

NOTES

ON THE SENATE



SENATE
OF THE REPUBLIC
OF POLAND

Legislative initiatives of the Senate of the First-to-Fourth Terms

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The term of the Sejm and Senate elected in June 1989 was cut short when the Sejm on its session of 9 March 1991 dissolved itself in November 1991. Parliamentary work progressed at a swift pace due to the political and economic changes that were taking place in Poland then. The volume of legislative work during these two and a half years was enormous and preliminary changes to the constitutional structure of the State were effected then. Most of the acts then adopted had been initiated by deputies and the Council of Ministers. The Senate was less involved in legislative work at that time, although it did initiate legislation on a number of essential State issues. The House put forward 27 legislative initiatives (one was withdrawn), of which the Sejm adopted 17 and rejected 1.

The aim of the first legislative initiatives of the Senate was to redesign the country's constitutional structure and to reform the system of local government. The Senate proposed a model of local government with municipality as its basic unit – an independent community composed of its residents, possessing legal personality and its own budget. The Senate drafted the following acts: **ON THE LOCAL GOVERNMENT, ON THE MUNICIPAL ELECTORAL SYSTEM AND ON AMENDING THE CONSTITUTION OF THE REPUBLIC OF POLAND**. They were passed by the Sejm on 8 March 1990. The Act on local government employees was adopted on 22 March 1990. Elections to the local government of 27 May 1990 were held in accordance with the municipal electoral system. The Act of 11 October 1991 **ON THE MUNICIPAL REFERENDUM** was first proposed by the Senate too.

On the initiative of the Senate, on 6 April 1990, **MAY 3 WAS REINSTATED AS A NATIONAL HOLIDAY**. Observed since 1919, the holiday had been outlawed in 1945. On 21 July 1990, the Sejm passed the Act **ON THE AWARD OF THE CROSS FOR PARTICIPATION IN THE 1918–1921 WAR**. It can be seen as a continuation of the Act of 1939 on the Volunteer Cross and Medal for War.

The Senate draft act of 21 June 1990 led to the adoption of the Act **ON THE REPAYMENT OF UNLAWFULLY OBTAINED GAINS AT THE EXPENSE OF THE STATE TREASURY OR OTHER STATE LEGAL PERSONS**. It was intended to provide a supplementary legal instrument that would make it possible for the State Treasury or other legal persons to recover assets unlawfully lost because of undervaluation of State property.

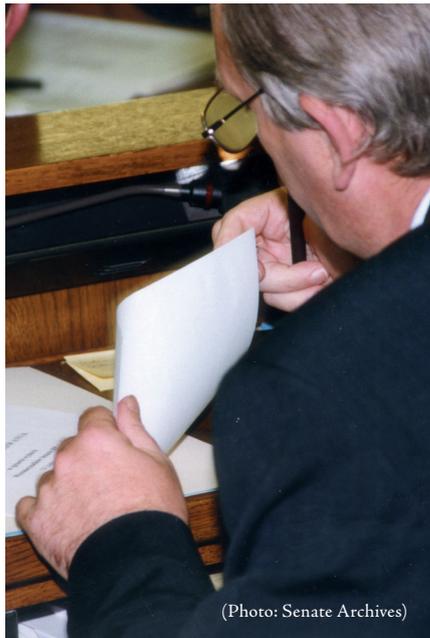
The urgent need to introduce new acts to regulate the new political and economic situation in the area of **EMPLOYERS' ORGANISATIONS** and the **RESOLUTION OF COLLECTIVE DISPUTES** prompted the Senate to exercise its right of legislative initiative in this regard. The resultant acts were passed by the Sejm in April 1991.

To provide compensation for individuals who met with reprisals for having defended Poland and fought for her independence, the Senate drafted the so-called "rehabilitation act" on the **INVALIDATION OF REPRESSIVE SENTENCES PASSED ON THOSE WHO HAD WORKED FOR THE INDEPENDENCE OF THE POLISH STATE**. The Sejm passed it on 23 February 1991.

(Photo by J. Zawadzki)



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(Photo: Senate Archives)

Other acts adopted on the initiative of the Sejm include the Act on the **ELECTORAL REGULATIONS FOR THE SENATE OF THE REPUBLIC OF POLAND** (10 May 1991) and the Act on **HEALTHCARE ESTABLISHMENTS** (30 August 1991).

The only Senate initiative rejected by the Sejm was the one **ON STREAMLINING FINANCIAL LIABILITIES**, which was meant to alleviate inflationary processes.

A number of acts drafted by the Senate were considered but not passed by the Sejm, including two acts on denationalisation. These were: **THE ACT ON THE RESTITUTION OF PROPERTY APPROPRIATED BY THE STATE UNDER REGULATIONS ON THE ADJUSTMENT OF THE LEGAL STATUS OF PROPERTY ADMINISTERED BY THE STATE** and on the **RESTITUTION OF PHARMACIES APPROPRIATED BY THE STATE** (the first one envisaged the restitution of property in kind or, when it was not possible, compensation in the form of capital bills); the act **ON COMPENSATION FOR ACCIDENTS AT WORK AND OCCUPATIONAL DISEASES**. It was intended to safeguard the interests of injured employees and their families; the draft act **ON SCIENTIFIC INSTITUTES**, under which some State-owned research and development institutions could be transformed into non-State ones, e.g. commercial companies and associations; draft act **ON COMBATING THE NEGATIVE EFFECTS OF TOBACCO USE**.

Interestingly, the Senate draft act on **AMENDING THE ACT ON THE DEVELOPMENT OF THE EDUCATION SYSTEM**, which provided for the teaching of religion in schools and other educational establishments, was considered jointly with a draft act submitted by the government. However, after having been amended by the Senate, the act on the system of education was not adopted due to legislative stalemate. In contrast, the act **ON THE LEGAL PROTECTION OF THE UNBORN CHILD** proved to be so controversial that the Sejm gave up its work on the draft.

The next term of the parliament was cut short too, this time by order of President Lech Wałęsa of 29 May 1993. It lasted from November 1991 to May 1993. The Senate of the Second Term put forward 9 legislative initiatives, 4 of which were adopted by the Sejm. The aim of the first of them was to amend the Act **ON THE LOCAL GOVERNMENT**. The introduced changes were to ensure the proper functioning of local government bodies (including the procedure for dismissing the board administrators and for appointing the secretary of the municipality and providing the board administrators and the village administrator (softys) with access to protection afforded to public officials). The Sejm adopted this Act on 6 November 1992.

The Act on the local government of 1990 made it possible to set up regional accounting chambers, under a separate act. The lack of such an act meant that control over the finances of municipal entities was temporarily assumed by other bodies, in contravention with the concept of control of the local government finances. The Senate-initiated Act **ON REGIONAL ACCOUNTING CHAMBERS** was adopted on 7 October 1992. It provided for the creation of these chambers as bodies responsible for the control of finances of municipalities and their associations, other municipal legal entities and local government parliaments.

On 2 April 1993, the Sejm passed a Senate-initiated amendment to the Act **ON CHANGES TO THE ORGANISATION AND ACTIVITIES OF COOPERATIVE SOCIETIES** to prevent agricultural cooperatives from circumventing the law when selling real property.

In addition, the Senate drafted 3 acts associated with “settling historical accounts” in legislation after 1989. The first one amended the Act **ON INVALIDATION OF JUDGEMENTS AGAINST PERSONS REPRESSED FOR THEIR ACTIVITIES FOR THE INDEPENDENCE OF THE POLISH STATE**, which had been initiated by the Senate of the previous term. Due to this legislative initiative, the time limit for seeking compensation by victims of repression was now extended and the group of persons entitled to claim compensation broadened. The Sejm did not complete its work on the two remaining drafts. In its draft act **ON THE PRECONDITIONS FOR TAKING UP CERTAIN POSTS IN THE REPUBLIC OF POLAND**, the Senate proposed that the holding of public office

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by people who had been employees or collaborators of the security services or communist party officials should be regulated by law. It set out a procedure applicable to candidates for civil service, public office or official duties and proposed to establish an appellate body for resolving disputes. The draft act **ON PROSECUTING STALINIST CRIMES AND OTHER CRIMES AGAINST HUMAN LIFE, HEALTH AND FREEDOM AND THE ADMINISTRATION OF JUSTICE, NOT PROSECUTED FOR POLITICAL REASONS IN THE 1944-TO-1989 PERIOD** aimed at removing legal obstacles to the persecution of these crimes which had lapsed or were covered by amnesty provisions.

Apart from this, the Senate also continued the work of the House of the First Term on a number of initiatives. These were draft acts **ON COMBATING THE HARMFUL EFFECTS OF THE USE OF TOBACCO** and **ON SCIENTIFIC INSTITUTES**. Unfortunately, the Sejm failed to finish its work on these drafts. The Senate draft on **BUSINESS SELF-GOVERNMENT** met a similar fate.

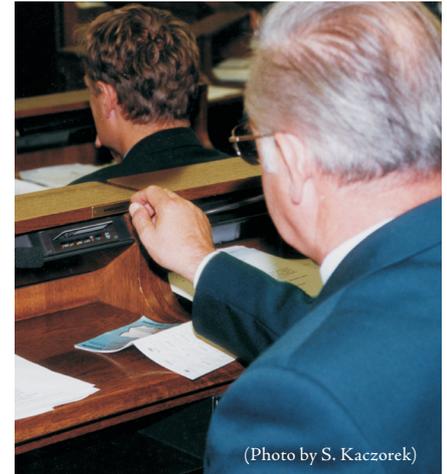
The Senate of the Third Term (1993–1997) submitted 19 draft acts to the Sejm, of which 7 were adopted and 4 were rejected by the Sejm. The Senate draft acts accepted by the Sejm included:

1. a draft act amending the **LAW ON ELECTIONS TO SENATE OF THE REPUBLIC OF POLAND**, adopted on 10 March 1994. It standardized the rules of elections to the Sejm and the Senate and made it possible to hold by-elections to the Senate jointly with elections to the municipal councils;
2. a draft act amending the **Act ON EMPLOYMENT AND UNEMPLOYMENT AND THE ACT ON OLD-AGE PENSIONS AND BENEFITS FOR EMPLOYEES AND THEIR FAMILIES** of 19 August 1994. It was intended to improve the use of active forms of counteracting unemployment and to provide incentives for economic entities to employ graduates;
3. the **Act ON THE “OSSOLIŃSKI” NATIONAL INSTITUTE FOUNDATION**, adopted on 5 January 1995.

In addition, the House prepared initiatives dealing with Poland's wartime and post-war history, including a draft **ACT AMENDING THE ACT ON COMBATANTS AND CERTAIN PERSONS WHO WERE VICTIMS OF WARTIME AND POST-WAR REPRESSIONS**. It granted rights equivalent to combatants' rights to persons whose participation in the events on the Polish Coast in December 1970 had resulted in death, serious injury, damage to health or impairment of organ function for more than 7 days. The Act based on that draft was passed by the Sejm on 24 April 1997. However, the Sejm rejected a draft act amending the **Act ON WAR VETERANS**, in which the Senate proposed that combatant rights should be also awarded to individuals who between 1949 and 1956 were directed, within the framework of alternative military service, to work in mines, quarries and uranium ore extraction sites. As stated by the Senate, the type of activities performed by members of these the so-called work or construction battalions, and the manner in which they were selected for that work, suggested that they had been victims of political repression. Two Senate drafts were not considered by the Sejm: the **ACT ON FINANCIAL BENEFITS FOR CHILDREN-VICTIMS OF THE WAR OF 1939-1945** and the **ACT AMENDING THE ACT ON INVALIDATION OF JUDGEMENTS AGAINST PERSONS REPRESSED FOR THEIR ACTIVITIES FOR THE INDEPENDENCE OF THE POLISH STATE**. It aimed to extend the time limit for submission of compensation claims by victims of repression on the part of the Soviet prosecuting authorities.

To safeguard and promote the wellbeing of the family and children and to improve the situation of women in Poland, the Senate initiated a number of activities as a result of which 3 acts were drafted and submitted to the Sejm. They focused on reinforcing the position of the child in Polish law, creation of the institution of Ombudsman for Children and the award of special rights to pregnant women and women caring for young children. The draft act **AMENDING THE ACT – FAMILY AND GUARDIANSHIP CODE** was rejected by the Sejm, while the draft acts **ON THE NATIONAL FUND TO ASSIST PREGNANT WOMEN** and **ON THE OMBUDSMAN FOR CHILDREN** were not considered.

The Senate draft act amending the **CONSTITUTIONAL ACT ON MUTUAL RELATIONS BETWEEN THE LEGISLATIVE AND EXECUTIVE POWERS OF THE REPUBLIC OF POLAND**



(Photo by S. Kaczorek)

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AND ON THE LOCAL GOVERNMENT had an interesting history. Its authors advocated extending the time given to the Senate for consideration of urgent legislative proposals of the Council of Ministers from 7 to 14 days. Although not considered by the Sejm, the initiative was included in the agenda of the National Assembly and had a definite impact on the wording of Article 123 (3) of the Constitution of the Republic of Poland adopted on 2 April 1997. Another Senate initiative not considered by the Sejm was a draft act amending the Act **ON ELECTION OF THE PRESIDENT OF THE REPUBLIC OF POLAND**. It enabled Polish citizens residing abroad to vote in the second round of presidential elections.

The Senate of the Fourth Term (1997–2000) came forward with many legislative initiatives concerning different aspects of social and economic life. The Chamber submitted 27 draft acts to the Sejm, of which 15 were adopted and 3 were rejected by the Sejm.

The draft act amending the Act **ON INVALIDATION OF JUDGEMENTS AGAINST PERSONS REPRESSED FOR THEIR ACTIVITIES FOR THE INDEPENDENCE OF THE POLISH STATE** took into account the resolution of the Constitutional Tribunal, which stated that the term “territory of Poland” used in the Act also covered the areas to the east of the Curzon line and, consequently, that the Act should also apply to Poles who lived there. Moreover, it was decided to discontinue the use of a limitation period for submission of claims. The Sejm adopted the Act on 16 July 1998. The amendment to the Act **ON DISCLOSURE OBLIGATIONS OF PUBLIC OFFICE HOLDERS WHO WORKED OR SERVED IN THE STATE SECURITY AUTHORITIES OR COLLABORATED WITH THEM BETWEEN 1944 AND 1990** was adopted on 18 June 1998, instituting the office of Commissioner for Public Interest and introducing a principle under which vetting cases were to be resolved by the Court of Appeal in Warsaw. The Senate of the Fourth Term made another attempt to provide financial benefits for children-victims of the war of 1939–1945. This time, the Sejm did consider the draft act, but ultimately rejected it. Neither did it accept the Senate proposal to award combatant privileges to military engineers who took part in the demining of the Polish territory in the 1945–1956 period. Other Senate proposals rejected by the Sejm included a proposal to amend the labour code (introduction of a 40-hour working week).

In addition, the Senate created a comprehensive regulatory framework for issues connected with the Polish citizenship, repatriation and the Pole’s Charter. Two out of four draft acts were adopted, but ultimately only one of them entered into force – the Act **ON REPATRIATION** adopted on 9 November 2000. Under this Act, and owing to the efforts of the local governments and social organisations, some Polish families from Kazakhstan returned to Poland. The Sejm also adopted the Act **ON THE POLISH CITIZENSHIP**, but failed to consider Senate amendments to this Act. The 2 remaining initiatives – **ON THE POLE’S CHARTER AND THE PROCEDURE FOR CONFIRMATION OF AFFILIATION WITH THE POLISH NATION OF PERSONS OF POLISH NATIONALITY OR OF POLISH BACKGROUND** and **ON THE ESTABLISHMENT OF 2 MAY AS THE DAY OF THE POLISH DIASPORA AND POLES ABROAD** – were not considered by the Sejm.

The following initiatives were adopted by the Sejm: **AMENDMENT TO THE ACT ON SOCIAL ASSISTANCE** adopted on 21 January 1999 (it set out the rules for the award of the guaranteed allowance for the unemployed), **AMENDMENT TO THE ACT ON PHYSICAL CULTURE** (it granted a financial benefit to former athletes who won at least one Olympic medal) adopted on 4 November 1999, **AMENDMENT** of 28 April 2000 **TO THE ACT ON ELECTION OF THE PRESIDENT OF THE REPUBLIC OF POLAND** (it enabled Polish citizens residing abroad to vote in the second round of presidential elections), the **AMENDMENT TO THE ACT ON RADIO AND TELEVISION BROADCASTING** (it instituted the office of social broadcaster and specified entities qualifying for the status of social broadcaster and its financial privileges) adopted on 1 February 2001. There were other noteworthy legislative proposals of the Senate: a draft amendment to **THE PENAL CODE**, so as to include provisions on the dissemination of pornographic materials. It called for the reinstatement of the ban on production, import and dissemination of such materials in any form. The Sejm adopted it on 3 March 2000, but failed to adopt it again after the President’s veto.

There were other important and interesting proposals of the Senate that the Sejm failed to consider, including proposals on the property of the Workers’ Holiday Funds or the establishment of the National Bioethics Council.