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Does the highest authority in the state belong to the Nation? Effectiveness of the citizens' legislative initiative

Keywords: citizens' legislative initiative, legislative procedure, parliament, statute

Słowa kluczowe: obywatelska inicjatywa ustawodawcza, procedura legislacyjna, parlament, suweren

Abstract

The subject of the present article is the analysis of the functioning of the institution of citizens' initiative in Poland, as well as a reference to the effectiveness of the institution in question on the example of draft acts that were voted upon by the 7th term of the Polish Sejm.

Streszczenie

Czy najwyższa władza w państwie należy do Narodu? Efektywność obywatelskiej inicjatywy ustawodawczej

Przedmiotem niniejszego artykułu jest analiza funkcjonowania instytucji obywatelskiej inicjatywy ustawodawczej w Polsce, a także odniesienie się do efektywności przedmiotowej instytucji na przykładzie projektów rozpatrywanych przez Sejm VII kadencji.

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Pursuant to Art. 4 section 1 of the 1997 Constitution of the Republic of Poland, the supreme power is vested in the Nation³. The nation exercises its power through its representatives or directly using the institutions of direct democracy. One of them is a citizens' initiative, which was introduced in the Polish legal system, for the first time ever, by the Art. 118 s. 2 of the current Constitution, and the detailed procedure for its implementation was been determined by the provisions of the Act of 24 June 1999, on the implementation of legislative initiative by citizens⁴. The citizens' legislative Initiative is one of the institutions aiming at socializing the law-making process and an important tool for the development of civil society in Poland. In accordance with the legal regulation referred to above (Art. 118 s. 2 of the Constitution of the Republic of Poland), a group of at least one hundred thousand citizens holding an active electoral right to the Sejm has the right of initiative, that is, submitting a bill to an authorized body of the state (Sejm in Poland) to initiate the legislative process⁵. The execution of the right of initiative by the entity authorized to do⁶ forms the required precondition for the further stages of the legislative process⁷, and its ultimate goal should be the adoption of a normative act, in the most significant form of source of law, after the Constitution⁸, i.e. an Act of Law.

18 citizens' drafts were submitted during the 7th term of Sejm⁹ pursuant to the procedure of Art. 118 s. 2 of the Constitution of the Republic of Poland.

³ Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483, as amended).

⁴ Dz.U. 1999, No. 62 item 688, as amended.

⁵ M. Borski, R. Glajcar, B. Przywora, *Postępowanie ustawodawcze w Polsce – prawo, zwyczaje i praktyka*, Sosnowiec–Katowice–Częstochowa 2015, p. 8.

⁶ Pursuant to Art. 118 of the Constitution of the Republic of Poland, the legislative initiative in Poland is vested in the MPs, the Senate, the President and the Council of Ministers.

⁷ Detailed legal regulations relating to the legislative process are included in the Regulations of the Sejm and the Senate.

⁸ See: Art. 87 of the Constitution of the Republic of Poland.

⁹ The values given do not include projects submitted as a continuation of the legislative procedure of the Sejm of the 6th term.

The subject matter of the initiatives was very diverse, and they concerned matters related to: income of local government units, animal protection, family allotments, conditions for termination of pregnancy, national and ethnic minorities, regulations of the profession of physiotherapist, pension system of uniformed services, education system or the regime for drug reimbursement.

Between 2011 and 2015 two acts were adopted following citizens' initiative, i.e. the act on family allotments, and the act amending the act – Construction industry law, and several other bills.

The citizens' bill on family allotments was directed to the Sejm on 12 October 2012 (print No. 1204). It established a comprehensive legal regulation of family allotment gardens and the status of gardeners. Pursuant to Art. 1 of the bill, the subject of the Act were the principles of establishing, functioning and liquidation of family allotments, the rights and obligations of gardeners, the principles of their association and the task of gardeners associations and public administration in the field of supporting allotment gardening (print No. 1204). The draft was prepared as a reply to the judgment of the Constitutional Tribunal of 11 July 2012 (case file OTK-A 2012/7/78), which questioned the constitutionality of a number of provisions of the Act of 8 July 2005 on family allotments¹⁰. The Applicant – the Legislative Initiative Committee of the Draft Act on Family Allotments, submitted the draft to the Speaker of the Sejm, along with almost a million signatures of people supporting the initiative. Such a significant number of signatures undoubtedly testified to the broad social support for the solutions proposed in the draft and the need for a different regulation than hitherto¹¹.

In the course of the legislative process, the citizens' project was considered together with three projects submitted by groups of MPs: Solidarna Polska Parliamentary Club (Sejm print No. 1148), Parliamentary Club of the Democratic Left Alliance (Sejm print No. 1170) and Parliamentary Club of the Civic Platform (Sejm print No. 1240). Legislative work on the draft act on family al-

¹⁰ The Constitutional Tribunal in its judgment of 11 July 2012, stating the non-compliance with the Constitution of 24 articles of the Act of 8 July 2005 on family allotments (Dz.U. No. 169, item 1419, as amended), postponed to eighteen months the loss of validity of the indicated provisions in the scope specified in the judgment with the exception of Art. 10 of the Act.

¹¹ More on that topic M. Rachwał, *Funkcjonowanie obywatelskiej inicjatywy ustawodawczej w Polsce. Podstawy prawne, praktyka, perspektywy rozwoju*, Poznań 2016, pp. 135–136.

lotments ended with the passing of the Act in its final version on 13 December 2013 (transcript from the 57th Sejm session of the seventh term), after consideration of amendments submitted in the Senate's position, and the President signed the act on 18 December 2013¹² and submitted it for publication¹³.

The second of the passed drafts was the citizens' act amending the Construction Industry Law and some other acts (Sejm print No. 2953), which was received by the Sejm on 27 October 2014, and the applicant was the Legislative Initiative Committee "STOP THE DEMOLITIONS OF GAZEBOS" (Pol. "Stop Rozbiórkom Altan"). The project aimed to clarify the legal regulations contained in the construction industry law and referring to the construction principles for family allotments¹⁴. The Ratio legis of the submitted project was to remove the gap in the law and prevent the demolition of 900,000 gazebos located in family allotments. The initiative met with a great social response because under the bill amending the Construction industry law act and some other acts some 700,000 signatures of eligible persons were collected.

On 18 December 2014, the plenary session of the Sejm held the first reading of the draft project. Due to its uncomplicated subject and support of all clubs and deputies, work on the project was swift and already on 6 February the draft was adopted by the Sejm, and the Act amending the Construction Industry Law Act and some other acts was signed by the President on 2 April 2015, and submitted for publication.

In 2011–2015, MPs rejected as many as 7 out of 18 submitted drafts. These were: two drafts on the issue of the admissibility of termination of pregnancy submitted by the citizens' committee "STOP ABORTION" (Pol. "Stop Aborcji") – Sejm prints 1654 and 3806. Both drafts envisaged a complete ban on abortion (in the first draft ban was to concern eugenic abortion), and they found the support of almost a million of signatories. Other rejected drafts were: the citizens' initiative "We bring history lessons back to schools" (Pol. "Przywracamy lekcje historii do szkół") the draft amending the law on the education

¹² The Act on family allotment gardens came in force on 19 January 2014.

¹³ The Act of 13 December 2013 on family allotments (Dz.U. 2014, item 40).

¹⁴ The citizens' initiative was a consequence of the judgment of the Supreme Administrative Court of 9 January 2014, which was stated that the lack of a legal definition of the notion of "gazebo" implies that, when interpreting the provisions of the Act – construction industry law, the meaning of the word taken from the Polish Common Dictionary should be applied.

system (parliamentary print 895), and supported by 100,000 signatures, the citizens' initiative "Free Sunday" (Pol. "Wolna Niedziela") amending the The labour code (parliamentary print No. 2113), supported by about 115,000 signatures, draft legislative initiative "Stop pedophilia" (Pol. "Stop pedofili"), aimed at amending the criminal code (parliamentary print 2654), backed by the votes of 250,000 citizens, civic draft amending the Act on the education system and certain other laws submitted by the Committee of legislative initiative "The parents want to have a choice" (Pol. "Rodzice chcą mieć wybór") (parliamentary print No. 3177), backed by almost 300,000 of the entitled person, and the citizens' draft law on amending the Electoral code and some other acts, which was submitted to the Parliament by the citizens' legislative initiative "Fair Elections" (Pol. "Uczciwe wybory") (Sejm print No. 3248), supported by more than 130,000 signatures.

All of the above projects were rejected by the Sejm already at the first reading. MPs "threw away" about 3 million signatures of citizens who wanted to have a real impact on the legal regulations in force in the country.

Another situation concerned the citizens' draft act on the territorial jurisdiction of common courts and amending the Law on the system of common courts (Sejm print No. 804). The draft was adopted by the Sejm and after rejection of the Senate veto, it went sent to the President's desk, who also vetoed it, sending the bill back to the Sejm with a substantiated request for reconsideration. However, the Act failed to gather the required 3/5 of votes in the presence of at least half of the statutory number of deputies¹⁵.

8 drafts of citizens' legislative initiatives were submitted to the Sejm in the 8th term, and the legislative process was not completed in any of them. One of the citizens' drafts – of the Act amending the animal protection¹⁶ act (print No. 2349) was withdrawn by the applicant already during the works in the Sejm of the eighth term; six of the projects were submitted to the Sejm

¹⁵ Vote No. 24.

¹⁶ The Constitutional Tribunal in the judgment of 27 November 2012, Case file U4/12, ruled that the provision of § 8 sec. 2 of the Regulation of the Minister of Agriculture and Rural Development of 9 September 2004 on the qualification of persons entitled to perform professional slaughter and the conditions and methods for the slaughter and killing of animals is inconsistent with Art. 34 sec. 1 and sec. 6 of the Act of 21 August 1997 on the protection of animals, as well as Art. 92 sec. 1 of the Constitution.

during its 8th term of office and are pending committee entries, or just after the first reading, and one of the drafts failed to reach the first reading yet.

Parliamentary practice shows the ostensible desire to include a sovereign in the law-making process. After the first reading, where the deadline for the first Sejm reading is set by the law the citizens initiatives are forwarded to the committee and processed there for unspecified period of time because there are no statutory deadlines that would precisely set the dates the committees have to process these citizens' drafts.

When analyzing the submitted projects, it should be noted that the citizens are most likely to submit drafts that change the existing laws and very rarely attempt to initiate proceedings in the area of completely new acts of law. Furthermore the content of legislative acts adopted by the parliament, where the legislative process was initiated in the mode of Art. 118 of the Constitution, often differs in the final version from the content of the draft submitted by the citizens. Due to the fact that citizens' drafts may be proceeded jointly with other drafts, the content of the acts adopted by the Sejm differs from the intentions of bodies that submit the draft to the Sejm. Projects adopted by means of a citizens' initiative may also be amended by other entities than those benefiting from the right of legislative initiative in the light of the Constitution.

Apart from successfully submitted citizens' initiatives, during the 7th term of the Sejm, twenty civic committees were formed, which attempted to refer draft laws to the Sejm, pursuant to Art. 118 of the Constitution. However, these initiatives encountered different formal obstacles, such as improper notifications of creation of a legislative initiative committee or insufficient time to collect missing signatures, or late notification of the committees about the start of a 3-month period for signature collection.

It seems that in the light of the applicable legal provisions, the influence of the sovereign on the normative acts in the legal system is apparent, and its role and significance in the law-making process are illusory. Parliamentary practice proves that the most important function of law-making is to realize the political interests of the absolute majority of the respective term of office. However, each of the parliamentary groups stresses the need to further develop the civic society in their political programs.

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