DRAFT LAW ON AMENDMENTS TO THE CONSTITUTION
OF THE REPUBLIC OF POLAND
(In connection with the aggression of Russia against Ukraine)

On 24 February 2022 Russian Federation commenced its aggression against Ukraine. As a result, the Republic of Poland – as an immediate neighbouring state of Ukraine – was faced with the challenge of preventing actions that could support Russian aggression and supporting those affected by hostilities on the territory of Ukraine. Russia’s actions also affect Poland’s internal security, including through the influx of a wave of refugees, which has changed the mode of operation of our state.

In this geopolitical situation, a parliamentary bill to amend the Constitution of the Republic of Poland was submitted to the Sejm on 7 April 2022. According to Article 235 sec. 1 of the Constitution, a bill to amend the Constitution may be submitted by at least 1/5 of the statutory number of deputies, the Senate, or the President of the Republic of Poland. The requirement of 1/5 of the statutory number of deputies is a minimum of 92 signatures of the deputies proposing the bill. The motion of 7 April 2022 was submitted by 122 MPs from the ruling majority (“Law and Justice”). Pursuant to Article 34 sec. 1 of the Standing Orders of the Sejm of the Republic of Poland, they authorised MP Łukasz Schreiber to represent the proposers in the work on the bill.

The first IT information on the legislative process concerning Sejm’s document No. 2263 it was stated that the draft concerns: (1) the modification of Article 216 sec. 5 of the Constitution in order to exclude public debt loans, guarantees, and financial warranties used to finance the defence needs of the state from the constitutionally defined limit, and (2) the addition of Article 234a as a basis for the State Treasury to seize property that is within the jurisdiction of the Republic of Poland, which can be presumed to be used to support Russian aggression – with the understanding that the seized property will be used in its entirety to support the victims of Russian aggression.

According to the draft, two changes are to be made to the Polish Constitution. First – Article 216 sec. 5 (in Chapter X of the Constitution – “Public finances”) would receive new wording: “It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. When calculating the ratio of the state public debt to the value of the annual gross domestic product, loans, guarantees, and financial sureties to finance the defence needs of the Republic of Poland shall not be included. The method of calculating the value of the annual gross domestic product and national public debt shall be determined by statute”. In this wording, only the second sentence is a normative novelty. The first and third sentences of the same provision are not modified.

Second – according to the draft – after Chapter XI of the Constitution, a (new) Chapter XI a – “Threat to State Security” – is added. Its content includes Article 234a, comprising three paragraphs with the following wording:

– “In the event of an armed attack by a foreign state on the territory of the Republic of Poland or an attack on the territory of another state causing a direct threat to the internal security of the Republic of Poland, the property of natural persons who are not Polish citizens, legal persons and other entities which is located on the territory of the Republic of Poland, may be seized by the State Treasury by operation of law and without compensation where it may be presumed that the property is or may be used in any part to finance or otherwise support an armed attack perpetrated by a foreign state or activities related to that attack, in particular, because of the personal, organisational or financial links of the owner of the property with the public authorities of that state” (para. 1),
– “The property seized by the State Treasury shall be used to support those affected by the armed onslaught” (para. 2),
– “The detailed manner in which assets are seized by the State Treasury, including the scope of the presumption and exemptions from the presumption, shall be determined by statute” (para. 3).

The law amending the Constitution would enter into force on the day following the day of promulgation (Article 2 of the draft).

Pursuant to Article 34 sec. 9 of the Standing Orders of the Sejm, the Speaker of the Sejm – upon receipt of the draft – before the draft was directed to the first reading, ordered that experts of the Chancellery of the Sejm prepare an opinion on the compliance of the submitted draft with the law of the European Union. The opinions submitted by the Sejm Bureau of Research stated that the draft is not a bill implementing the law of the European Union and that the proposed Article 234a sec. 1 of the Constitution “is contrary to the law of the EU to the extent to which it leads to different treatment of Polish citizens in comparison to citizens of other EU Member States”, while in the remaining scope the draft is not contrary to the law of the EU. The basis of the objection raised was respect for the principle of non-discrimination on the grounds of nationality, as national provisions limiting or excluding internal market freedoms must treat the situation of national entities in an equivalent manner to that of entities from other EU Member States whose assets are located in the territory of the Republic of Poland.
On 16 May 2022, the Speaker of the Sejm referred the bill for first reading at a session of the Sejm. This fulfilled the requirement under Article 235 sec. 3 of the Constitution that the first reading of a bill to amend the Constitution may take place no earlier than the thirtieth day after the day on which the bill was submitted to the Sejm. Pursuant to Article 37 sec.2 of the Standing Orders of the Sejm, the first reading of a bill to amend the Constitution shall be conducted at a sitting of the whole Sejm (chamber in pleno).

At this stage of the proceedings, the Sejm already had a legal opinion on the bill, presented by the Supreme Bar Council. A statement dated 26 April 2022 was also presented in the media space. “Position of the Team of Legal Experts of the Stefan Batory Foundation on the parliamentary draft on amendments to the Constitution of the Republic of Poland”8. Both opinions were highly critical.

The first reading of the draft took place at the 55th sitting of the Sejm on 26 May 2022. In the debate, the proposers emphasised that Russian policies and actions are a threat to Poland, requiring adequate preparations to be made in terms of the country’s defence, which justifies making the ‘disciplining’ formula in Article 216 sec.5 of the Constitution more flexible. In turn, the addition of a chapter on threats to state security, with the instruments provided for therein, is to allow for the “financial punishment” of entities from the aggressor state, for which there is no adequate legal basis today. Opposition MPs pointed to the sham and lack of justification for the adoption of the draft. They, therefore, tabled a motion to reject the draft already at first reading. They portrayed the submitted proposal to amend the Constitution as, in fact, another element of the destructive policy of the ruling groups and the destruction of the legal order and the rules of healthy politics. They did not question the objectives of the draft, but its substantive and technical-legislative form (see the context of the Act of 13 April 2022 on special solutions to counter aggression against Ukraine and to protect national security9).

After a rather emotional and little substantive debate, in voting number 59, the Sejm rejected the motion to reject the draft (voting result: 191 in favour of the motion, 233 against, 29 abstentions) and referred the draft – as proposed by the Presidium of the Sejm – to the Public Finance Committee and the National Defence Committee for consideration.

On 29 November 2022, a joint meeting of the Committee on Public Finance (No. 372) and the Committee on National Defence (No. 98), summoned urgently at 10 p.m., was held to consider the parliamentary bill on amending the Constitution of the Republic of Poland. However, a formal motion was made to postpone the meeting to another date, citing firstly the six months of inactivity on the draft and the attempt to act now in a rather special mode (during the night), as well as the absence of any opinion from constitutionalists on the draft. The motion was accepted (44 votes in favour, 39 against, 0 abstentions). It was emphasised that the sitting should only be convened once there are expert opinions on the draft10.

However, already at the sitting of the Sejm on 1 December 2022, the Speaker of the Sejm announced that the Law and Justice Parliamentary Club had submitted a motion to withdraw the parliamentary bill on the amendment of the Constitution from the Committee on Public Finance and the Committee on National Defence, and to refer the bill to the Extraordinary Committee to be set up to consider it. The Sejm approved the motion with 226 votes in favour, 215 against and 2 abstentions11.

At its sitting on 14 December 2022, the Sejm adopted a resolution, the draft of which had been submitted by the Presidium of the Sejm after consulting the Convention of Seniors on the appointment and selection of the composition of the Extraordinary Committee to consider the draft law on amending the Constitution (229 votes in favour, 217 against, 1 abstention). Its remit was to consider the draft from Sejm’s paper No. 2263. Eleven Members were elected to the Extraordinary Committee. In the debate, opposition MPs strongly emphasised that the ruling majority had no chance of obtaining the 307 votes needed to pass the amendment to the Constitution. In these circumstances, the appointment of the Extraordinary Committee is de facto pointless.

The 5th Extraordinary Committee to consider the draft law on the amendment of the Constitution – established on 1 December 2022 – held 7 meetings (on 26 January, 9 and 21 February, 8 March and 12, 20 and 27 April 2023), adopting a report at the last one12. In the report, the Committee requested that the Sejm pass the attached bill.

At its first meeting (2 months after its appointment), the Committee only elected its presidium – MP Marek Ast as a chairman and four vice-chairmen, by one cumulative vote.

The agenda of the second meeting of the Committee included only a general discussion on the draft. However, in accordance with Article 86c of the Standing Orders of the Sejm, the Committee should appoint a team of permanent experts, one-third of whom shall be indicated by the representative of the proponent of the bill to amend the Constitution. In the vote, it was agreed that this would be a three-member team and the deadline for the submission of candidates was adopted. However, the request (made by an opposition MP) to hold a public hearing on the draft was rejected. After these formal matters, the floor was taken by the representative of the proposers (MP Łukasz Schreiber – not a Committee member), who presented the main assumptions of the draft. He presented the objectives of the draft and the proposals in a synthetic and more concrete manner than at the first reading of the draft during the plenary session of the Sejm. He emphasised that the proposed changes were intended to be universal, not limited only to the current situation. He also emphasised that further work might change the opposition’s attitude to the draft, although so far four opposition clubs had voted against the draft and the continuation of works on it.

After MP Schreiber’s speech, the floor was first taken by legislator Przemysław Sadłoń from the Legislative Office of the Chancellery of the Sejm, who drew attention to certain issues of a general, structural nature of the draft. He noted that the appropriate place for standardising the matter proposed in the new Chapter XIa would be Chapter II of the Constitution. This is also relevant from the point of view of the procedure for amending the Constitution.
as set out in Article 235 of the Constitution. Thus, it is not only a question of mere systematics. He also pointed out that in view of the far-reaching consequences in the form of deprivation of property (Article 234a according to the draft), the regulation should not be so vague (undefined). He further noted the lack of adequate justification for the proposal for the law to enter into force already on the day following the date of publication.

Deputies then moved on to general questions, as is usual at the first reading of a bill. These focused on the facts underlying the proposals for Articles 216 sec.5 and 243a. In the view of the opposition MPs, the state of affairs rendered both proposals pointless. Statements were much more subdued and factual than in the first reading of the draft at the plenary session of the Sejm. In his final speech, the rapporteur reiterated his conviction that the proposed amendments to the Constitution were expedient and necessary but declared his readiness to discuss possible amendments to the provisions of the draft.

The agenda of the third meeting (21 February 2022) of the Extraordinary Committee included only the appointment of the Committee’s team of permanent experts. As four candidates were appointed by the deadline of 15 February 2022, the Committee revised its earlier resolution of a 3-member panel of experts and adopted a resolution of a 5-member panel. At the meeting, the candidates of Dr. Marcin Olszówka (appointed by the draft applicants), Prof. Genowefa Grabowska (appointed by the Law and Justice party), Prof. Marek Chmaj (appointed by the Civic Coalition party), Dr. Anna Rakowska-Trela (appointed by the Left party) were accepted. It should be added that the fifth expert – Dr. habil. Krzysztof Koźmiński – was proposed by applicants in order to maintain the requirement of 1/3 of the expert team from the applicants’ submission. He was approved at the fourth meeting of the Committee (8 March 2022). In addition, the Chairman of the Committee announced that he had asked the Bureau of Research to prepare an opinion on the draft so that the Committee would have an opinion at its next meeting.

At the fourth sitting (8 March 2023), the Commission – in addition to the aforementioned replenishment of the permanent panel of experts – started the substantive work. MPs were provided with two opinions of the Bureau of Research, but the discussion was postponed until the next meeting, as their delivery during the current meeting made it impossible to familiarise themselves with their content. Instead, the preliminary assessments of the draft were presented by the permanent members of the expert team at the meeting.

Prof. Marek Chmaj pointed out several issues. Firstly – he highlighted the need to verify the current public debt, which would make it possible to assess the scope of the decision-making slack under Article 216 sec.5 of the Constitution. Secondly – he highlighted the extremely broad scope of the definition of ‘defence needs’, posing the risk of abuse of Article 216 sec.5. Thirdly – he pointed to doubts about the need for a new Article 234a, including its unacceptable generality. Fourth – he criticised the lack of foreseen vacatio legis.

Prof. Krzysztof Koźmiński emphasised the completely novel nature of Article 234a, strongly interfering with the right to property. He acknowledged the numerous general clauses in this provision but treated this as a special feature of the language of the Constitution.

Dr. Marcin Olszówka claimed that the rather general nature of the proposed provisions did not raise any major objections. He only emphasised the optionality of the solution in Article 216 sec.5 of the Constitution. He considered the provisions of Article 234a to be necessary because the existing provisions make it impossible for ordinary legislation to achieve their objectives. He also pointed out that the institution of vacatio legis should not be fetishised. He noted that the amendment (Article 234a) concerns “materially” Chapter Two of the Constitution, which implies a lengthy procedure.

Prof. Anna Rakowska-Trela shared the criticism of the overly broad definition of defence needs in Article 216 sec.5 and the conviction of the need to clarify this definition already at the constitutional level. She also spoke out against the excessive generality and ambiguity of the provisions in Article 234a. She suggested considering the modification of the statutory provisions according to the expected needs rather than amending the Constitution.

The Legislator from the Legislative Office reminded that amendments can be proposed in writing by a group of at least 5 Committee Members and are adopted by a simple majority. A qualified majority is only required for the adoption of the report by the Committee. The Chairman of the Committee pointed out that this was not yet the stage of considering individual amendments in detail, but the stage of general questions to the proposer and experts. The speeches raised, inter alia, the issue of the need to assess the project in terms of its compliance with EU regulations in terms of its profound interference with the right to property, the specificity of the de facto permanent state security threat, the possibility to realise the assumed objectives of the draft without amending the Constitution, more precise formula for the concept of a threat to the internal security of the state (MPs R. Kropiwnicki, M. Żukowska, A. Myrcha, D. Rosati). Subsequently, all the regular experts presented broader assessments of the draft, although without specific detailed comments as to the proposed amendments. The Chairman of the Committee recalled that the discussion on specific aspects of the proposed amendments would begin at the following meeting. A general ‘overview’ of the preliminary remarks was concluded by the representative of the proposers (MP Łukasz Schreiber). In particular, he emphasised the impossibility of using Article 46 of the Constitution and amending the Constitution as the only possibility for legal action, and his readiness to discuss allegations and doubts of a strictly legislative nature.

Expert opinions on the draft should be seen as part of proceeding to detailed consideration of the draft. Since the beginning of May 2022, the text of Sejm’s paper No. 2263 n the parliamentary information on the course of legislative proceedings has been supplemented by the opinion of the Supreme Bar Council. The Institute of Legislation and Parliamentary Work of the Supreme Bar Council referred only to the second proposal in the draft, namely the new Chapter XI a (Article 243a). The conclusion of the opinion was clear that there was no need to amend the Polish Constitution to the extent proposed. As stated, property “restrictive” measures have been used in Poland for many
years in connection with the fight against terrorism. As indicated, analogous mechanisms could also be introduced in other cases of threats to the security of the Republic of Poland. It was emphasised that international and EU law allows for both the freezing of funds and the confiscation of assets – with the right to effective judicial review ensured. Moreover, it was pointed out how the existing legal instruments should be ‘adjusted’ for the needs of Russia’s armed aggression against Ukraine.

Also the “Position of the Team of Legal Experts of the Stefan Batory Foundation on the parliamentary draft on the amendment of the Constitution of the Republic”, referred to earlier, has been available in the public space since the end of April 2022. According to it, the parliamentary draft in the part concerning Article 216 sec.5 of the Constitution (exclusion of expenditure on the needs related to the defence of the Republic of Poland from the scope of the national public debt) is a legally unnecessary and financially harmful change. The existing provision constitutes a kind of “financial safety net” for the state and directly refers to the EU regulations on excessive budget deficits. Pursuant to Article 146 of the Constitution of the Republic of Poland, it is the Council of Ministers that conducts the internal policy of the state, including financial policy. An important tool for conducting financial policy by the government is the adoption of the draft state budget and the exclusive legislative initiative with regard to the draft budget act. It is clear that the government – meeting the need to strengthen the defence potential of the Republic – may successively increase budgetary outlays for this purpose within the limits of the current constitutional regulations. It will be legally sufficient to intensify the strengthening of the defence potential of the Republic through an appropriate budget expenditure policy. The idea of abolishing restrictions on state indebtedness, even if only to the extent of defence spending, is a manifestation of acting to the detriment of the state and citizens.

The essence of the second proposal of the MP’s draft concerning the new Article 234a of the Constitution is perceived by the same Team of Legal Experts of the Batory Foundation as the possibility of the unprecedented confiscation of assets: a) without a court and without compensation, b) on the basis of the presumption that, c) these assets are or may be used – in any part – to finance or otherwise support an armed attack perpetrated by a foreign state or activities related to this attack. The experts stress that this change is not only unnecessary but does not fit within the standards of a democratic state ruled by law. It also shows that, as a result of the proposed amendment, constitutional grounds would be permanently introduced into the Polish legal order to allow – on unspecified grounds – unspecified (non-judicial) authorities to confiscate to the State Treasury the assets of unspecified entities also after the end of the war in Ukraine. The Team of Experts sees this proposal as an expression of the current political-image demand related to Russia’s aggression against Ukraine. It also sees in it – unacceptable in a democratic state ruled by law – a political instrumentalization of the Constitution as the basis of the constitutional order of the Republic of Poland. The Team assesses the proposed legal construction as intricate and unclear, failing to meet the basic requirements of legislative correctness. What is particularly important – from the point of view of the guarantee function of the Constitution for the protection of individual freedoms and rights – is that the admissibility of the seizure of property is to be based on a number of factual and legal presumptions, included in the formulas of undefined phrases. The Team of Experts pointed to the possibility of achieving the declared objectives on the basis of the current constitutional provisions.

It also warned that under the guise of preventing and mitigating threats to the state, citizens, and public security, the draft is a manifestation of the government’s activity, introducing legislative solutions serving completely different goals. This weakens the society’s ability to control the processes of exercising political power. The proposed solutions would create – in the opinion of the Team of Experts – permanent grounds for discretionary repression in the future of unspecified entities, including Polish citizens, with capital ties to foreign entities. It would be tempting to use such an instrument for political struggle.

Two opinions of the Sejm Bureau of Research treated each of the proposals contained in the draft act amending the Constitution separately. The opinion prepared by Rafal Dubowski answered the question concerning “the admissibility of excluding from the constitutional debt limit loans, guarantees and financial sureties used to finance the defence needs of the Republic of Poland” (Article 216 sec.5 of the Constitution). The author emphasized the purpose of the provision in its current form, which is to prevent excessive indebtedness of the state. The value protected here is the economic and financial balance of the state and the avoidance of threats to the stability of economic development. He also referred to the unambiguous jurisprudence of the Constitutional Tribunal, protecting the so-called constitutional debt limit. He stressed the danger of manipulating the structure, which would de facto lower the constitutional index. The change would not inform about the state’s actual debt and would not constitute a barrier against its excessive indebtedness. The expert answer to the question is therefore negative.

The second of the aforementioned legal opinions – by Ewelina Gierach – was prepared “on the admissibility of taking over the assets of natural persons who are not Polish citizens, legal persons and other entities by the State Treasury”. The author emphasized that the seizure of property by the State Treasury by law and outside judicial control is unacceptable under the current Constitution of the Republic of Poland. In order to achieve such a goal, it would be necessary to amend the Constitution, creating a separate from Article 46 and Article 21 sec. 2 legal basis.

The meeting of the Constitutional Committee on 12 April 2023 started the stage of detailed consideration of the draft. It was carried out with the use of electronic means of communication, enabling remote communication. All members of the Committee also received comments from the Legislative Office of the Chancellery of the Sejm to the draft by e-mail17. Genowefa Grabowska – a member of the Permanent Team of Experts – spoke first as a supplement to the general discussion about the draft, as she participated in the Committee’s meeting for the first time. She emphasized – in a legal and comparative perspective – the difficulties not so much with freezing property as...
with its confiscation. She pointed out that only Canada has introduced new domestic laws that allow for confiscation. She signaled that, despite initial declarations, it is difficult to expect the adoption of a common EU regulation in this matter. With reference to these comments, the Committee decided to order an opinion from the Bureau of Research of the Sejm, illustrating the experiences of other countries with regard to the freezing of funds. As indicated in the discussion, the collected material may be used to develop a fallback solution if the Constitution cannot be changed. It was stipulated that waiting for this opinion may not suspend the Committee’s consideration of the draft amendment to the Constitution.

The detailed debate was limited to the amendment concerning Article 216 sec. 5 of the Constitution. The Committee (without opposing votes) adopted a minor editorial change to the wording of the initial part of the new sentence. The concept of defence needs – in the in fine part of the same sentence – was the subject of a lively discussion, in which the vagueness (lack of a clear scope) of this concept was emphasized. However, no proposal for an amendment in this regard was presented, although it was noted that such a possibility is still possible at the stage of the second reading of the draft. In the absence of a proposal for any further changes to the proposed amendment to Article 216 sec. 5 of the Constitution, the Chairman announced that the Committee considered this part of the draft.

The seventh meeting of the Extraordinary Committee on April 20, 2023, also with the use of electronic means of communication enabling remote communication, was devoted to the continuation of detailed consideration of the draft. Amendment 2 of the draft, i.e. the introduction of a new Article 234a was considered as the first one. It would be a new chapter XI “Threat to state security”. The starting point was in particular the position of the Legislative Office regarding the location of the proposed provision. Taking into account the subject matter of the proposed regulation, the Legislative Office proposed placing it under Chapter II of the Constitution, concerning freedoms, rights, and obligations of man and citizen. It could be Article 64a, since Article 64 concerns the right to property and its protection.

The expert, Marek Chmaj, proposed placing the provision in Chapter XI of the Constitution, concerning states of emergency. However, he also pointed out that it concerns matters particularly protected by the Constitution (chapters I, II, and XII), which may mean that a referendum approving the amendment of the Constitution is admissible (Article 235 sec.6). He also enumerated how many other provisions of the Constitution the draft amendment collides with. Therefore, a number of significant ambiguities in the proposed regulation require many clarification amendments.

The speech of the expert Krzysztof Kożmiński should be classified only as a general debate. He postulated that the provision should not be created as an ad absurdum threat. At the same time, he was in favour of locating the new regulation as in the draft act. He also held that its material connection with the right to property did not mean that the amendment concerned Chapter II of the Constitution within the meaning of Article 235 sec. 6 of the Constitution.

Expert Marcin Olszówka was in favour of leaving the proposed regulation as in the draft, i.e. in Chapter XIa of the Constitution. The applicant MP maintained the proposal to place the regulation as in the draft. A very important part of the further exchange of views was dominated by the issue of a general debate, namely the need (necessity) for regulation of constitutional rank and the possibility of an ordinary act to introduce the merits of the proposed regulations. The arguments were repeated, and there were no proposals for specific amendments to the proposed amendment No. 2 of the draft. The Chairman of the Committee, therefore, directed the debate to the consideration of the detailed draft.

A representative of the Legislative Office drew attention to the advisability of changing the title of the proposed chapter XIa, as the current wording is too broad and inadequate for the content. He was supported in the discussion by MP Robert Kropiwnicki. The rapporteur spoke out against the change. In the absence of a formal amendment, the Chairman of the Committee claimed the title of the chapter to be considered.

After a short exchange of comments on the need to correlate the terminology of the draft Article 243a sec. 1 with concepts of a similar nature in the text of the Constitution, the provision of par. 1 was regarded as not yet considered. It was decided that at the next meeting of the Committee, specific amendments in this regard would be submitted, prepared before the meeting and in consultation with the Legislative Office.

The meeting of the Committee on 27 April 2023 turned out to be the last one where the consideration of the draft act amending the Constitution was continued. At this meeting – as we have already mentioned – the Committee adopted its report on the project. The meeting was conducted with the use of electronic means of communication enabling remote communication. Prior to the session, in accordance with declarations from previous sessions, proposals for amendments were prepared in consultation with the Legislative Office of the Chancellery of the Sejm.

Guided by the signalled reservations as to the compliance of the provision of Article 234a sec. 1 of the draft with the European Union law, it was proposed to delete the distinction between Polish citizens and citizens of other EU countries when it comes to admissibility of collecting (taking over) property. This amendment was supported by the Committee.

Another amendment to Article 234a sec. 1 was primarily of an editorial nature because it was about using the conceptual grid from the applicable provisions of the Constitution. In particular, the premise of a “direct threat to the internal security of the Republic of Poland” was changed to the premise “direct external threat to the Republic of Poland or its public order”. It had its substantive aspect, but also better reflected the intentions of the applicants. This amendment was also accepted by the Committee, which allowed for the conclusion that para. 1 of this provision
has been considered. In the absence of comments, also sec. 2 of the provision was regarded considered. When it comes to para. 3 of the provision, an amendment that clarified the scope of the matter referred to regulation in the Act was adopted by the Committee. Also, this provision was regarded considered.

With regard to the provision on entry into force (Article 2 of the draft), a representative of the Legislative Office pointed out that in the Explanatory Memorandum to the draft, the applicants did not indicate any premise that would justify a departure from the 14-day vacatio legis rule. The term “day after the day of the announcement” de facto significantly limits the possibilities of work on the regulation referred to statutes. However, no amendment to the provision was officially submitted, so Article 2 was also regarded considered.

In the end, the Chairman of the Committee decided that the vote on the whole draft could take place. The draft act with the previously adopted amendments was adopted (6 votes were in favour, 3 were against, nobody abstained). The result of the vote meant that the draft was adopted in the Committee not only by the votes of the ruling majority MPs but de facto with partial “support” from the opposition MPs. MP Marek Ast, the Chairman of the Committee was elected as a rapporteur.

At the plenary session of the Sejm on 25 May 2023, the second reading of the draft amending the Constitution was held18. The rapporteur underlined the constructive nature of the work in the Committee and asked for support for the draft. The discussion included 5-minute statements on behalf of clubs and 3-minute statements on behalf of parliamentary circles. Three opposition clubs declared their refusal of the draft. A representative of the “Confederation” parliamentary group, however, submitted two amendments, although in terms of content without a clear connection with the provisions contained in the draft. Out of several parliamentary circles, only the “Kukiz’15 – Direct Democracy” circle supported the draft in the debate. The whole debate was de facto general in nature, with no direct remarks about the provisions contained in the submitted report. After the speeches of representatives of parliamentary clubs and circles, about twenty deputies signed up to ask a question which were answered by the representative of draft proposers and the rapporteur. Due to the fact that amendments to the draft were submitted during the second reading, the Deputy Speaker of the Sejm, who conducted the debate, sent the draft – pursuant to Article 86j of the Standing Order of the Sejm – back to the Extraordinary Committee in order to consider them and present a report.

The meeting of the Extraordinary Committee was held on 15 June 2023, with the agenda including the consideration of amendments to the draft amending the Constitution of the Republic of Poland (papers No. 2263 and 3180) submitted during the second reading. On behalf of the applicants of the draft, MP Łukasz Schreiber presented a negative opinion on the proposed amendments. The authors of the proposed amendments (“Confederation” Deputies’ Club) did not participate in the meeting of the Committee at which it considered these amendments. A representative of the Legislative Office of the Chancellery of the Sejm reminded that a qualified majority in the Committee is required only for the adoption of the Committee’s report, while the amendments submitted in the second reading are adopted by a simple majority of votes.

First, the Committee voted negatively on the motion to reject the bill (5 votes in favour, 6 against, no one abstained). Before the vote, MP Robert Kropiwnicki (Citizens’ Coalition Club) upheld the motion to reject the draft, additionally supporting it with a new expert opinion issued by Teresa Gardocka19. The opinion showed that there was no need to amend the Constitution and that changes to the Penal Code would be sufficient.

The amendments submitted by the “Confederation” Deputies’ Club included the deletion of both substantive proposals from the draft amendment to the Constitution (i.e. the new wording of Article 216 sec.5) and the addition of a new Article 234a – as in the report from the paper No. 3180). As the content of the amendment, it was proposed that: 1) in Article 41 of the Constitution, add sec. 6 (“Everyone is provided with the possibility of unlimited cash payments”), 2) to Article 90 sec. 1 of the Constitution, limit the possibility of conferring powers (“with the exception of matters referred to in Article 217”), 3) in Article 217 of the Constitution, mark the current provision as sec. 2, and add a new sec. 1 (“The Republic of Poland has exclusive competence to impose taxes and other public levies”).

With regard to the content of the proposed amendments, there was no discussion at the Committee meeting. The explanations of the representative of the Legislative Office of the Sejm, followed by voting, were of great importance. No amendment was supported by the Committee. The legislator’s comments focused mainly on the allegation that the amendments go beyond the acceptable limits set by the scope of the submitted draft. The explanations refer to the jurisprudence of the Constitutional Tribunal, which has repeatedly emphasized that an amendment in substance cannot constitute a de facto new legislative initiative.

After examining the motion and the amendments – submitted in the second reading – the Extraordinary Committee rejected them20.

The next sitting of the Sejm is scheduled for 6–7 July 2023 and its planned agenda also does not include the consideration of the draft act amending the Constitution21. The July sittings of the Sejm (the last scheduled for 28 July 2023) complete the pre-holiday plans for the chamber’s meetings. At the same time, however, the schedule of Sejm sessions for 2023 no longer provides for post-holiday sessions, which is related to the approaching end of the 9th term of the Sejm.

The above perspective makes it most probable that the draft amending the Constitution will not be adopted by the end of the current term of office. Such a conclusion is reinforced by the declared positions of the opposition parties in the Sejm, which are opposed to the draft. This means that the draft will be covered by the principle of discontinuation of legislative work in the Sejm after the end of the term of office. Legislative work that has not been finalized by the end of the term of office is, in principle, not “inherited” by the Sejm of the next term and “expires”. In the new term – if the entities defined by law were convinced of the need for a given regulation – it would be
necessary to submit the draft to the Sejm as part of a new legislative initiative and to carry out the entire legislative procedure from the very beginning.

1 Sejm’s paper No. 2263.
4 www.sejm.gov.pl/przebiegpracr
5 File No. BAS-WAPEiM-783/22 of 12 April 2022 (attachment to paper No. 2263).
6 File No. BAS-WAPEiM-780/22 of 12 April 2022 (attachment to paper No. 2263).
9 Shorthand report, pp. 203-225, and 269.
11 All references to the course of meetings of the relevant Committees – based on bulletins (“Full record of the course of the meeting”, published by the Office of the Sejm Committees of the Chancellery of the Sejm), with the name of the Committee, the number of the meeting and the date of the meeting.
13 Shorthand report, 68th sitting of the Sejm, pp. 238-244.
14 Sejm’s paper No. 2872.
15 Sejm’s paper No. 3180.
16 Opinion BAS-WAP-329/23 of 2 March 2023 (by Rafał Dubowski) and opinion BAS-WAP-330/23 of 3 March 2023 (by Ewelina Gierach).
18 Shorthand report, 76th sitting of the Sejm, pp. 198–214.
19 “The legal opinion is the answer to the question: can the result to be achieved by amending the Constitution of the Republic of Poland proposed in the draft act amending the Constitution of the Republic of Poland (paper No. 2263 of 7 April 7 2022) be achieved by appropriately amending the applicable Penal Code?” – Opinion of 15 May 2023.
20 Sejm’s paper No. 3180-A.
21 www.sejm.gov.pl-porządekzdzienny77.posiedzeniaSejmu