

DESCRIPTION OF ENTITLEMENTS AND OBLIGATIONS OF SENATORS RESULTING FROM THEIR MANDATE

Principal regulations as regards the legal status of Polish deputies and senators are included in the Constitution of the Republic of Poland of 2 April 1997. They include, *inter alia*, provisions concerning certain office positions which cannot be occupied while serving as a deputy/senator, issues concerning immunity, and limitation of professional and business activity.

However, the majority of information included herein is based on the Act on the Exercise of the Mandate of a Deputy or Senator (“the Statute”) passed on 9 May 1996 and its implementing provisions. The implementing provisions include the Resolutions by the Senate Presidium as well as Instructions by the Marshal of the Senate, which are sometimes issued together with the Marshal of the lower house of the parliament (the Sejm).

The Statute – as demonstrated already by its title – regulates the legal status of the 460 deputies and 100 senators. Due to the fact that the Statute covers both deputies and senators, a number of conditions concerning the exercising of both mandates are quite similar. This is why both deputies and senators receive the same monthly remunerations, allowances, funds for running their constituency offices, etc. Because of the fact, however, that certain implementing provisions to the Statute are issued by the Marshals of both houses and their presidiums separately, certain less important aspects of the status of deputies are different from that of the senators.

Adaptation of the newly elected senators

Polish Election Code defines the principles and procedures concerning nominations of candidates, conducting the election as well as the requirements for the election to be deemed valid. The Code covers the elections to the Sejm and the Senate, the election of the President of the Republic of Poland, elections to the European Parliament and to the local government bodies (voivodeship’s assemblies, powiat and gmina councils). Moreover, the Code regulates direct elections of heads of gminas and city mayors.

Senators are elected in single-member constituencies. This means that for the purposes of the election to the Senate, Poland is divided into 100 constituencies and in each of them one senator is elected.

We are interested in those actions of the Chancellery, which concern new senators, and which are taken following the announcement of election results by the State Election Committee and

terminated with the first session of the newly elected Senate. In principle the first sessions of the Sejm and Senate are convened by the President within 30 days of the election day, we are thus interested in the period of not even one month. One should remember that a majority of the elects have already served for the parliament (Sejm or Senate) so they are well aware of how to exercise their mandate. Some of the senators serve for several consecutive terms. Others, who have won the mandate for the first time, are often experienced in work in the local authorities, which experience is sometimes similar to the parliamentary experience.

Official results are known several days following the election. Thanks to the help of the National Election Committee officers, the most important particulars concerning the elects, such as their names, addresses, and phone numbers (most important), are available quickly. During the first telephone conversation, an elect learns about his/her most important duties and entitlements in the first days of exercising his/her mandate. It is worth knowing that in our system, a person becomes a senator on the day he/she is elected, and not on the day he/she is sworn into the office. Having become sworn in, which usually takes place during the first session of the house, the senator may fully use his/her mandate, which had already been obtained on the day of election.

What obligations are laid on the newly-elected senator before his/her first session?

First of all, his/her status must be clear, so if he/she has a job which must not be performed while serving a term in the Parliament, he/she must stop performing the job.

The Polish Constitution does not allow for exercising both parliamentary mandates jointly; one cannot be a senator and a deputy at the same time. The Constitution also forbids a senator or a deputy to occupy a position of the President of the National Bank of Poland, President of the Supreme Audit Office, Human Rights Defender, Children's Ombudsman and deputies thereof. The mandate must not be combined with serving a term in the National Broadcasting Council, or in the Monetary Policy Council, or with working as an ambassador. It must not be combined with working at the Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic of Poland. One must not combine the parliamentary mandate with working in the government administration, but this ban does not apply to the members of the Council of Ministers and secretaries of state. Also a judge, a prosecutor, civil servant, active soldier, policeman or state protection officer must not execute a mandate of a deputy or a senator. Apart from prohibitions defined by the Constitution, also other statutes list various functions which must not be combined with exercising a mandate of a senator. Prohibitions defined in the Constitution require that a senator resign from any work hitherto performed in the institutions and offices listed.

Performing certain jobs may, however, be combined with exercising a mandate. E.g. if a senator is employed in local administration he/she does not need to resign. Unpaid leave of absence will do.

An elect is obliged to provide the Marshal of the Senate with a written statement of resignation from a hitherto occupied position or office which must not be combined with the senator's mandate. Such a statement must be submitted within 14 days of the date of publication by the National Election Committee of the results of the Senate election in the Official Journal. Failure to abide by the obligation will make his/her mandate expire pursuant to Article 279. 1 (5) in relation with Section 3 of the Code of Elections. In such case the Marshal acknowledges the fact by issuing a decision on mandate expiry.

Senators' statements of resignation from offices which must not be combined with the mandate should be submitted to the Marshal before the first session, otherwise it might happen that the Marshal would have to acknowledge mandate expiry before the first session, as a consequence of which, due to a single-member constituency system – a need would arise to conduct complementary election to make up for the vacancy.

Apart from status clearance in order not to violate the prohibition of combining certain functions and offices with the senator's mandate, before the first session an elect must also submit a statement on property disclosure, according to a specimen attached to the Statute.

Since the elect becomes a senator on the date of election already, an announcement by the National Election Committee merely confirms that fact. This is why elects enjoy the right to travel to the first session for free (within Poland). Carriers who render the service based on agreements with the Chancellery accept certificates issued by the Chancellery. Such certificates, which are sent to senators' homes together with an invitation to the first session, confirm the right to a free of charge trip (flight) within the territory of Poland. Thanks to this a senator does not have to pay for a trip to the first session.

At their first session in the new term, the Senate must take numerous important actions. The first session is convened by the President of Poland and chaired by a Senior Marshal (the oldest of the senators). During its first session the Senate should elect the Marshal, his/her deputies and Senate secretaries. The inaugurating session starts with swearing in the senators. Rejection of being sworn in results in the mandate termination. Before the session starts (often on the same day) the elects who have already arrived in Warsaw, submit their declarations of financial interests to the Chancellery and receive certificate of election issued by the National Election Committee (during a separate meeting).

After being sworn in, the senators can fully enjoy all the rights resulting from their mandate, they are provided with a senator's IDs and senator's badges which are prepared separately for each term.

Giving a senator his/her senator ID does not end the process of introducing elects to the Parliament. The elects must arrange for their remuneration and insurance. This is why they must submit special declarations. Remuneration may be paid if a statement of entitlement to such a remuneration has been provided to the Senate Presidium. In case of insurance, it is the Chancellery who notifies the Social Insurance Office based on the particulars provided by the elect.

Financial and organizational conditions of maintaining a constituency office

A deputy and a senator can establish his/her constituency office, individually or jointly with a few other colleagues. A senator can establish more than one office – individual or jointly with other colleagues – and in such case he/she indicates one of the offices as a so called main office. Location of a constituency office is chosen by a senator at his/her own discretion. It need not be located in his/her constituency, although this tends to be a rule.

It is a senator, and not his/her office who is an institution for the purposes of office establishment. This is why it is a senator (and not a senator on behalf of his/her office) who signs a lease for office premises and employment contracts with office employees (copies of these contracts must be submitted to the Senate Chancellery). The office is only a set of assets by means of which a senator operates within his/her constituency. The office is not a legal entity; all the rights and obligations related with running the office refer personally to the senator as a natural person. This assumption results directly from the statute, as a result of which, following his/her term, the then deputy or senator remains liable for financial obligations which accrued in relation with running the office.

It is an obligation to have a constituency office. Despite the fact that having an office means numerous additional duties, all deputies and senators establish their constituency offices. Having a constituency office enables staying in touch with constituents. This is a method of collecting information on their needs and expectations. This is why each deputy/senator during the first few months of his/her term establishes a main office and then – depending on funds in his/her disposal – he/she establishes other offices individually or jointly with his/her party mates.

A senator employs his/her office staff based on the Employment Code. He/she should sign employment contracts with office staff for a defined period, i.e. for the time of his/her term. This might be inconvenient for the staff, but it is justified by the fact that the state budget can fund only the cost of work performed on behalf and for a member of one of the Houses of Parliament. After the mandate expires, the senator stops being a senator, so it is impossible to keep funding his/her employees from the public funds any more. If such contracts did not expire automatically after a term is over, the former senator would have to pay his/her staff from his/her own resources until the contracts terminate.

Apart from the staff employed upon a contract of employment, there are two other categories of people who work with a senator: contractors who work for the senator based on civil-law contracts; they are commissioned by the senator with preparing a certain study or task, for which they are paid; and volunteers who cooperate with the senator because of ideological reasons. They are not paid for their work, because it is not allowed, but certain costs borne by them in the course of implementing tasks for the senator can be reimbursed to them, e.g. the cost of travelling around the country. These costs are also paid with a flat-rate funds dedicated for running the office.

Contractual employees as well as volunteer co-workers can become a tool for influencing the senator's decisions. This is why both groups of people are obliged to submit special statements, to reveal their previous sources of income and places of employment in the past (before they started working for the senator), for lobbying checking purposes. People who are temporary working for the senator are not obliged to provide such statements.

Apart from office staff, a constituency office is a premises leased by the senator and funded with funds received from the Senate Chancellery in the form of a so called flat-rate amount.

Senator's office equipment is provided by the Senate Chancellery. The equipment provided includes a PC with a monitor and a printer; copying machine and fax with a voice mail. On request the senator may receive another computer with a monitor and a printer. The Chancellery also provides senators' offices with office furniture. A one-term payment of PLN 10,000.00 is provided to a senator for office refurbishment and purchase of necessary equipment. Then, each month throughout his/her term, he/she receives a flat-rate payment of PLN 12.150,00 to cover the cost of running the constituency office. This flat-rate amount can be spent on fees and salaries, etc. (taxes, premiums) for office staff, or for contractors, for preparing expertise, opinions and translations, and on hosting foreign delegations, on travels, business trips and training of office staff as well as on travel and allowances of the senator's

voluntary workers which costs are incurred as a result of executing the senator's mandate, or as the costs of rent, utilities (power and heating, water supply) telephone lines, renovation of premises, cleaning, software, printing jobs, repair and maintenance of office equipment. The flat-rate amount may also be used for the purchase of fix assets, the initial value of which does not exceed LPN 3.500 , purchase of office consumables, cleaning supplies as well as representation expenses and promotion of the Senate and its operations. These expenditures should be certified by invoices or bills. A senator may spend up to PLN 3,000.00 a month for driving his car (for the purposes of exercising his/her mandate). This expense would be difficult to certify by an invoice, thus the senator's statement is enough to account for the expenses. Once a year every senator receives PLN 1,500.00 for paying for opinions and expertise on legislation and those relating to the exercising of the senator's mandate. Every year he/she receives also PLN 4,500.00 for services relating with the use of Internet. If a senator proves with certain documents that his/her staff should receive benefits such as annual prizes etc., he/she can get some funds for this purpose. The amount intended for annual funding of the senator's payroll workers has not been fixed in advance.

All the above mentioned expenses – apart from care expenses – should be properly accounted for by the senator. Failure to account for these expenses results in the need to reimburse the money to the state budget at the end of his/her term.

According to the law, the flat-rate amount intended for constituency office expenses must not be used for funding donations and subsidies to natural persons, organizations and institutions or liabilities resulting from agreements entered into by the senator with his/her relatives or expenses which are not related with exercising the mandate or with the constituency office running. The office must not be used for political or business purposes.

During his/her mandate, by 31 January each year, the senator is obliged to account to the Senate Chancellery for the funds received in the previous year for office maintenance. Within 30 days of his/her term end or mandate expiry, the senator is obliged to wind up his/her constituency office, while returning all the office equipment to the Senate Chancellery and to submit all the financial accounts related with constituency office maintenance.

Financial and material benefits for the senators

Financial benefits addressed to senators personally include their remuneration, allowances, fringe benefits and refunds concerning accommodation or lease in Warsaw. Senator's (deputy's) salary corresponds to the remuneration of an undersecretary of state (vice-minister) and for a few recent years it has amounted to PLN 9,892.30. It is more less a

threefold current average monthly salary in Poland. Only those senators and deputies are eligible for the salary who, due to exercising their parliamentary mandate, do not work for their hitherto employer, do not operate any business or do not receive a disability pension or early retirement pension. A senator who keeps working at his/her workplace other than the parliament (e.g. keeps lecturing at the university), may apply for a supplementary remuneration. Such an application must be filed to the Senate Presidium. Such a supplementary remuneration is granted in the amount which constitutes a difference between the full amount of parliamentary remuneration of PLN 9,892.30 and his/her remuneration received for his/her other job.

As of the moment of being sworn in until the end of the term, each senator (also the one who is not remunerated) is entitled to an allowance which is a flat-rate amount of 25% monthly senator's remuneration. Currently the allowance amounts to PLN 2,473.08, including a tax-free amount of PLN 2,280.00, tax deductible expenses in the amount of PLN 111,25 and a taxable amount of PLN 81.83.

Senators who have certain functions in the Senate receive additional benefits. E.g. chairmen of parliamentary committees receive an additional payment which is equivalent to 20% of the senator's monthly salary, i.e. PLN 1,978.46.

Vice-chairmen receive an equivalent of 15 % of the monthly remuneration, i.e. PLN 1,483.85. Senate Secretaries and members of Legislative Commission are entitled to 10% of the remuneration, i.e. PLN 989.23.

Senators are also entitled to reimbursements of the cost of accommodation outside their residence and outside Warsaw. The total of PLN 7,600.00 a year may be reimbursed to a senator to this end.

Material benefits include free-of-charge accommodation and public transport, as well as free-of-charge mail within Poland.

The Chancellery provides the senators with free accommodation in Warsaw. The senators can stay at the Senator's Hotel or rent an apartment. A senator who rents an apartment instead of staying in the Hotel, is reimbursed with the cost of rent up to PLN 2,200.00 a month.

Senators are entitled to free-of-charge means of public transport as well as free-of-charge flights around Poland. This entitlement, which results from the Statute, is funded by the Senate Chancellery which enters into agreements with PLL LOT S.A. for the purpose of providing senators with free flights, and with PKP INTERCITY S.A. for the purpose of funding free railway transport between voivodeships, as well as with Automotive Chamber of Commerce which controls almost 200 shuttle bus agencies.

The costs of flights are accounted for based on flight tickets, while railway and shuttle bus transport is accounted for on a flat-rate basis.

One has to underline that such a system of funding domestic transport for senators was established in the time when each transportation sector was dominated by one state carrier, namely LOT Polish Airlines, Polish State Railway, and State Shuttle Bus Communication. In the olden times, three agreements entered into with these three firms enabled the senators to travel freely all around Poland. Nowadays the transportation market is becoming more and more competitive and the carriers with which agreements are entered into by the Senate Chancellery do not dominate the market any more. The senators can use the services of other carriers than the contracted ones; in such cases they are reimbursed by the Chancellery for the tickets bought.

A fleet of the Senate Chancellery cars is at the senators disposal for free when moving within the Warsaw city limits.

Free mail is another material benefits to which senators are entitled. For the purposes of sending letters related with exercising his/her mandate the senator is provided with envelopes and stationery. Each senator is entitled to 1500 specially marked envelopes. The envelopes are printed with the senator's name and they can be sent without a stamp as economy and first class mail within Poland. Such mail is funded by the Senate Chancellery based on an agreement entered into with the Polish Post-Office.

Financial disclosure forms and Register of Benefits.

Limitations on professional and business activity of the members of the Polish Parliament are defined in the Constitution and in the Statute. These provisions forbid acquisition and use of public property for commercial purposes and they ban the deputies and senators from controlling enterprises, the shares in which are held by the state treasury. Public property is the property held by the State Treasury and local government units; local government units in Poland include 16 voivodeships, 379 poviats and 2478 gminas.

Financial disclosure form is a way to control whether the above mentioned prohibitions are observed. Apart from deputies and senators who are obliged to file financial disclosure forms pursuant to the Statute, some public officials are also subject to this obligation.

Public disclosure form is filed by senators at the beginning and at the end of their term as well as annually – by 30 April, as at 31 December of the previous year. The public disclosure form is filed to the Marshal of the Senate in two counterparts, together with copies

of annual tax returns. One copy is forwarded by the Marshal of the Senate to the revenue office having jurisdiction over the senator's place of residence. The second copy is stored at the Senate Chancellery for 6 years. Information included in the form is made public – it is posted on the Senate website except for the information on the senator's address and the location of his/her property. Failure to submit the financial disclosure form results in senator's liability and loss of the right to remuneration until the form is submitted. A senator is criminally liable if the information provided in the financial disclosure form is not true or if he/she has not disclosed some relevant information.

Financial disclosure form relates to the property the senator holds by him/herself as well as jointly with a spouse. Information provided there includes i.a. the amount of cash in bank, property held, shares held in companies or partnerships, or in public property. Moreover, the form includes information on the senator's business activity, offices held in corporations, on the senator's income, movable property and financial liabilities. The correctness of financial disclosure forms is verified by: Committee for Regulatory Matters, Ethics and Senators, revenue offices and Central Anti-Corruption Bureau.

The Register of Benefits kept by the Marshal of the Senate reveals benefits acquired by the senators or their spouses. A senator must notify the Marshal on a current basis on offices held and activities conducted, due to which the senator received financial benefits, as well as on sole professional practice conducted or other self-employment, on any material support of public activity conducted by the senator concerned, or on donations and other benefits. Participation in the executive boards of foundations, companies and partnerships, or cooperatives, even if no financial benefits are received due to holding such offices must also be notified for the purposes of being entered on the Register of Benefits. All the modifications of data entered on the Register must be notified within 30 days of their occurrence at the latest.

SOCIAL AND PERSONAL MATTERS CONCERNING SENATORS

A senator is not an employee of the Senate, however his/her remuneration and benefits, referred to above, are treated as compensation for employment, and the period of compensation payment is treated as a period of employment. This period is also factored in for calculating pension or other special benefit entitlements. A deputy or senator who had an

accident or was injured while exercising a mandate is entitled to benefits resulting from general legislation.

A senator who had another job prior to being sworn in as a senator, has the right to an unpaid leave of absence for the term of his/her mandate and three months following its expiry regardless of the type and period of employment. His/her employer must grant him/her the leave of absence, and if the senator keeps working for the employer concerned, he/she has the right to an unpaid leave of absence for the time of performing the duties of a senator.

The employer who granted the senator such a leave of absence must employ him/her after this leave ends (after his/her mandate expires), at the same or equivalent (in terms of compensation) position. A former senator must not be dismissed without a consent by the Senate Presidium for two years following the end of his/her term, neither can his/her remuneration or employment conditions worsen.

A senator must notify the Senate Marshal of an intention to undertake additional jobs, except activities subject to copyright or related rights; a senator must not take additional jobs or receive donations which can undermine constituents' trust to his/her exercising the mandate. Neither can he/she invoke the mandate or use the title of senator for the purpose of performing additional jobs or business conducted on own account or jointly with other entities.

Senators and their families benefit from health-care services on general basis, i.e. pursuant to the Act on health-care services funded from public funds. In case of emergency, accidents, traumas, poisoning while participating in the Senate session, the senators can benefit from emergency medical services team of specialists who are on duty on the days of the Senate sessions.

A senator who receives the senator's remuneration is subject to mandatory health insurance. Social insurance (retirement, disability pension and accident injuries) is obligatory or optional. It depends on whether the senator is employed outside the Senate with one or several employees. A senator who does not work additionally outside the Senate, and as a result is not covered with social insurance which provides for retirement pension entitlements, and who receives senator's remuneration in full amount, must be obligatorily reported for health and social insurance purposes. In other cases (optionally) he/she can be reported for health insurance purposes only or for optional retirement insurance purposes.

Senators are not subject to sickness insurance because they do not receive a sickness benefit. Their senator's remuneration is paid in full amount even when they are on a sick-leave. They are not Senate employees, so they are not subject to work time verification (time-sheets) based on which periods of work disability are calculated. Senators reported for social insurance purpose or only for health insurance purpose can, via Chancellery, report their family members to be covered with health insurance, if they are not otherwise covered with such health insurance.

Senators may take loans for apartment renovation, which loans are paid out from a social fund. The former senators whose financial situation has worsen, can sometimes benefit from these funds.

Entitlements to retirement benefits are earned by the senators on general principles.

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