tvarkymu.

Atlikta teisės aktų analizė leido nustatyti, kad gyventojų savivaldos teisės įgyvendinimas neatsiejamas nuo institucijų, per kurias ši teisė yra įgyvendinama, ir (arba) joms atskaitingų institucijų organizavimo ir veiklos. Taigi neatsitiktinai Konstitucijoje savivaldybės sąvoka vartojama ne tik administracinio vieneto ir jo gyventojų (teritorinės bendruomenės), bet ir savivaldos institucijų ir (arba) joms atskaitingų institucijų prasme. Tam, kad būtų įgyvendintos vietos gyventojų teisės tvarkyti viešuosius savivaldybės reikalus, savivaldybių institucijos turi Konstitucijos bei įstatymų nustatytas pareigas.

Teisės aktai užtikrina vietos gyventojams galimybę dalyvauti sprendimų priėmimo procesuose savivaldybių lygiu, tačiau jie negali aktyviai ja pasinaudoti dėl pilietinės atsakomybės, lyderystės kompetencijų, žinių ir informacijos, reikalingos dalyvauti viešojo valdymo procesuose, stokos. Dėl šios priežasties būtina skatinti visuomenę, ypač nevyriausybinės organizacijas ir vietos bendruomenes, dalyvauti viešojo valdymo procesuose.

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