

**Sabina Grabowska<sup>1</sup>**

## **People's initiative of putting a bill before the parliament – Polish case**

**Keywords:** people's initiative, direct democracies, Poland

**Słowa kluczowe:** inicjatywa ludowa, demokracja bezpośrednia, Polska

### **Summary**

The Polish law provides for two types of people's initiative. One type is a people's initiative of putting a bill before the parliament as provided for in Art. 118 subpar. 2 of the Constitution of the Republic of Poland and the Act dated 24 June 1999 on the use of a legislative initiative by citizens. The second type is a people's initiative of putting forward a motion to hold a legislative referendum regulated by the Act dated 14 March 2003 on holding a national referendum. The legislature did not provide for, however, a people's initiative for the purpose of amending the constitution or its abrogation. The subject of this paper is the institution of a people's initiative of putting a bill before the parliament.

### **Streszczenie**

#### **Inicjatywa ludowa w sprawie uchwalenia ustawy – polski przypadek**

Polskie prawo ogólnokrajowe przewiduje dwa rodzaje inicjatywy ludowej. Jest to inicjatywa ludowa w sprawie złożenia ludowego projektu ustawy w parlamencie przewidziana art. 118 ust. 2 Konstytucji RP i ustawą z dnia 24 czerwca 1999 r. o wykonywaniu inicjatywy ustawodawczej przez obywateli. Drugim rodzajem jest inicjatywa ludowa w sprawie złożenia wniosku o przeprowadzenie referendum ustawodawczego uregulowana ustawą z dnia 14 marca 2003 r. o referendum ogólnokrajowym. Ustawodawca nie uwzględnił

---

<sup>1</sup> The author is an Associate Professor in Institut of Political Science on the Faculty of Sociology and History of University of Rzeszow. E-mail: chatazawsia@wp.pl.

jednak inicjatywy ludowej w sprawie zmiany konstytucji lub jej abrogacji. Tematem niniejszego opracowania będzie instytucja inicjatywy ludowej o zasięgu ogólnokrajowym.

✱

## I.

The people's legislative initiative appeared in Polish law when the new Constitution of the Republic of Poland was passed. As provided for in Article 118 subparagraph 2 of the Constitution of the Republic of Poland, the right of legislative initiative is vested in a group of at least one hundred thousand citizens holding complete electoral rights, and the mode of procedure in this matter is to be framed in a bill. In order to make it possible for the citizens to use this right, the Sejm enacted the Act on the use of an initiative. It does not regulate the principles, but the mode of procedure governing the use of a legislative initiative<sup>2</sup>.

As mentioned before, according to the Polish regulations, a legislative initiative, may be put forward by a group of at least one hundred thousand citizens holding active electoral rights (Art. 2 of the Act on using an initiative).

While working on the new Polish constitution in the constitutional commission it was stated that the number of one hundred thousand signatures was too high, and that it would be difficult to gather the signatures. It was also argued that this number is much too small and that the Sejm would be inundated by numerous citizens' draft bills<sup>3</sup>. In practice, it took the committee only three weeks to gather almost two hundred thousand signatures supporting the first people's draft bill on preserving the national character of the strategic natural resources of the country. On 14 September 1999 the Speak-

---

<sup>2</sup> W. Skrzydło, *Władza ustawodawcza w Konstytucji RP*, [In:] *Ustrój konstytucyjny Rzeczypospolitej Polskiej*, ed. R. Mojak, *Społeczeństwa – demokracje – konstytucje*, Vol. X, Lublin 2000, p. 170; S. Grabowska, *Geneza i ewolucja inicjatywy ludowej w Europie*, "Gubernaculum et Administratio" 2001, p. 169 et al.; P. Uziębło, *Inicjatywa ustawodawcza obywateli w Polsce na tle rozwiązań ustrojowych państw obcych*, Warszawa 2006, p. 25.

<sup>3</sup> J. Jaskiernia, *Zasady demokratycznego państwa prawnego w sejmowym postępowaniu ustawodawczym*, Warszawa 1999, p. 400.

er of the Sejm received notification of the formation of the committee, and a draft bill was submitted on 4 October by the representative of the committee, together with the requisite number of signatures<sup>4</sup>. As one can see, it was not a problem to raise the statutory number of signatures. The fears that the Sejm would get a countless number of citizens' draft bills were also groundless. So far it has not happened and, as the practice shows, there is little likelihood of that.

For a group of citizens to be able to put forward a legislative initiative, a legislative initiative committee has to be formed. Such a committee is formed by at least fifteen Polish citizens holding active electoral rights, who are among the first to support a given draft bill.. When joining the committee, they make a written declaration giving their full name, address and PESEL Personal Identity Number (Art. 5 of the Act on using an initiative). The tasks of the committee include: preparing a draft bill, disseminating it, conducting a promotion campaign, as well as organising actions of raising signatures of the citizens supporting the bill<sup>5</sup>.

In order to improve its activities, the committee has a representative and his deputy. They act on behalf and in favour of the committee. After having gathered one thousand signatures of the citizens supporting the draft bill, the representative notifies the Speaker of the Sejm of the formation of the committee<sup>6</sup>. Upon formal acceptance of this notification by the Speaker of the Sejm, the people's legislative initiative committee acquires a legal personality. After this fact has been published in a domestic daily newspaper, and after the address of the initiative organisers and a location where the draft bill would be accessible for inspection have been made public, the action of raising signatures can be started (Art. 6, 7 of the Act on using an initiative).

The question arises as to how this first thousand signatures can be attained in a legal way, if the committee acquires the right to gather them only upon

---

<sup>4</sup> The first reading took place during Session No. 64 of the Sejm, on 18<sup>th</sup> November 1999, and the bill was not passed until after almost two years, i.e., during Session No. 112 of the Sejm, on 6<sup>th</sup> July 2001 (Official Gazette No. 97, item 1051).

<sup>5</sup> M. Jabłoński, *Obywatelskie prawo inicjatywy ustawodawczej*, [In:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warszawa 2002, p. 652.

<sup>6</sup> These signatures constitute a part of the requisite number of 100 thousand signatures of the citizens supporting the draft bill.

getting from the Speaker of the Sejm a decision on the acceptance of the notification?<sup>7</sup> One solution to this problem can be to apply the interpretation of the law pursuant to which the collection of the first thousand signatures can be conducted without giving notice to the Speaker of the Sejm. Thus, the provision of Article 6 subparagraph 1 of the Act on using an initiative is a special arrangement with regard to Article 6 Subparagraph 4 of the same Act, i.e. the one taking precedence over it<sup>8</sup>.

The people's legislative initiative committee is dissolved three months from the date of completion of the legislative procedure, after a decision by the Speaker of the Sejm refusing to let the draft bill take its course, or following a positive ruling by the Supreme Court on an appeal of the committee against a refusal of the Speaker of the Sejm to allow the draft bill to take its course. The committee is also dissolved when its representative does not submit a draft bill to the Speaker of the Sejm within three months, and when the representative submits a financial statement to the Minister of Finances after the lapse of the time limit of three months (Art. 18 of the Act on using an initiative).

In Article 18 of the Act the Legislature omitted two cases in which the committee is dissolved. Thus, the committee should be dissolved in the event that the Speaker of the Sejm rejects a bill, and when the Supreme Court issues an order dismissing the complaint of the representative against the rejection of the bill by the Speaker of the Sejm (Art. 11 of the Act on using an initiative).

Moreover, in Art. 18 subpar. 1 pt. 2 we have to do with a mistake of the Legislature as regards the order of the Supreme Court. This provision states that the committee is dissolved three months from the date of an order by the Supreme Court dismissing the appeal of the refusal of the Speaker of the Sejm to let the draft bill take its course. By dismissing this decision the Supreme Court imposes an obligation on the Speaker of the Sejm to refer this draft bill to the Sejm. The first reading takes place within three months from the date of giving the order. The representative of the committee takes part in the discussion on the people's draft bill in the Sejm. So how can the representative take part in the works of the Sejm, if within the same time-limit of three

---

<sup>7</sup> This problem was mentioned by Deputy J. Madej during the discussion on the amendments of the Senate, but his comments were not taken into consideration.

<sup>8</sup> P. Winczorek, *Obywatele wnoszą projekt ustawy*, "Rzeczpospolita", No. 196, 23 October 1999.

months the committee is dissolved? Maybe, the Legislature meant an order of the Supreme Court dismissing an appeal (and not the appealed-against decision) against the decision of the Speaker of the Sejm on refusing to make the draft bill take its course. In this case, the dissolution of the legislative initiative committee would be sensible<sup>9</sup>.

## II.

In Poland a people's initiative cannot refer to the matters reserved in the Constitution for other subjects holding a right of a legislative initiative (Art. 3 of the Act on using an initiative). Article 221 of the Constitution stipulates that the right of a legislative initiative within the following acts: a budget one, on interim budget, on contracting a public debt, and on furnishing financial guaranties by the State is vested only in the Cabinet. As regards the relations between the Republic of Poland and other churches and religious unions than the Catholic Church, pursuant to Art. 25 subpar. 5 of the Constitution of the Republic of Poland, the right of legislative initiative has been vested only in the Cabinet, excluding at the same time the possibility of a people's legislative initiative.

The fact of allowing a people's initiative with regard to putting forward a draft bill expressing consent to the ratification of an international agreement (Art. 90 of the Constitution of the Republic of Poland) may arouse some doubts. We should agree with the opinion of M. Jabłoński, who asserts that "the cause of this uncertainty lies in the granting of exclusive powers to the Sejm for making a decision in the matter of choosing the course of making such consent. This is because this competence would indicate that the right of putting forward a draft bill is vested only in this authority"<sup>10</sup>.

By failing in Art. 235 subpar. 1 of the Constitution of the Republic of Poland to define a group of citizens as one of the subjects allowed to put forward a draft bill on amending the Constitution, the Legislature excluded the possibility of a people's constitutional initiative. In this indirect way he defined

---

<sup>9</sup> S. Grabowska, *Inicjatywa ustawodawcza obywateli*, "Studia z prawa wyznaniowego" 2001, No. 2, p. 157.

<sup>10</sup> M. Jabłoński, *Obywatelskie prawo inicjatywy...*, pp. 651–652.

a people's legislative initiative in terms of a so-called ordinary initiative, relating only to acts<sup>11</sup>.

It seems unjustified to deliberate as to whether a group of citizens can submit draft bylaws of the Sejm or Senate by way of a people's initiative<sup>12</sup>. The right to put forward draft bylaws of the Sejm and Senate does not belong to the matter of a people's initiative. These bylaws are internal regulations of these Houses adopted in the form of a resolution. A people's initiative pertains only to those legal acts, i.e. laws, which relate to ordinary national legislation.

### III.

In accordance with the Polish regulations, a representative of a legislative initiative committee, after having collected one thousand signatures of the citizens supporting a draft bill, notifies the Speaker of the Sejm of the formation of the committee and of the intent to put a people's draft bill before the Sejm. Such a notification, apart from the thousand signatures, contains the full name of the committee, its address, the personal data of the committee members, the personal data of the representative and his deputy and the draft bill together with the explanatory statement. Such an explanatory statement should contain: an explanation of the need and purpose for passing such a bill; social, economic, financial implications and legal consequences; the sources of financing the bill; differences between the current and proposed regulatory environment; a declaration of the compliance of the people's draft bill with the law of the European Union; and proposals of basic implementation acts. It should also present the results of the consultations carried out and give information about the presented variants and opinions in the event that the obligation to seek such opinions results from the provisions of the act (Art. 31 subpar. 2 and 3 of the Bylaws of the Sejm)<sup>13</sup>. Failure to provide

---

<sup>11</sup> See also the Reasons of the Resolution of the Constitutional Tribunal dated 27<sup>th</sup> September 1994.

<sup>12</sup> P. Uziębło, *Ustawa z 1999 roku o wykonywaniu inicjatywy ustawodawczej przez obywateli*, "Przeгляд Sejmowy" 2000, No. 4, p. 52.

<sup>13</sup> Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 30 lipca 1992 r. Regulamin Sejmu Rzeczypospolitej Polskiej (M.P. Nr 26, poz. 185).

any of these requirements may be recognised as a mistake and thus the notification may be returned for supplementing. The preparation of a draft bill by the people's initiative committee may cause some problems in form because of the lack of professional preparation and access to the necessary data and information<sup>14</sup>.

We should concur with the opinion of P. Uziębło, who considered as controversial the rejection by the Sejm of the amendment passed by the Senate aimed at making it possible for a representative of a committee to demand assistance from the State administrative agencies in determining the predicted financial implications of the adoption of a bill<sup>15</sup>.

A people's initiative committee can report only one draft bill. When the initiators aim at passing an amendment to binding regulations, one committee may report several draft bills. If different draft bills, unrelated to one another, are to be reported, then it is necessary to form two or more legislative initiative committees, which can, however, be composed of the same people<sup>16</sup>.

If the report does not contain any mistakes, the Speaker of the Sejm determines within fourteen days after it is submitted whether it is to be accepted or not. A decision to accept the report is immediately conveyed to the representative of the committee. As of the day the decision by the Speaker of the Sejm is communicated, the contents of the draft bill can no longer be changed (Art. 6 subpar. 1–4 of the Act on using an initiative).

After completing the action of gathering signatures, the representative of the committee lodges a motion to institute a legislative process by the Sejm. He includes with it the people's draft bill in its unchanged form together with one hundred thousand signatures and the information included in the report submitted to the Speaker of the Sejm. This means that the draft bill lodged with the Speaker of the Sejm should meet the requirements defined in the Constitution and the Bylaws of the Sejm (Art. 118 *supra*. 3 of the Constitution of the Republic of Poland, Art. 34 subpar. 2 of the Bylaws of the Sejm).

---

<sup>14</sup> M. Kruk, *Prawo inicjatywy ustawodawczej w nowej Konstytucji RP*, "Przegląd Sejmowy" 1998, No. 2, p. 26.

<sup>15</sup> P. Uziębło, *Ustawa z 1999 roku o wykonywaniu inicjatywy ...*, p. 53.

<sup>16</sup> B. Szepietowska, *W sprawie wykonywania inicjatywy ustawodawczej przez obywateli (art. 118 ust. 2 konstytucji)*, "Biuletyn Ekspertyzy i Opinie Prawne" 2000, No. 3, pp. 56–57.

**IV.**

In accordance with the Act on using an initiative, the Speaker of the Sejm of the Republic of Poland is the authority necessary to institute a procedure connected with a people's initiative for submitting a draft bill. He decides whether or not to accept a notification of the formation of a committee. In the event that the Speaker of the Sejm finds formal defects in a notification, such as, for example, the absence of the personal data of committee members, he sets a fourteen-day period for removing the defects. If the representative fails to do that, the Speaker refuses to accept the notification.

Upon lodging a draft bill by the representative, the Speaker of the Sejm refers it to the Sejm. If it is found that the contents of the bill or explanatory statement has been changed, he will refuse to accept the draft bill (Art. 10 subpar. 3, Art. 11 subpar. 1 of the Act on using an initiative).

Moreover, in case of justified doubts as to the validity of the signatures collected, the Speaker may apply to the State Electoral Commission in order to determine the number of correctly affixed signatures within fourteen days after submitting the draft. If, as a result of the verification of signatures carried out by the State Electoral commission, it turns out within twenty-one days that the number of signatures is less than the statutory number, the Speaker of the Sejm will refuse to allow the draft bill take its course<sup>17</sup>.

The Speaker of the Sejm has fourteen days -- from submitting the report or from submitting a draft bill together with signatures, or from receiving a finding of the State Electoral Commission -- to make his determination. In case a refusal to allow the matter to move forward, the representative of the committee has a right to appeal against this decision to the Supreme Court within fourteen days from the date of receiving the decision with its reasons.

**V.**

The people's initiative committee may start a promotional campaign for a draft bill in Poland and the process of collecting signatures of citizens sup-

---

<sup>17</sup> P. Sarnecki, *Wprowadzenie Konstytucji w życie*, [In:] *Wejście w życie nowej Konstytucji Rzeczypospolitej Polskiej*, ed. Z. Witkowski, Toruń 1998, p. 17.



porting the draft bill after publishing the acquisition of a legal personality by the committee, the address of the committee, and the location where the draft bill will be available for inspection in a daily newspaper having a nationwide circulation<sup>18</sup>.

Promotion campaigns and processes for collecting signatures are governed by the relevant electoral regulations for the Sejm of the Republic of Poland and the Senate of the Republic of Poland, which define the principles of conducting election campaigns (Art. 85–93, to the exclusion of Art. 94, of the Electoral Regulations)<sup>19</sup>.

At places where signatures are collected, the draft bill must be made accessible for inspection. A citizen gives his support for the draft bill by putting his signature on a list whose form was determined by the Prime Minister by way of an ordinance after obtaining the opinion of the State Electoral Commission<sup>20</sup>. Each page of the list must be identified by the name of the committee and the title of the draft bill for which a citizen gives his support.

Citizens express their support for the draft bill by putting their signatures under the draft, giving their full name, address of residence and PESEL Personal Identifier. These signatures are placed on an appropriate list. It is not possible to withdraw this support once it has been given for a draft bill (Art. 9 of the Act on using an initiative).

After having collected the requisite number of signatures, the representative of the committee should report the draft bill to the Speaker of the Sejm together with the list of the signatures of the citizens supporting the draft no later than three months from the date of receiving the decision to accept the notification of the committee formation,. If all the activities have been conducted in accordance with the Act, the Speaker of the Sejm sends it up for the first reading, at the same time notifying this fact to the representative of the committee (Art. 10 of the Act on using an initiative).

---

<sup>18</sup> S. Grabowska, *Inicjatywa ludowa w Rzeczypospolitej Polskiej*, "Rzeszowskie Zeszyty Naukowe" 2001, t. 30, p. 181.

<sup>19</sup> Ustawa z dnia 12 kwietnia 2001 r. Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej i do Senatu Rzeczypospolitej Polskiej (Dz.U. Nr 46, poz. 499 ze zm.).

<sup>20</sup> Rozporządzenie Prezesa Rady Ministrów z 28 września 1999 r. w sprawie ustalenia wzoru obywateli, którzy udzielają poparcia projektowi ustawy stanowiącej przedmiot inicjatywy ustawodawczej (Dz.U. Nr 79, poz. 893).

**VI.**

In Poland, the Supreme Court reviews complaints lodged by the representative of the committee in connection with decisions given by the Speaker of the Sejm which are adverse to the people's initiative committee. Complaints are considered during a non-litigious procedure, in seven-person composition, within 30 days after being submitted<sup>21</sup>.

The Supreme Court decides about upholding or denying a complaint of the representative against a refusal by the Speaker of the Sejm to accept the notification. If the complaint of the representative is upheld, the Speaker of the Sejm is obliged to accept the notification of the committee formation. If the complaint is rejected, the committee is dissolved.

The Supreme Court also decides about upholding or denying an appeal of the representative against a refusal by the Speaker of the Sejm to accept the people's draft bill. By issuing a decision upholding the appeal, the Court imposes an obligation upon the Speaker of the Sejm to accept the draft. By rejecting the appeal, the Court closes any further legislative way for the draft bill.

There is one more case in which the Supreme Court decides in the matter of a people's initiative. This is when the representative of the committee appeals against a decision of the Speaker of the Sejm refusing to allow the draft bill take its course. The Supreme Court may uphold this appeal or not. When the Court upholds the complaint of the representative, the Speaker of the Sejm sends the draft bill for the first reading in the Sejm; if not, the people's draft bill fails. Decisions of the Supreme Court are final, which means that no right of appeal is granted.

A question arises as to why complaints of the representative are brought to the Supreme Court, and not to the Constitutional Tribunal? The representative of the committee cannot appeal against decisions of the Speaker of the Sejm to the Constitutional Tribunal because Article 188 of the Constitution of the Republic of Poland defines precisely all the matters in which the Tribunal can decide. The scope of the competences of the Constitutional Tribunal cannot be extended nor limited by way of an ordinary law. But the legislature, defining the scope of the duties of the Supreme Court, left a "wicket gate" in the form of Art. 183 subpar. 2 of the Constitution of the Republic of

<sup>21</sup> Ustawa z 23 listopada 2002 r. o Sądzie Najwyższym (Dz.U. Nr 240, poz. 2052).

Poland<sup>22</sup>. Owing to this, the number of its functions can be increased by an ordinary law. The Supreme Court examines electoral petitions, determines the validity of elections, the validity of an MP's or senator's election, and the validity of a referendum. Thus, it seems logical that the legislature should entrust this body with the power to rule on complaints lodged by the representative of a people's legislative initiative committee against decisions of the Speaker of the Sejm.

## VII.

In Poland the first reading of a draft bill takes place during a session of the Sejm within three months from the day the draft bill is submitted to the Speaker of the Sejm, or from a decision of the Supreme Court (Art. 13 of the Act on using an initiative). The mere fact of submitting the draft bill to the Sejm for consideration does not end the legislative procedure. The second part of the process is only fragmentarily regulated by the Act. Art. 14 of the Act on using an initiative provides that a representative of the committee take part in the deliberations on the draft bill in the Sejm and the Senate on the basis defined in the bylaws of both the houses. To be able to apply this provision in practice, the bylaws of the Sejm and Senate should be amended. This amendment would concern the participation of a representative of a committee in sessions of the Sejm, Senate and commissions, and the scope of his rights and obligations (e.g. his presence at the meetings, taking the floor in the Sejm and Senate, introducing motions, making it possible and determining the means of bringing forward amendments, and enabling a draft bill to be withdrawn before the second reading is completed).

Art. 14 does not specify clearly whether a representative of a committee may withdraw a people's draft bill. The opinion of M. Jabłoński that "a person representing a people's initiative committee, under the powers granted by this committee and on the basis of the binding regulations, has a right to withdraw a draft bill, especially in a situation when it comes to substantial changes in its contents" seems to be correct<sup>23</sup>. Owing to such powers, it is pos-

---

<sup>22</sup> "The Supreme Court also performs other activities as defined [...] in bills".

<sup>23</sup> M. Jabłoński, *Obywatelskie prawo inicjatywne* ..., p. 661.

sible for a people's initiative committee, through its representative, to supervise the legislative work on the draft bill. In a situation when the final text of a bill departs in a significant way from the text of the draft submitted through the people's initiative, a representative may prevent the adoption of this legal act by withdrawing it. A different opinion is proclaimed by P. Uziębło, who states that the right of the representative of a committee to withdraw a draft bill "Would wreck [...] an enormous social effort with the entire procedure of preparing a draft bill and submitting it to the Speaker of the Sejm"<sup>24</sup>. In consequence, such an opinion makes it impossible for the organisers of a people's initiative to have any influence on its further fate after having submitted the draft to the Speaker of the Sejm.

A draft bill introduced by a group of citizens in Poland enjoys certain preferences. Pursuant to Art. 3 subpar. 3 of the Act on using an initiative, a draft bill for which the legislative procedure is not completed before the expiry of the Sejm's term of office shall be considered by the Sejm of the next session within a period of no longer than six months from the first session of the newly-elected Sejm, without the necessity of its resubmission. So, just as with the Italian and Spanish legislatures, the Polish version also abolished the principle of discontinuation with regard to the people's draft bill<sup>25</sup>.

Apart from this, contrary to the situation with other draft bills, the Sejm conducts the first reading of a draft bill introduced by citizens within 3 months from the date this draft is submitted to the Speaker of the Sejm. It always takes place during a plenary session of the Sejm, whereas in case of other draft bills the first reading may take place at forums of the Sejm commissions.

The financial records of a people's legislative initiative are open to public in Poland. A committee covers all the expenditures connected with the activity conducted, and it may derive funds for this purpose from public collections, for example (Art. 15 of the Act on using an initiative)<sup>26</sup>. The financial resources of a committee cannot come from the budget of the state, from state enterprises and organisational units, from the budget of territorial self-government units, communal unions and other communal legal entities, or from

---

<sup>24</sup> P. Uziębło, *Ustawa z 1999 roku o wykonywaniu inicjatywy...*, p. 65.

<sup>25</sup> L. Garlicki writes about the principle of discontinuing the work of the parliament, *idem, Zasada dyskontynuacji prac parlamentarnych*, "Studia Iuridica" 1995, No. 28, p. 45 et al.

<sup>26</sup> The principles and procedure of raising funds are defined by the Act.

enterprises with the participation of the State Treasury, territorial self-government units, communal unions and other communal legal entities. These limitations refer to funds coming from: physical persons not registered in the territory of Poland, excluding the Polish citizens residing abroad, registered foreigners and legal persons without a seat in the territory of Poland, legal persons with the participation of foreign subjects and other subjects having the capacity to enter into legal transactions, but without a seat in the territory of Poland. A committee cannot be financed by foreign diplomatic missions, consular offices, special missions and international organisations or other agencies holding diplomatic immunity on a contract basis (Art. 16 of the Act on using an initiative).

The representative of a committee must submit a financial statement regarding the way and sources of gathering the means for its activity to the Minister of Finances within three months from the submission of a draft bill with the Speaker of the Sejm, from a decision by the Supreme Court regarding the appeal of the representative against the refusal by the Speaker of the Sejm to allow the draft bill to take its course, or from the prior dissolution of the committee. A sample statement is determined by the Minister of Finances by way of an ordinance<sup>27</sup>. The representative publishes the statement in a daily newspaper having a nationwide circulation. If the receipts were higher than the expenditures, the representative transfers the surplus to charity. He is obliged to keep the financial records of the committee for 12 months.

## VIII.

After a period of over five years during which the Act of using a people's legislative initiative has been binding in Poland, it is clearly evident that the Sejm is not in danger of being inundated (as it was feared during the debate on the draft bill on an initiative) by a huge number of people's proposals. It may be said that the situation is quite the opposite. In comparison to the statistics in other countries, the number of people's initiatives is not small. The initiators

---

<sup>27</sup> Rozporządzenie Ministra Finansów z 27 sierpnia 2001 r. w sprawie wzoru sprawozdania o źródłach pozyskiwania funduszy na cele inicjatywy ustawodawczej wykonywanej przez obywateli oraz szczegółowego zakresu zawartych w nim informacji (Dz.U. Nr 94, poz. 1036).

of draft bills are usually various interest groups -- from teachers and old-age pensioners to nurses and the unemployed.

So far political parties have not engaged very much in promoting people's legislative initiatives. Owing to this circumstance there is still a chance for people's initiatives to remain initiatives of groups of citizens, and not of political parties, as is the case in Italy, for example. This will have a favourable effect on the attitude of the parliament to draft bills of this type.

## IX.

When analysing the institution of a people's initiative for passing a bill in Poland the following conclusions can be drawn.

The Polish legislature prescribed a term of three months for collecting the requisite number of signatures. In my opinion, it should be longer: this period should amount to at least six months, just like, for example, in Italy or Spain.

An interesting solution to the problem of collecting signatures has been provided for by the Austrian legislature. The entire action of collecting signatures through a people's initiative is prepared and carried out by the local agencies entitled to do this, and not by the initiators of a people's initiative. In connection with this, the term for collecting the requisite number of signatures is eight days. Before the term for signature collection is set by the Minister of Internal Affairs, the initiators of a people's initiative have time to prepare a promotional campaign<sup>28</sup>. It is an interesting solution, and, in my opinion, better than the others. It is always easier for citizens to mobilise and put their signatures within a strictly appointed and short period. Such a solution, however, is possible only when state agencies assist the organisers of an initiative in the action of raising signatures, because it requires large financial resources and a significant number of people to be involved, as well as an appropriate number of premises where it will be possible for people to actually sign. The organisers of an initiative are not able to organise and conduct everything in such a short time and in such a way by themselves.

---

<sup>28</sup> Art. 41 ust. 2 Federalnej Ustawy Konstytucyjnej Republiki Austrii z dnia 1 października 1920 r., tłum. i wstęp P. Czarny i B. Naleziński, Warszawa 2004, § 7–8 *Volksbegehrensgesetz* 27.06.1973 (BGBl. Nr 344/1973).

The Polish legislature did not provide for an obligatory certification by a civil servant (e.g. in a gmina office) of the signatures placed under a people's motion for a bill. Such verification is only carried out upon a motion of the Speaker of the Sejm in case of justified doubts. Such verification is important, also because it gives certainty as to the correctness and number of the affixed signatures even before lodging the proposal with the Speaker of the Sejm. An amendment of this rule by the Polish legislature seems well founded.

An important modification of the parliamentary procedure with regard to a people's draft bill is found in the abolition of the principle of discontinuing. Owing to preferences of this type, the effort of the initiators of a people's initiative and the will of a large group of citizens will not be undone in a situation when the legislative work on the people's draft bill is not completed before the expiry of the term of office or the parliament dissolution.

Another interesting regulation accompanying the work on a people's draft bill in parliament is seen in the obligation to always conduct the first reading of the draft during a plenary session of the parliament. Moreover, the Polish legislature imposed the obligation of conducting the first reading of a people's draft bill in the parliament within a deadline of three months from the date of the effective submission of a people's draft bill to the Speaker of the Sejm. Owing to such arrangements, the initiators of a people's initiative are certain that the people's draft bill will not "sit" in the parliament for an indefinite period of time.

The mechanism for settling financial matters connected with a people's initiative for adopting a bill also deserves notice. In Poland the provisions of the Act allow for the possibility of obtaining funds for covering the expenditures connected with a people's initiative by means of public collections. But the group of subjects which may finance a people's initiative is limited. Moreover, the Polish organisers of a people's initiative must document their expenditures by submitting a financial statement of their activity.

A characteristic feature of the Polish law regulating the institution of a people's initiative is in the penal provisions (Art. 19–20 of the Act on using an initiative). It is a good solution, because the provisions regulate the matters connected with a people's initiative. Owing to this, there is no need to "adjust" the provisions of other laws to the provisions of the Act on using an initiative. The specific character of the matters connected with a people's ini-

tiative does not always make it possible to interpret other provisions in such a way that the interpretation would cover the matters connected with a people's legislative initiative.

Two models of legal regulations can be distinguished in European countries as regards the institution of a people's initiative for presenting a draft bill in the parliament. The first model can be found in Italy and in Poland. The legislature put all the matters connected with the organisation of a people's initiative into the hands of its organisers, starting with the formation of an initiative committee through the action of raising signatures to financing. The state agencies cannot assist the initiators of a people's draft bill in any way.

The second model occurs in Spain and Austria, where the state helps, to a different degree, in the organisation of a people's initiative. In Spain the state agencies reimburses the expenses connected with the organisation of an initiative, but only when the organisers succeed in putting a draft bill before the parliament. In Austria, on the other hand, the local governments conduct the entire action of collecting signatures supporting a people's motion for putting a draft bill before the parliament.

The solution in which the state helps its citizens take advantage of the forms of direct democracy seems justified. Apart from the above-mentioned forms of assisting the organisers of a people's initiative, we could also offer some help, for example, in the preparation of a declaration about the financial effects of its implementation, in establishing sources of financing in the event that a draft bill charges the state budget, or in the preparation of a declaration about whether a people's draft bill is consistent with the law of the European Union. Citizens do not have the organisational, financial and legal back-up facilities at their disposal as do the state agencies. With such support, the organisation of a people's initiative would be carried out in a more efficient way. People's draft bills would have a chance for better preparation, and thus the legislative process could be conducted faster.

At present the institution of a people's initiative is not a frequently-used form of direct democracy, but a tendency can increasingly be noticed for citizens to exhibit an interest in state affairs. This tendency is manifested by an increase in the number of the reported people's legislative initiatives.

There are several reasons for this state of affairs. A lack of interest on the part of the citizens, or their lack of understanding of the substance of the pro-



posals submitted -- as well as distrust towards the authority agencies -- may be some reasons for the infrequent use of this form of direct democracy. The lack of assistance from state agencies during the preparation of a people's draft bill and during the organisation of promotion campaign or action of raising signatures may be considered to be another reason.

Activity on the part of other subjects holding the right to initiate a legislative initiative that pays attention to any and all signals from citizens regarding the need for adopting new (or amending already-existing) legal regulations may have an influence on the low number of people's legislative initiatives.

Another reason could be, as rightfully noticed by M. Jabłoński, the fact that the parliament is not obliged to complete the legislative procedure for adopting a people's draft bill. The proposers of people's initiatives do not have any influence on the final contents of the law adopted upon the people's motion, and they do not possess any legal remedies to influence the work of the legislative agencies<sup>29</sup>.

Unfortunately, to a large extent people's draft bills are not converted into specific laws. They are rejected by the representative bodies, or the completion of their legislative process is postponed because of political implications of adopting such a law. Draft bills are also rejected in cases when the members of the parliament find mistakes during the work on a people's draft bill which are significant enough to make the enforcement of such a bill almost impossible: e.g. inconsistency with already existing laws, unclear way of financing any matters resulting from the bill or, finally, inaccurate vocabulary. When the parliament does not adopt a people's draft bill, it must take into consideration the effects that such rejection may cause. Prolongation of the legislative process may turn out to be a paradoxically better way out for the parliament. By introducing amendments to the draft bill the members of the parliament lay themselves open to criticism (e.g., by the opposition) that the adopted law departs significantly from the contents of the draft bill submitted through a people's initiative.

A real "Solomonic" way out of such a situation was found by the members of the Polish parliament. After the successful submission of the draft bill on the Foundation of National Education to the Speaker of the Sejm, the Sejm

---

<sup>29</sup> M. Jabłoński, *Obywatelskie prawo inicjatywy ustawodawczej, ...*, pp. 664–665.

adopted the law on the Common Scholarship Fund<sup>30</sup>, without introducing practically any significant amendments<sup>31</sup>. This new law was almost identical in wording with the contents of the people's draft bill. Upon adoption, the law was handed over to the Senate, which lodged a motion for rejecting the law because, among other things, it contained numerous substantial mistakes, inconsistencies with the binding law and inaccurate vocabulary<sup>32</sup>.

The citizens realise their superior authority through their representatives and directly, thanks to the institutions of direct democracy. If the parliament regularly performs its duties in this way, this practice may cause people to doubt in democracy as a form of authority. It may also cause a decrease in confidence in state institutions, the efficiency of the institutions of direct democracy, and the meaning of their existence.

## Literature

- Garlicki L., *Zasada dyskontynuacji prac parlamentarnych*, "Studia Iuridica" 1995, No. 28
- Grabowska S., *Geneza i ewolucja inicjatywy ludowej w Europie*, "Gubernaculum et Administratio" 2001.
- Grabowska S., *Inicjatywa ludowa w Rzeczypospolitej Polskiej*, "Rzeszowskie Zeszyty Naukowe" 2001, t. 30.
- Grabowska S., *Inicjatywa ustawodawcza obywateli*, "Studia z prawa wyznaniowego" 2001, No. 2.
- Jabłoński M., *Obywatelskie prawo inicjatywy ustawodawczej*, [In:] *Prawa i wolności obywatelskie w Konstytucji RP*, eds. B. Banaszak, A. Preisner, Warszawa 2002.
- Jaskiernia J., *Zasady demokratycznego państwa prawnego w sejmowym postępowaniu ustawodawczym*, Warszawa 1999.
- Kruk M., *Prawo inicjatywy ustawodawczej w nowej Konstytucji RP*, "Przeгляд Sejmowy" 1998, No. 2.
- Sarnecki P., *Wprowadzenie Konstytucji w życie*, [In:] *Wejście w życie nowej Konstytucji Rzeczypospolitej Polskiej*, ed. Z. Witkowski, Toruń 1998.
- Skrzydło W., *Władza ustawodawcza w Konstytucji RP*, [In:] *Ustrój konstytucyjny Rzeczypospolitej Polskiej*, ed. R. Mojak, Społeczeństwa – demokracje – konstytucje, T. X, Lublin 2000.

<sup>30</sup> Druki sejmowe Nr 1816, 2397, 2524, 3162, 3162-A.

<sup>31</sup> Ustawa z dnia 27 lipca 2001 r. o Powszechnym Funduszu Stypendialnym.

<sup>32</sup> Druki senackie Nr 771, 771A, 771Z.

Szepietowska B., *W sprawie wykonywania inicjatywy ustawodawczej przez obywateli (art. 118 ust. 2 konstytucji)*, "Biuletyn Ekspertyzy i Opinie Prawne" 2000, No. 3 (39).

Uziębło P., *Inicjatywa ustawodawcza obywateli w Polsce na tle rozwiązań ustrojowych państw obcych*, Warszawa 2006.

Uziębło P., *Ustawa z 1999 roku o wykonywaniu inicjatywy ustawodawczej przez obywateli*, "Przegląd Sejmowy" 2000, No. 4.

Wieczorek P., *Obywatele wnoszą projekt ustawy*, "Rzeczpospolita", No. 196, 23 October 1999.