

NOTES

ON THE SENATE



SENATE
OF THE REPUBLIC
OF POLAND

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

CHANCELLERY OF THE SENATE
6, WIEJSKA STR. | 00-902 WARSAW
TEL. 48 22 694 90 34 | FAX 48 22 694 93 06
senat@senat.gov.pl
www.senat.gov.pl
www.facebook.com/SenatRP

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). Due to this initiative 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 were adopted.

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 amendment to the Act **ON COLLECTIVE WATER SUPPLY AND COLLECTIVE WASTE DISCHARGE AND THE ACT – WATER LAW** 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.

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**, 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**, February 22 was established as **THE DAY OF THE VICTIMS OF CRIME**, while October 16 was to be celebrated as the **DAY OF POPE JOHN PAUL II**.

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 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.

The amendment of the Act **ON COURT ENFORCEMENT OFFICERS AND PROCEDURES AND ON AMENDING THE ACT – CODE OF CIVIL PROCEDURE** changed the

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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 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 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.

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.

Office for Citizen Relations, 2016

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.

A Senate draft act which became binding in Polish law was an amendment to the Act **ON THE PROTECTION AND PRESERVATION OF HISTORICAL MONUMENTS**. It enabled voivodeship parliaments to provide subsidies for conservation, renovation and construction work involved in the restoration of historical monuments.

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 from proceedings in circumstances which might put his or her impartiality in question in a given case.

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 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.

The Senate of the Seventh Term (2007–2001) submitted 124 draft acts to the Sejm, which passed 78 of them and rejected 1.

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); **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, an amendment to a set of Acts **ON THE AUTHENTICATION OF DOCUMENTS** was passed. It deformed 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 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 Senate-initiated Act **ON POLISH CITIZENSHIP**, 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 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 deformed 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).

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During the Eighth Term (2011–15), the Senate submitted 103 draft acts to the Sejm, including 62 enacting rulings of the Constitutional Court and 11 implementing requests addressed in petitions to the Marshal of the Senate. On their basis, the Sejm adopted 74 acts.

The 43 acts adapting legal provisions to the Constitutional Court rulings included, among others, amendments to the following acts: **ON A LOCAL REFERENDUM** (making it possible to hold a local referendum also on important topics concerning social, economic or cultural ties binding the residents' community, while such topics are beyond the competence of local authorities); **ON ENTITLEMENTS TO REDUCED FARES FOR TRAVEL ON PUBLIC TRANSPORT AND THE ACT – THE TEACHERS CHARTER** (kindergarten teachers were granted the entitlement to reduced fares for travelling on public transport; this was compensated by decreasing the reduction for all teachers from 37 to 33%); **ON IMPLEMENTATION OF THE ENTITLEMENT TO COMPENSATION FOR ABANDONING REAL PROPERTY OUTSIDE THE CURRENT BORDERS OF THE REPUBLIC OF POLAND** (the right to compensation was also granted to individuals who were Polish citizens on 1st September 1939, but only had a secondary residence on the former territory of the Republic of Poland); **ON THE NATIONAL SYSTEM FOR KEEPING RECORDS OF PRODUCERS, RECORDS OF FARMS AND RECORDS OF APPLICATIONS FOR AWARDS OF PAYMENTS** (it was made possible for spouses who are not joint owners of a farm to obtain a separate identity number in the national system for keeping records of producers, records of farms and records of applications for awards of payments); **THE CRIMINAL CODE AND ACTS ON THE SOCIAL SECURITY SYSTEM** (double penalisation was abolished for individuals who do not pay social security contributions or pay a lower sum than required); **THE CIVIL PROCEDURE CODE AND THE ACT – LAW OF ADMINISTRATIVE COURTS PROCEDURE** (courts were placed under the obligation to issue a summons for defects to be removed within 7 days before rejecting a cassation made on grounds of such defects).

Five acts were passed on the basis of draft acts implementing requests voiced in petitions: **ON THE AMENDMENT OF THE ACT ON PENSIONS AND DISABILITY PENSIONS FROM THE SOCIAL INSURANCE FUND** (unemployment periods due to political repression before 4 June 1989 are deemed premium periods); **ON THE AMENDMENT OF THE ACT MAKING NULL AND VOID RULINGS PASSED AGAINST PERSONS REPRESSED FOR THEIR ACTIVITY FOR THE INDEPENDENCE OF THE POLISH STATE** (persons doing military service from 1.11.1982 to

28.02.1983, who were drafted due to their activity for the independence of the Polish state, were given the right to compensation and damages from the State Treasury); **ON THE AMENDMENT OF THE ACT ON PUBLICLY FINANCED HEALTH CARE** (the right to free medicines was granted to so-called soldier miners); **ON THE AMENDMENT OF THE LOCAL TAXES AND CHARGES ACT** (an exemption from property tax was introduced relative to land and buildings or their parts belonging to communes).

In 2014, the Chamber began collaboration with the Ombudsman and with the Supreme Audit Office. On the basis of the problems indicated by these authorities, the Chamber prepared and submitted 4 draft acts to the Sejm, of which 3 were adopted. These are amendments to the following acts: **ON COURT-APPOINTED ADMINISTRATORS** (appointed Supreme Audit Office employees are granted the right to use the assistance of a professional lawyer in disciplinary proceedings); **THE CRIMINAL CODE, THE BUILDING LAW ACT AND THE ACT – CODE OF PROCEDURE IN PETTY OFFENCE CASES** (indirect violence, as used for example by tenement house owners to force tenants to leave flats, is now subject to penalty); **ON PUBLIC FINANCE** (regulations governing the activity of budget institutions were modified).

Among the important initiatives of the Senate which became binding law, it is important to mention the following acts: **ON PETITIONS** (the regulation concerns the principles and the procedure of petition submission and examination; as well as the competences of organs involved in issues concerning petitions); **ON ACTIVISTS OF THE ANTI-COMMUNIST OPPOSITION AND PERSONS REPRESSED FOR POLITICAL REASONS** (a special benefit and financial aid has been guaranteed to democratic opposition activists and persons repressed for political reasons from 1.01.1957 to 4.06.1989, who are in a particularly difficult financial situation, subject to the interested person obtaining the status of opposition activist or repressed person and meeting the income test); **ON AMENDMENT OF THE BANKING LAW ACT AND CERTAIN OTHER ACTS** (the regulations concerns issues connected with so-called dormant accounts; access of successors to bank accounts of deceased persons has been facilitated); **ON AMENDMENT OF THE PROPERTY MANAGEMENT ACT AND OF THE ACT – FAMILY AND GUARDIANSHIP CODE** (the capital city of Warsaw and the State Treasury were attributed the right of pre-emptive purchase in the case of claims resulting from the so-called Bierut decree, with the aim of curtailing the dirty business of reclaiming property using the "court-appointed administrator" trick).