

**STATE
OF DEMOCRACY
HUMAN RIGHTS
AND THE RULE
OF LAW IN POLAND**
RECENT
DEVELOPMENTS

EDITED BY

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CITIZENS' LEGISLATIVE INITIATIVE - INSTRUMENT OF PARTICIPATORY DEMOCRACY

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OLAF SZCZYPIŃSKI

Citizens' legislative initiative is a form of direct democracy on the central level. It enables a group of citizens to initiate legislative procedure²⁵⁰. Its construction reflects one of systemic principle of Polish legal system, according to which the people are the supreme authority (article 4 of the Polish Constitution)²⁵¹. As such, citizens' legislative initiative gives Polish citizens the possibility to directly impact the works of the Sejm as the Parliament's lower chamber is obliged to examine the submitted initiative. This right for citizens to craft and submit legislative initiatives is guaranteed by the Constitution of Poland and is considered an element of a democratic State under the rule of law. **During previous parliamentary terms, citizen's legislative initiatives often been ignored by the parliamentary majority and rejected in their first reading, even before substantive parliamentary proceedings begin.**

The present analysis of the citizens' initiative mechanism includes a description of the current legal situation as well as a review of the citizens' right exercise of the right to direct governance as practiced in previous parliamentary terms and the current, 8th term which began in November 2015.

THE CITIZENS' INITIATIVE IN THE POLISH CONSTITUTION

The citizens' initiative mechanism was in the 1997 Constitution. Before, the constitutional tradition in Poland did not know this instrument of direct democracy. **This solution is not unique as other countries have it e.g. Switzerland, Austria, Italy, Macedonia, Romania, Finland, Slovenia, Lithuania and Spain.** At the same time, Polish legislation does not include the possibility to adopt laws by way of a referendum or the right to veto laws by the citizens.

The citizens' legislative initiative is rooted in the systemic norm expressed in Article 4 of the Polish Constitution. According to paragraph 1 of this Article: "Supreme power in the Republic of Poland shall be vested in the Nation". The following paragraph in the Constitution describes how this power shall be exercised. Pursuant to Article 4 para. 2, the Nation shall exercise the power either through their

²⁵⁰ Florczak-Wątor, *Komentarz do art. 4 Konstytucji RP* /Commentary to Article 4 of the Polish Constitution/ (in:) *Konstytucja RP. Tom I, Komentarz do art. 1-86* /Constitution of the Republic of Poland. Vol. 1, Commentary to Articles 1-86/, M. Safjan, L. Bosek (red.), Warszawa 2016, LEGALIS.

²⁵¹ It is as this principle that underlies the democratic system of the State (ibid.).

representatives or directly. This principle constitutes the foundation of the State's system and defines the systemic instruments of the Nation's power²⁵². Therefore, this provision provides for two forms of democracy. Any action undertaken in either of these two forms constitutes an act of the supreme authority of the Nation, meaning that they can shape the activity of the State's organs and citizens' duties²⁵³.

The representative form of democracy does not require a more detailed explanation. In Poland, it is explained in consecutive provisions of the Constitution that regulate the election of representatives and their functions..

The direct form of democracy is also specified later on in the Constitution, which regulates the issues concerning a nationwide referendum (Article 62, Article 125, Article 144 para. 2.5, Article 90 para 3, Article 228 para. 7, Article 235 para. 6) and a citizens' legislative initiative (Article 118 para. 2). Taking into account the scope of this issue, the analysis contained in this report will be limited only to the second instrument.

Article 118 of the Constitution is the first of several provisions in the section concerning legislative power that regulate the rules of the legislative, which is constituted in Poland by Chambers of Sejm and the Senate. Pursuant to Article 118 of the Constitution, **legislation can be introduced** by MPs, the Senate, the President of the Republic and the Council of Ministers (para.1) as well as **a group of at least 100,000 citizens having the right to vote in elections to the Sejm** (para. 2 sentence 1). Article 62 of the Constitution declares that the right to vote arises when a citizen turns 18. In comparison with other countries, the requirement of 100,000 signatures is an easier requirement as it amounts to approximately 0.33% of all citizens having the right to vote, whereas the European average is from 1 to 2%²⁵⁴. Moreover, 100,000 votes is five times less than the number of citizen votes required in referendum, which according to the Constitution requires the support of 500,000 citizens. Thus, it is true that the citizens' legislative initiative is an accessible instrument that allows for the launch of a legislative procedure not only by the bodies connected with major political parties but also by NGOs²⁵⁵.

²⁵² K. Działocha, *Komentarz do art. 4 Konstytucji / Commentary to Article 4 of the Constitution/*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz / Constitution of the Republic of Poland. A Commentary/*, red. L. Garlicki, v. V, p. 20.

²⁵³ *Ibid.*, p. 22.

²⁵⁴ P. Uziębło, *Demokracja partycypacyjna / Participative Democracy/*, Gdańsk 2009, p. 222.

²⁵⁵ K. Górka, T. Litwin (red.), *Konstytucja Rzeczypospolitej Polskiej. Próba oceny i podsumowania z perspektywy dziesięciolecia stosowania / Polish Constitution. Assessment and Summary after 10 Years of Application/*, Kraków 2008, p. 63.

The Constitution requires that a detailed procedure of citizens' legislative initiative be defined in a statute (para. 2 sentence 2). This condition is fulfilled by the Act of 24 June 1999 on the Exercise of Legislative Initiatives by the Citizens²⁵⁶. Entities authorized to introduce legislation are listed exhaustively, and all entities included therein are equal²⁵⁷.

As pointed out by Article 118 para. 13, “a bill” has to be the object of a citizens' legislative initiative. This means that the initiative has to fulfil formal requirements provided for this type of acts in the internal rules of the Sejm (Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Internal Rules of the Sejm of the Republic of Poland²⁵⁸) and in the Legislative Drafting Principles (Regulation of the President of the Council of Ministers of 20 June 2002 concerning “Legislative Drafting Principles”²⁵⁹). A legislative initiative is addressed to the Sejm.

The above article does not include any limitations regarding the subject of bills proposed by citizens. Thus, except for matters exclusively reserved for other entities (Budget Law bill - Article 221, amendment of the Constitution - Article 235 of the Constitution), bills proposed by citizens can concern all matters, and the statute regulating this procedure cannot provide for any subject limitations²⁶⁰. The doctrine also points out that a citizens' legislative initiative cannot refer to relations between Poland and churches or other religious organizations, or propose bills authorizing the President to ratify an international agreement²⁶¹. It is also forbidden to submit bills contradictory to the law binding in Poland or to the EU's “secondary legislation”.

Moreover, as clearly pointed by Article 112 of the Constitution, a bill proposed by a citizens' legislative initiative cannot concern matters that have to be regulated by a normative act that is not a statute (e.g. regulation or local normative acts)

²⁵⁶ Journal of Laws of 1999, no. 62, with subsequent amendments

²⁵⁷ L. Garlicki, *Komentarz do art. 118 Konstytucji, w: Konstytucja Rzeczypospolitej Polskiej. Komentarz /Commentary to Article 118 of the Constitution [in:] Polish Constitution. Commentary.*, red. L. Garlicki, v. II, p. 13.

²⁵⁸ Official Gazette of 2012, item 32.

²⁵⁹ Journal of Laws of 2002, no. 100, item 908.

²⁶⁰ L. Garlicki, *Komentarz do art. 118 Konstytucji /Commentary to Article 118 of the Constitution*, p. 20.

²⁶¹ A. Szmyt, *Obywatelska inicjatywa ustawodawcza /Citizens' Legislative Initiative*, in: *Wybrane zagadnienia nowej konstytucji /Selected Aspects of the New Constitution*, red. A. Szmyt, Gdańsk 1998, p. 151.

or matters regulated by EU law. It is important to note that EU treaties also provide EU citizens the possibility of introducing. However, this initiative is limited²⁶².

LEGISLATIVE INITIATIVE – THE PROCEDURE

The procedure to be followed in the case of a citizens' legislative initiative is regulated in the above mentioned Act: On the Exercise of Legislative Initiatives by Citizens, hereinafter referred to as the Act.

In accordance with the Act, the first step to be taken when launching a citizens' initiative is the creation of a committee to carry out all acts connected with the preparation of a draft bill, its dissemination, promotional campaign and the organization of signature gathering (Article 5 para. 1 of the Act). The committee must be composed of at least 15 people, each having the right to elect members of the Sejm (Article 5 para. 2 of the Act). The committee is represented by its representative or his/her deputy (Article 5 para. 3 of the Act).

Based on Article 6 para. 1 of the Act, before the committee informs the Speaker of the Polish Sejm that a committee was created pursuant to the Act, it has to gather 1000 signatures from citizens supporting a draft bill as provided for in Article 9 para. 2 of the Act that regulates formal requirements. These signatures will be then included in the required number of 100,000 signatures. The notification sent to the Speaker has to include the text of the draft bill and a list of 1000 people who support it (Article 6 para. 3).

Having received Speaker's decision confirming the reception of the notification about the committee creation or the decision of the Supreme Court's decision (if a complaint is filed with the Supreme Court against the decision of the Speaker not to receive the notification), the committee acquires legal personality. This information is then published in a nationwide journal together with the committee's address and information as to where the draft bill will be available to the public (Article 7 para. 1 of the Act). On the day the notification is published, the

²⁶² Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65, 11.3.2011. About limitations: O. Szczypiński, *Analiza mechanizmu funkcjonowania europejskiej inicjatywy obywatelskiej /Analysis of the Functioning of the European citizens' initiative/*, <http://www.ordoiuris.pl/analiza-mechanizmu-funkcjonowania-europejskiej-inicjatywy-obywatelskiej,3713,analiza-prawna.html>, access: 21 June 2016.

promotional campaign for the draft bill can be launched in the purpose to present and explain the content of the draft bill (Article 8 para. 1 and 2 of the Act).

From the moment the Speaker of the Sejm accepts the notification of the creation of the legislative initiative committee or from the moment the committee receives Supreme Court's decision to uphold its complaint against the refusal of the Speaker the content of the draft bill cannot be modified, until the bill is introduced (Article 7 para. 2).

The draft bill has to be introduced to the Speaker of the Sejm together with a list of signatures in support of the draft bill at the latest within 3 months since the date of the Speaker's (or Supreme Court's) decision to accept the notification of the committee (Article 10 para. 2 of the Act). Pursuant to Article 10 para. 3, the Speaker of the Sejm is obliged to present the bill for its first reading in the Sejm. The legislature has imposed on the initiative's addressee the obligation to organize the first reading within 3 months since the introduction of the bill to the Speaker of the Sejm or since the date of the decision delivered by the Supreme Court stating that the signatures in support of the draft bill are correct (Article 13 of the Act). When introduced correctly, citizens' are not covered by the discontinuation principle, thus the legislature provided for the extension of this deadline up to 6 months since the date of the first session of the Sejm if a legislative procedure is not finalized during the Sejm term when the draft bill was presented (Article 13 in connection with Article 4 para. 3 of the Act).

THE CITIZENS' LEGISLATIVE INITIATIVE IN PRACTICE

Even though more than once the required number of signatures was not gathered or the formal requirements were not fulfilled, the mechanism of the citizens' initiative should be clearly assessed as positive as it strengthens the democratic exercise of the power and the role of the nation as holder of the supreme power.

As of the end of seventh term of the Sejm (2015) there have been **144 citizens'** legislative initiatives, since the implementation of this instrument. Citizens were the most active in the years 2007-2015 with **84 launched initiatives**. Out of these 84, only 36 cases gathered at 100,000 signatures and the were presented in draft bill form to the Speaker of the Sejm. Eleven initiatives were rejected at the first reading and one bill at the third reading. Only four bills were adopted by the Parliament during the eight year period.

One of the most important citizens' initiatives was the draft bill concerning changes in the educational system. The organizers wanted to allow parents to decide about the age at which their children could begin education. During the campaign, which lasted more than seven years, three available tools to express the citizens' voice were used. First the organizers of the campaign "Let's save the kids" ("Ratujmy maluchy") sent around **60,000 statements** of support calling on the President to veto the changes in the education system which were to reduce the education starting age to 6 years of age. Three years later, a draft bill was presented within a citizens' initiative that was signed by almost **350,000 people**. The draft bill included three changes in the educational system aiming at guaranteeing its stability and at restoring the previous school starting age (7 years). At the first reading, the bill was referred to the Sejm committees for further examination, but after three years, it was finally rejected during the second reading (form no. 4616, then form no. 27 in the new term of the Sejm²⁶³). In the meantime, in 2013, citizens made another attempt to change the binding law by presenting the Sejm with the initiative to organize a nationwide referendum following Article 63 of the Act of 14 March 2003 on Nationwide Referendum²⁶⁴ that requires at least 500,000 signatures. **This initiative gathered almost one million signatures, but the coalition in power rejected the request for a referendum on the educational system even though it is a matter of high importance for the State and the citizens** (form no. 1635)²⁶⁵. The last attempt was yet another citizens' initiative presenting a draft bill that would give the parents a free choice deciding when to send their children to school. This initiative gathered **almost 300,000 statements of support** (form no. 3177)²⁶⁶, and yet it was rejected at the first reading. The voice of the citizens who participated in this initiative was heard in the next Sejm term. In the beginning of 2016 the President signed the Act adopted at the initiative of MPs that changed the mandatory school age for 7 years of age and gave parents the right to send their children to school at the age of 6²⁶⁷.

²⁶³ The course of the legislative procedure available at: <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?id=608DD2B52D42B968C1257950004998E4>, access: 21 June 2016.

²⁶⁴ Journal of Laws of 2003, no. 57, item 507 with subsequent amendments.

²⁶⁵ The course of the legislative procedure available at: <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?nr=1635>, access: 21 June 2016.

²⁶⁶ The course of the legislative procedure available at: <http://www.sejm.gov.pl/Sejm7.nsf/PrzebiegProc.xsp?id=816DCB8ED981F6D1C1257DF100269357>, access: 21 June 2016.

During the 8th term of the Sejm, six bills prepared by citizens were introduced. Three of them were referred to parliamentary committees for further examination²⁶⁸. Other three are before first reading²⁶⁹. In addition, the current Sejm continues working on 8 bills introduced by citizens in the previous term. Four bills (one dating back to 2012) were again presented for the first reading (3 of them were already examined by parliamentary committees before) and are currently being examined by parliamentary committees²⁷⁰. It was decided to finish the first reading in the case of one of the four bills²⁷¹.

It is worth describing in more detail two bills presented by citizens within the legislative procedure that are now debated by the Sejm. The first one (form no. 48²⁷²) concerns changes in the educational system aiming at changing the financing and organization of religion classes at schools and in public establishments. The draft bill was presented within a citizens' initiative during the previous 7th term. **The then Speaker of the Sejm initiated the proceedings even though the duration of signature gathering. The way the campaign was financed, and the very content of the draft bill raised serious doubts as regards their consistency with the law that regulates the exercise of legislative initiatives by citizens.** Since the draft bill was presented right before the end of the term, the discontinuation principle did not apply. Consequently, the first reading of the bill took place in the new term of the Sejm, which referred the bill for further examination by a parliamentary committee.

Taking into account the current dispute concerning the Constitutional Court (hereinafter CC) in Poland, it is worth mentioning the citizens' draft bill of the Constitutional Court Act prepared by the Committee for the Defense of Democracy (form no. 550). The draft bill presented by citizens seeks to bring back the wording of the Act of 25 June 2015 on the Constitutional Court but at the same time modifies a couple of provisions e.g. provides for the implementation

²⁶⁷ Journal of Laws of 2016, item 35. The course of the legislative procedure available at: <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?id=BA07F735E8CD3436C1257F1B00366168>, access: 21 June 2016.

²⁶⁸ Numbers of the Sejm forms: 226, 461 and 550.

²⁶⁹ Numbers of the Sejm forms: 784. Other two does not have numbers of the Sejm form yet.

²⁷⁰ Bills numbered: 24, 25 and 27.

²⁷¹ Form no. 26. This bill was eventually withdrawn.

²⁷² The course of the legislative procedure available at: <http://www.sejm.gov.pl/Sejm8.nsf/PrzebiegProc.xsp?nr=48>, access: 21 June 2016.

of the absolute majority rule when the General Assembly of the CC Judges adopts resolutions with 2/3 of all CC judges present; changes the rules of judges' election; introduces the principle of rotation in the office of the CC President and Vice President, changes the organ before which judges take the oath, and extends the scope of matters on which the CC adjudicates in full court. **On the 9th of June the first reading of the citizens' bill took place, however as the opposition objected, the bill was referred for further examination to a parliamentary committee.**

CONCLUSIONS

In the previous terms of Sejm the citizens' legislative initiatives were very often ignored and rejected in the first reading, before the substantive part of parliamentary proceedings started. The new representatives having a mandate in the 8th term of the Sejm have been in power for a relatively short period at the time when the study is prepared, but the practice concerning citizens' legislative initiatives has so far differed from the decisions taken in previous terms. The declaration by the majority leaders that no citizens' initiative will be rejected in the first reading has up to date been fulfilled. Moreover, the Sejm has already voted on issues that were subject to citizens' legislative initiatives that had been rejected in the past. The general diagnosis cannot be yet verified quantitatively, until the current situation can be assessed post factum, once the term is over.

At the same time it should be underlined that this citizen's right to legislative initiative is not absolute. It does not guarantee that citizens can expect all draft bills presented by them to be adopted as they always have to be examined taking into account common good and the rules provided for in the Constitution.