

NOTES

ON THE SENATE



SENATE
OF THE REPUBLIC
OF POLAND

Legislative initiatives of the Senate of the Fifth-to-Seventh Terms

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During its four years in office, the Senate of the Fifth Term (2001–2005) worked on 34 draft acts, 26 of which were submitted to the Sejm. The Sejm adopted 16 of them, and rejected 1.

One of key initiatives of the Senate was the amendment to the Act **ON REGIONAL ACCOUNTING CHAMBERS**, bringing existing legislation in line with the standards required of modern public administration. It changed the procedure for appointing the president and members of the board of regional accounting chambers (henceforth appointed by way of competition). On 11 June 2003, the Sejm adopted an act amending the Act on regional accounting chambers and an act amending the Act on the determination of salaries in the public sector and some other acts.

The Senate came forward with legislative initiatives associated with water and waste management twice. In the first draft amendment to the Act – **ENVIRONMENTAL PROTECTION LAW AND WATER MANAGEMENT LAW**, the Senate introduced systemic changes concerning the fees charged for using the natural environment, as well as changes to administrative fines associated with water uptake and waste discharge into water and soil. The Sejm adopted the Act on 23 November 2002. The amendment to the Act **ON COLLECTIVE WATER SUPPLY AND COLLECTIVE WASTE DISCHARGE AND THE ACT – WATER LAW** was adopted by the Sejm on 5 December 2002. It enabled water companies to carry out collective water supply and wastewater discharge operations, and broadened the definition of a water-supply and sewage enterprise.

By amending the **PUBLIC PROCUREMENT ACT**, the Senate made it non-applicable to procurement associated with the staging and production or co-production of play, opera or operetta performances by theatre companies, and procurement associated with research and development entities, state-run institutions of higher education and the Polish Academy of Sciences, in cases when the value of procurement does not exceed EUR 130,000. The Sejm adopted the Act on 23 July 2003.

Under 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**, adopted by the Sejm on 13 September 2002, the intelligence, counterintelligence and border protection services of the Polish People's Republic were excluded from the vetting. It also modified the definition of collaboration with state security services between 1944 and 1990.

On the initiative of the Sejm, **MAY 2 WAS ESTABLISHED AS THE DAY OF THE POLISH DIASPORA AND POLES ABROAD** (Act adopted on 20 March 202), **FEBRUARY 22 WAS ESTABLISHED AS THE DAY OF THE VICTIMS OF CRIME** (Act adopted on 12 February 2003), while October 16 was to be celebrated as the **DAY OF POPE JOHN PAUL II** (Act adopted on 27 July 2005).

The amendment to the Act **ON REAL ESTATE MANAGEMENT AND TO THE ACT ON STATE-OWNED AGRICULTURAL REAL ESTATE** enabled persons who as a result of World War II lost their property in the Eastern Borderlands (*Zabużanie*) to receive equivalent property from agricultural real estate assets of the State Treasury and to establish perpetual usufruct right to real estate assets comprised in the Agricultural Property Stock of the State Treasury. On 12 November 2003, the Sejm adopted the Act **ON CREDITING THE VALUE OF REAL ESTATE LEFT OUTSIDE THE PRESENT BORDERS OF THE POLISH STATE TOWARD THE SALE PRICE OR PERPETUAL USUFRUCT FEES IN RESPECT OF STATE TREASURY PROPERTY**.

The amendment of the Act **ON COURT ENFORCEMENT OFFICERS AND PROCEDURES AND ON AMENDING THE ACT – CODE OF CIVIL PROCEDURE** changed the legal status of the court enforcement officers (it became a liberal profession), the rules for the operation of court enforcement activities, the definition of a court enforcement district, funding conditions applicable to enforcement activities and the rights of the president of the court of appeal. The Sejm adopted the Act on 16 July 2004.

The draft act amending the Act **ON THE COOPERATION OF THE COUNCIL OF MINISTERS WITH THE SEJM AND SENATE IN MATTERS ASSOCIATED WITH THE MEMBERSHIP OF THE REPUBLIC OF POLAND IN THE EUROPEAN UNION** provided the Senate with the same rights as those enjoyed by the Sejm to express opinions on draft legislation of the European Union and on positions that the Council

of Ministers intends to take with respect to a legislative proposal of the EU Council. The Sejm adopted the Act on 17 June 2005.

The amendment of the Act **ON UNIVERSAL OBLIGATION TO DEFEND THE REPUBLIC OF POLAND**, adopted by the Sejm on 1 July 2005, made it possible to promote in rank those former professional soldiers who are active as volunteers in soldiers' associations or who work in government or local government administration or in the system of national education in positions associated with defence and public security. The draft act **ON EQUAL STATUS OF WOMEN AND MEN** clarified constitutional provisions to that effect, introduced a definition of gender discrimination and prohibited it. It obliged public authorities to support gender equality. The Sejm rejected the Senate initiative on 17 June 2005.

Due to the lengthy work of the Sejm committees and because its term of office came to an end, 9 acts drafted by the Senate were never passed. They proposed, among other things:

- to establish a National Bioethics Council in the office of the President of the Council of Ministers;
- to make it possible to deduct the financial equivalent of donated blood from the taxable base;
- to regulate the legal situation of homosexuals in Poland;
- to specify the rules and procedures for the payment of the financial benefit for underage victims of repression by the USSR and the Third Reich during the war of 1939–1945;
- to award combatant status to civilians and soldiers of the Polish Army who between 1945 and 1956 were directly involved in detection and clearance of minefields within the framework of the nationwide mine-clearing military operation.

The Senate of the Sixth Term worked for only two years as its term in office was reduced (from October 2005 to November 2007). Nonetheless, it concerned itself with as many as 39 legislative initiatives. 19 were submitted to the Sejm, which accepted 3 of them. The work on the remaining initiatives was not completed due to the end of the term.

A Senate draft act which became binding in Polish law was an amendment to the Act **ON THE PROTECTION AND PRESERVATION OF HISTORICAL MONU-**

MENTS. It enabled voivodeship parliaments to provide subsidies for conservation, renovation and construction work involved in the restoration of historical monuments. The Sejm adopted the Act on 12 May 2006.

The aim of many legislative initiatives of the Senate was to revise laws judged inconsistent with the Constitution by the Constitutional Tribunal. One of them was the Act – **LAW ON PROCEEDINGS BEFORE THE ADMINISTRATIVE COURT**. The Senate initiative broadened the catalogue of reasons for excluding a judge

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from proceedings in circumstances which might put his or her impartiality in question in a given case. The Sejm passed that Act on 22 September 2006.

The draft amendment to the Act **ON THE PERFORMANCE OF WORK UNDERWATER** normalized the scope of competence of persons hired to perform work underwater and aligned it with the applicable practice, thus strengthening the safety of divers in accordance with global standards. The Sejm adopted the Act on 17 February 2007.

The end of the term made it impossible for the Sejm to examine the remaining acts drafted by the Senate. Several of them were intended to regulate various social and societal issues. In addition, the Senate

presented a number of draft acts concerning transformations of ownership of real property. It also initiated amendments to the Act **ON THE AGRICULTURAL SYSTEM** twice. Other proposals of the House included an amendment to the Act **ON ELECTION OF THE PRESIDENT OF THE REPUBLIC OF POLAND**. It also put forward a draft act **ON THE SENATE'S POLICY TOWARDS THE POLISH DIASPORA AND POLES ABROAD**, as well as a draft act which enabled blood donors to deduct the financial equivalent of donated blood from the taxable base. Another initiative of the Senate made it possible to disclose, and to supplement the then existing state of law accordingly, the rights of the State Treasury acquired under separate provisions after World War II in areas incorporated into the territory of Poland.

The Senate of the Seventh Term (2007–2001) submitted 124 draft acts to the Sejm, which passed 78 of them, rejected 1 and did not finish working on the remaining ones.

Out of 78 Senate-initiated acts, 56 were passed to implement decisions of the Constitutional Tribunal. The obligation to do so was incorporated in the Senate's Rules and Regulations in 2007. The most important acts intended to adjust Polish legal provisions to decisions of the Constitutional Tribunal included amendments to the following Acts: **ON CASH BENEFITS UNDER SOCIAL INSURANCE IN THE EVENT OF SICKNESS OR MATERNITY** (it no longer provided for different benefits under sickness insurance); **ON THE COMPANY SOCIAL BENEFITS FUND** (specific forms of leisure activities abroad, as well as cultural, educational, sports and recreational activities could now be financed from this fund); **ON THE TAX ON GOODS AND SERVICES** (the first amendment put an end to unequal treatment of VAT payers, the second one made it impossible to aggregate administrative, penal and fiscal liability with respect to natural persons); **ON THE LAW ON ELECTIONS TO MUNICIPAL COUNCILS, DISTRICT (*powiat*) COUNCILS AND VOIVODESHIP PARLIAMENTS** (abolishing the domicile-related census for non-nationals of Poland with citizenship of one of the EU Member States, as well as Polish citizens); **ON HOUSING CO-OPERATIVES** (it obliged co-operatives to notify residents of changes in amounts of charges with a notice period now extended from 14 to 30 days); **ON FINANCIAL BENEFITS FOR PERSONS DEPORTED AS FORCED LABOURERS OR PLACED IN LABOUR CAMPS BY THE THIRD REICH AND THE UNION OF SOVIET SOCIALIST REPUBLICS** (entitlement to receive a cash benefit was also given to persons

who had to leave their previous place of residence for at least six months to perform forced labour within the borders of Poland; of the term "deportation" was clarified to remove doubts associated with it); **CODE OF CIVIL PROCEDURE** (extension of the period for revision of judgements in the so-called economic matters which were passed on the basis of a norm which was later challenged by the Constitutional Tribunal); **ON THE PENAL FISCAL CODE** (the time limit for claiming compensation for unjust enrichment against the State Treasury was extended from 2 to 10 years).

In addition, the Senate enabled citizens to be directly involved in the governance process by means of petitions, i.e. motions on matters pertaining to public life. On their basis, the Senate submitted 3 draft acts to the Sejm: **AMENDMENT TO THE ACT ON OLD-AGE AND OTHER PENSIONS FROM THE SOCIAL INSURANCE FUND** (non-working periods due to political repression between 31 December 1956 and 4 June 1989 were henceforth to be regarded as contribution periods); **AMENDMENT TO THE ACT ON COMBATANTS AND CERTAIN PERSONS WHO ARE THE VICTIMS OF WARTIME AND POST-WAR REPRESSION AND AMENDMENT TO THE ACT ON DEPARTMENTS OF GOVERNMENT ADMINISTRATION** (the Office for Combatants came under the authority of the President of the Council of Ministers while temporary and regular financial assistance was now to be awarded by the Head of that Office or by the Association of War Invalids of the Republic of Poland); **AMENDMENT OF THE ACT ON DECORATIONS AND ORDERS** (resumption of the award of decorations and orders awarded before 8 May 1999). Due to the end of the term, the work on these draft acts was never finished.

On the initiative of the Senate, on 23 October 2009, the Sejm passed an amendment to a set of Acts **ON THE AUTHENTICATION OF DOCUMENTS**. It deformedalized civil, administrative, court-administrative and taxation-related proceedings by rationalising the requirement to attach original documents or their copies certified by a notary to case files.

In the draft amendment to the Act **ON THE OMBUDSMAN FOR CHILDREN**, the Senate proposed to extend the powers of the Ombudsman, authorizing the Ombudsman to take part in proceedings before the Constitutional Tribunal, to request the Supreme Court for clarification of unclear or inconsistent legal provisions and to bring an appeal in cassation. The Sejm adopted the Act on 24 September 2010.

The aim of the amendment to the Act **ON THE NATIONAL COUNCIL OF THE JUDICIARY OF POLAND** was to regulate issues connected with its competences, system, procedural rules and its role in proceedings before the National Council of the Judiciary. The Sejm adopted the Act on 12 May 2011.

The Senate-initiated Act **ON POLISH CITIZENSHIP**, adopted on 2 April 2009, introduced, among others, the principle of admissibility of multiple citizenships, maintaining the absolute priority of Polish citizenship. It also enabled former Polish citizens to apply for the restoration of Polish citizenship.

The draft act **ON THE COOPERATION OF THE COUNCIL OF MINISTERS WITH THE SEJM AND SENATE IN MATTERS ASSOCIATED WITH THE MEMBERSHIP OF THE REPUBLIC OF POLAND IN THE EUROPEAN UNION**, rejected by the Sejm on 6 May 2010, aligned the Polish law with changes brought about by the Lisbon Treaty.

The work on a number of Senate initiatives was discontinued due to the end of the term. They included: draft amendment to the Act – **CIVIL CODE AND SOME OTHER ACTS** (introduction of donation upon death and its inclusion in the legal system); draft acts **AMENDING THE ACT ON PERSONAL INCOME TAX** and **THE ACT ON FREEDOM OF ECONOMIC ACTIVITY** (it enabled farmers to engage in untaxed and deformedalized small-scale production and sale of processed agricultural products); **ON PETITIONS** (it set out the rules for the submission and examination of petitions, as well as procedural rules and competences of specific bodies in matters concerning petitions).