

NOTES

ON THE SENATE



**SENATE
OF THE REPUBLIC
OF POLAND**

Rights and obligations of a Senator

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Both the rights and obligations of a senator are regulated in detail by the provisions of the Constitution of the Republic of Poland and various legal acts, in particular by the Act on Exercising the Mandate of a Deputy and Senator – and by the Rules and Regulations of the Senate.

WORK AT THE SENATE

Senators are required to actively participate in sittings of the Senate and its bodies: committees, Presidium of the Senate and the Council of Seniors. If a senator fails to comply with this obligation and misses meetings without justification or comes to meetings, but does not take part in voting, his or her salary for a given month is reduced. At plenary sittings, senators can voice opinions on issues on the agenda, submit motions concerning an act or resolution discussed by the Senate – propose its rejection, amendment or adoption without amendments, submit the so-called points of order (e.g. announcement of a recess during a debate, setting a time-limit for speeches), as well as motions concerning the agenda. When the Senate is examining an act, the senator who has presented a committee's opinion thereon at a sitting of the Senate is required to participate in meetings of the relevant Sejm committees to explain the position which is ultimately adopted by the Senate.

A senator has the **RIGHT TO PRESENT DRAFT RESOLUTIONS OR, ON BEHALF OF A GROUP OF 10 SENATORS, DRAFT ACTS**. A draft act adopted by the Senate is submitted to the Sejm as a legislative initiative.

A senator **MUST SUBMIT HIS OR HER CANDIDATURE FOR MEMBERSHIP IN AT LEAST ONE STANDING COMMITTEE OF THE SENATE**. As a committee member, a senator may voice his or her opinions on issues on the agenda, submit motions on legal acts under consideration and make comments and suggestions concerning the work of the committee or procedural issues. Senators may also take an active part in the work of any other committee of which they are not members, but without the right to vote.

One of the rights of a senator connected with the exercise of his or her mandate is **THE RIGHT TO SUBMIT SENATOR'S STATEMENTS** at the end of each sitting of the Senate. In the case when such a statement contains motions or comments addressed to the government or other institutions, the statement is forwarded to that party, which is then obliged to reply to it.

WORK OUTSIDE THE PARLIAMENT

Independently of statements made at sittings of the House, a **SENATOR MAY** also **ASK MEMBERS OF THE COUNCIL OF MINISTERS, REPRESENTATIVES OF STATE AND LOCAL GOVERNMENT BODIES AND INSTITUTIONS FOR INFORMATION AND CLARIFICATION** of matters associated with the performance of his or her parliamentary

duties. A senator has **THE RIGHT OF ACCESS TO DOCUMENTATION AND IS ENTITLED TO LOOK INTO THE PERFORMANCE OF PUBLIC ADMINISTRATION AUTHORITIES, COMPANIES WITH A STATE SHARE, AS WELL AS PLANTS AND ENTERPRISES OWNED BY THE STATE OR LOCAL GOVERNMENT**. Moreover, **A SENATOR MAY COME FORWARD WITH THE SO-CALLED "INTERVENTION"**, i.e. he or she may look into a particular matter, for example on behalf of a voter, and request a report on how it has been solved. This right enables a senator to assist citizens, e.g. in situations when public authorities or other institutions unduly delay decisions that affect them.

SENATORS MAY OPEN AN OFFICE, which helps them to perform their duties in their respective electoral districts. The lump-sum for covering the costs of running a senator's office and an office of a deputy is determined jointly by the Marshal of the Sejm and the Marshal of the Senate. The Senate Chancellery assists senators in organizing, furnishing and running their offices.

Since a large proportion of a senator's tasks is accomplished in his or her electoral district, he or she is **ENTITLED BY LAW TO PARTICIPATE IN SESSIONS OF VOIVODESHIP PARLIAMENTS, DISTRICT (POWIAT) COUNCILS** and municipal councils in this electoral district. Taking part in these sessions, a senator has the right to submit comments and motions.

IMMUNITY

The so-called immunity is a very important senatorial right. Its objective is to provide a senator with guaranteed protection and independence in the exercise of his or her mandate. In other words, a **SENATOR CANNOT BE HELD ACCOUNTABLE FOR ANY ACTION TAKEN IN CONNECTION WITH THE EXECUTION OF HIS OR HER MANDATE**. He or she is **ACCOUNTABLE** for any such action **ONLY TO THE SENATE**. This protection is guaranteed both during and after a senator's term of office. However, if a senator infringes personal interests of other parties, then the **SENATE MAY AGREE TO HOLD THE SENATOR ACCOUNTABLE**. **A SENATOR IS ALSO PROTECTED BY IMMUNITY IN CRIMINAL MATTERS**, so he or she may not be held criminally liable without the Senate's approval, unless the senator himself or herself acquiesces thereto. If a criminal proceeding has been instituted against a candidate to the Senate prior to a senatorial election, then it must be suspended following the date that person is elected, until the expiry of his or her mandate, provided that the Senate submits such motion to the authority conducting the proceedings. This does not mean that he or she will escape being judged by a court of law. Matters that cannot be pursued while a senator is protected by the parliamentary immunity are not subject to the statute of limitations. Therefore, if a proceeding against a senator cannot be continued during his or her term of office (i.e. the senator is not willing to forfeit his or her right to immunity and the Senate does not agree to revoke it), then it can be resumed after the term of office ends.

A SENATOR CANNOT BE ARRESTED OR DETAINED WITHOUT THE CONSENT OF THE SENATE, unless he or she is caught in the commission of an offence, and that only if the arrest is indispensable to ensure a proper course of the criminal proceeding.

INCOMPATIBILITY OF THE MANDATE

As in many modern democracies, the Polish governance system is founded on the principle of the separation and mutual control of the legislative, executive and judicial power. At the same time, parliamentarians are discouraged from engaging in occupations that might interfere with their time-consuming civic duties or compromise their independence. This objective is achieved by the **SO-CALLED INCOMPATIBILITY OF THE SENATORIAL MANDATE WITH CERTAIN OTHER FUNCTIONS OR OCCUPATIONS**. The senatorial mandate must not be combined with:

- the office of president, mandate of a deputy, mandate of a Member of European Parliament, office of the president of the National Bank of Poland, Supreme Audit Office, Institute of National Remembrance, Commissioner for Human Rights, Ombudsman for Children, ambassador, member of the Monetary Policy Council, National Broadcasting Council, Council of the Institute of National Remembrance, councillor and member of the local government;
- employment in government administration (this prohibition does not apply to members of the Council of Ministers and secretaries of state) and local govern-

ment administration, in the chancelleries of: the President, the Sejm and the Senate, in the Supreme Audit Office, in the office of the Constitutional Tribunal, Commissioner for Human Rights, Ombudsman for Children, National Broadcasting Council, Institute of National Remembrance, National Election Bureau, State Labour Inspectorate, in civil service and in court and prosecutor's office administrations;

- function of a judge, prosecutor, civil servant, active soldiers, police and state security officers (if elected, they must resign their current position).

In order to become a senator, one must give up his or her aforementioned position or function within 14 days of the announcement of election results – a failure to do so causes expiry of the senator's mandate. Conversely, the mandate expires on the date the senator is appointed to any of the aforementioned positions or functions.

ENGAGING IN GAINFUL ACTIVITY

A senator holds a position of public trust and participates in the exercise of the legislative power. Therefore, he or she is subject to special **RESTRICTIONS AS CONCERNS HIS OR HER INVOLVEMENT IN BUSINESS ACTIVITIES**. He or she must not carry out activities that would entail benefiting from State or local government assets (i.e. assets of a municipality, district (powiat) or voivodeship). A senator must not be a member of the governing body of an enterprise in which the State Treasury or local government hold shares, cannot be involved in a business where he or she would be using property of the State Treasury or municipal assets, is not allowed to manage or represent such business (even if he or she is not its owner), and cannot own more than 10% of shares in a business where the State or a municipal legal person is a shareholder. A senator who fails to comply with this prohibition may be brought before the State Tribunal, which may revoke his or her mandate.

A SENATOR MUST INFORM THE MARSHAL OF THE SENATE OF ANY ADDITIONAL ACTIVITIES which he or she is planning to undertake. The only exception to this rule is an activity associated with author's rights, such as writing books, articles, etc. Senators involved in such additional activities, or engaged in an economic activity, are not entitled to use their mandate with a view to obtaining special privileges. Moreover, senators must not undertake any activities that could result in losing the public trust or accept gifts that could impair it.

At the beginning and at the end of each Senate term, and also at the beginning of the calendar year, **SENATORS SUBMIT A DECLARATION OF ASSETS** listing their personal assets and those held jointly with their spouse. The declaration must include assets such as real property, stocks and shares, financial resources, as well as liabilities (debts) in excess of a specified amount. This information is reviewed by the Rules, Ethics and Senatorial Affairs Committee and by the competent tax office, and the results of these reviews are reported to the Presidium of the Senate. Starting from the Senate of the Fifth Term, information provided in senators' declarations of assets, except the address of residence and location of real property, is subject to public scrutiny and is made available on the Internet.

In addition, the Marshal of the Senate maintains the so-called "**REGISTER OF INTERESTS**", in which every senator enters all benefits received personally or by his or her spouse, such as positions or activities for which they are paid, gifts they have received, as well as domestic and foreign trips they have made (except for those associated with official travel on Senate business), which were not paid for personally, by the institution for which they work or by their political party. The register is available to the public. Moreover, the data contained are published by the Marshal of the Senate in a special annual publication.

A senator who does not abide by restrictions relating to the involvement in gainful activity, or does not perform his or her obligations, risks being subjected to the regulatory accountability (specified in the Rules and Regulations of the Senate) and other legal sanctions. For example, a failure to submit the declaration of assets within the prescribed period results in the loss of pecuniary benefits until the declaration is submitted, whereas not disclosing the required information or providing false information in the declaration of assets is subject to criminal prosecution.

In order to ensure the proper performance of a senator's responsibilities, **THE LAW COMPELS EMPLOYERS TO PROVIDE EMPLOYEES WHO HAVE BEEN ELECTED TO THE SENATE**

WITH UNPAID LEAVE FOR THE DURATION OF THEIR MANDATE AND 3 MONTHS THEREAFTER. Furthermore, these persons are entitled to return to their workplace after the expiry of the mandate. Getting unpaid leave is a senator's privilege, but he or she does not have to take it (unless the above-mentioned principle on the incompatibility of the mandate requires the senator to do so). **IF A SENATOR CHOOSES NOT TO TAKE A LEAVE FOR THE DURATION OF THE MANDATE, HIS OR HER EMPLOYER MUST GIVE HIM OR HER ENOUGH TIME OFF FOR PERFORMING HIS OR HER PARLIAMENTARY TASKS** (for example, to travel to the Senate with a view to participating in its sittings or sessions of its committees).

SALARY

A senator who is on unpaid leave from his or her usual employment during his or her term in office, who is not engaged in economic activities and who is not entitled to a retirement or disability pension receives a **MONTHLY SALARY**. Its amount is equivalent to the salary of an under-secretary of state (deputy minister). Chairmen and deputy chairmen of Senate committees receive a supplement amounting to 20% and 15% of their basic salary respectively. Chairmen of Senate standing subcommittees, secretaries of Senate, members of the Legislation Committee and members of the Human Rights, the Rule of Law and Petitions Committee receive a supplement of 10% of their basic salary. The total of these supplements in the case of holding several concurrent functions cannot exceed 35% of the basic salary.

All senators are entitled to a **PARLIAMENTARY PER DIEM ALLOWANCE** regardless of whether they are "professional" senators (i.e. receive a senator's salary) or continue to be engaged in gainful activity outside the parliament (and so do not receive a senator's salary). The per diem allowance is meant to cover expenses incurred by a senator while exercising his or her mandate. The monthly per diem allowance is equivalent to 25% of a senator's salary.

At the end of the mandate, senators receive a so-called "**PARLIAMENTARY ALLOWANCE FOR CESSATION OF MANDATE**", equivalent to 3 salaries. However, a senator who is re-elected for another term is not entitled to this allowance.

OTHER ENTITLEMENTS

Senators perform their duties not only in the Parliament, but also in their electoral districts and in other locations in Poland and abroad. This entails frequent trips, especially to the Senate (several times in a month) with a view to participating in its sittings or sessions of its committees. For this reason, senators are entitled to **FREE USE OF URBAN PUBLIC TRANSPORT AND OTHER MEANS OF PUBLIC TRANSPORT (POLISH STATE RAILWAYS – PKP AND THE STATE BUS SERVICE – PKS)**, and to **FREE AIRLINE TICKETS ON DOMESTIC FLIGHTS**.

Senators who do not live in Warsaw permanently use the **ASSISTANCE OF THE SENATE CHANCELLERY IN FINDING ACCOMMODATION IN THE CAPITAL**. Most stay at the Deputies' Hotel (a hotel located in the premises of the Chancellery of the Sejm where deputies and senators are accommodated). Some senators use other hotels or rent apartments. The costs of senator's accommodation in Warsaw is paid for by the Senate Chancellery. Accommodation expenses incurred by senators who must travel away from home as part of their official duties are reimbursed by the Senate Chancellery up to an annual limit set for that purpose.

THE TASK OF THE CHANCELLERY OF THE SEJM IS TO ASSIST SENATORS IN THE PERFORMANCE OF THEIR DUTIES. The staff of its various offices provide senators with useful information (e.g. on legal provisions applicable in various European countries which have relevance for issues that senators are interested in), prepare opinions on designated topics or have such opinions prepared by external experts, provide legal advice and assist in the preparation of legislative amendments or drafting new acts.

SENATORS RECEIVE, FREE OF CHARGE, ALL PRINTED MATERIALS ASSOCIATED WITH THE LEGISLATIVE ACTIVITIES of the Parliament: draft acts and related opinions of the Sejm committees, acts finally adopted by the Sejm, various expert opinions, comments and other supporting documentation. If a senator's duties include writing correspondence, he or she may use special letterhead envelopes and paper supplied by the Chancellery of the Senate. There is no fee for mailing such letters.