

NOTES ON THE SENATE



**SENATE
OF THE REPUBLIC
OF POLAND**

The Role of the Senate in the constitutional structure of the Polish State

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In constitutional democracy, the two-chamber structure has an essential effect on the State system. Due to this structure, the principle of separation and balance of legislative, executive and judicial powers is always adhered to. It is intended aimed to protect the rights of individuals against the risks involved in the concentration of power. Legislative power is thus entrusted to both the Sejm and the Senate to prevent the negative effects of concentration of power within a parliamentary majority.

As evidenced by the history of the Polish parliamentary system, there is a link between the two-chamber parliament structure and the sovereignty of the State, in its traditional meaning. Such a link could be seen again when the Senate was re-established following a number of constitutional reforms, initiated in 1989.

In accordance with the Constitution of the Republic of Poland, the Senate consists of 100 senators elected by direct and universal ballot, by secret



(Photo by T. Ozdoba)

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vote. As set out in the Election Code, these are majority elections, held in single-member constituencies. The Senate is thus a repository of democratic legitimacy on an equal footing with the Sejm.

However, due to the Polish parliamentary tradition, the **BASIC LAW IN FORCE AND THE PRACTICE OF ITS APPLICATION, THE TWO HOUSES DO NOT HAVE AN EQUAL STATUS**. It is the Sejm which ultimately decides on the wording of acts submitted to the President for signature. It is the Sejm which has the powers to accept or reject a presidential veto. As set out in the Constitution, only Sejm takes part in appointing the government and monitoring and reviewing its activities. Only Sejm appoints judges of the Polish Constitutional Tribunal and the State Tribunal of the Republic of Poland. Only Sejm has the right to bring an action against a person before the State Tribunal. However, there are some exceptions: the Sejm may not indict the President of the Republic of Poland or bring an action before the State Tribunal against a senator who fails to comply with the ban on being engaged in economic activities. With the end of the term of the Sejm, the mandates of the Senate are terminated too.

NONETHELESS, BOTH CHAMBERS HAVE EQUAL POWERS TO AMEND THE CONSTITUTION. The Senate, too, has the right to initiate constitutional amendments. The Sejm may only amend the Constitution with the Senate's consent given by an absolute majority of votes, in the presence of at least half of the statutory number of senators, within 60 days of the adoption of the relevant constitutional amendment.

Both Houses are equally empowered to adopt **ACTS**, both with a majority of 2/3 votes and in the presence of at least half of the statutory number of its members, which **AUTHORIZE THE RATIFICATION OF AN INTERNATIONAL AGREEMENT**, under which the competences of State authorities in certain matters are delegated to an international body or an organisation. The Council of Ministers works together with the Sejm and Senate **ON ISSUES CONNECTED WITH POLAND'S MEMBERSHIP IN THE EUROPEAN UNION**, especially on issues associated with the EU law-making process, the submission of complaints to the Court of Justice of the European Union and the exercise of the EU Council presidency by representatives of the government. **THE SENATE MAY ADOPT A RESOLUTION ON BRINGING AN ACTION BEFORE THE EU COURT OF JUSTICE WITH RESPECT TO AN EU LEGISLATIVE ACT WHICH BREACHES THE PRINCIPLE OF SUBSIDIARITY**.

When sitting in joint session, the Senate and the Sejm act as the two fully equal components of the **NATIONAL ASSEMBLY**. The presence of both senators and deputies is equally important for the performance of its functions, i.e. taking the presidential oath of office and hearing the President's address. Senators and deputies vote on an equal footing when the National Assembly adopts a resolution on indicting the President before the State Tribunal or on declaring the President permanently unable to hold office due to health reasons. **THE MARSHAL OF THE SENATE TAKES ON THE DUTIES OF THE PRESIDENT OF THE REPUBLIC OF POLAND**, on a temporary basis, when the Marshal of the Sejm is unable to do so.

As one of the two bodies of the legislative authority, the Senate has the **RIGHT TO INITIATE LEGISLATION AND PARTICIPATES IN THE ADOPTION OF LEGISLATIVE ACTS**. However, an opinion of the Senate on an act passed by the Sejm may be rejected by an absolute majority of votes cast by at least half of the statutory number of deputies. The Senate does not take part in examining acts vetoed by the President, however, it does **TAKE PART IN REMOVING CONSTITUTIONAL DISCREPANCIES OF AN ACT IDENTIFIED BY THE CONSTITUTIONAL TRIBUNAL** at the request of the President, who may send an act to the Tribunal before it is finally signed by the head of the State.

Under the Constitution, the **MARSHAL OF THE SENATE AND A GROUP OF 30 SENATORS** are obliged to ensure compliance with its provisions. It also gives them the right to request **THE CONSTITUTIONAL TRIBUNAL TO EXAMINE THE**

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CONSISTENCY OF AN ACT WITH THE BASIC LAW, OR TO CHECK WHETHER THE OBJECTIVES AND ACTIVITIES OF POLITICAL PARTIES ARE CONSISTENT WITH THE CONSTITUTION.

Another role which is essential for the constitutional structure of the State – a role which has evolved in practice over the years and which is based on the Rules and Regulations of the Senate – is associated with **ACTIONS TAKEN BY THE SENATE TO ENFORCE DECISIONS OF THE CONSTITUTIONAL TRIBUNAL** on legislative acts. The Marshal of the Senate forwards the decision of the Constitutional Tribunal on the consistency of an act to the Constitution to the Legislative Committee, which checks if any legislative measures have to be initiated. In such a case, the Committee requests the Marshal of the Senate to undertake legislative initiative.

The Senate has the **RIGHT TO APPROVE THE DECISION OF THE PRESIDENT OF THE REPUBLIC OF POLAND ON A NATIONWIDE REFERENDUM** on issues which are especially important for the State. Resolutions on such issues are adopted by the Senate by an absolute majority of votes in the presence of at least half of the statutory number of senators. The Senate can also put forward a **MOTION TO THE MARSHAL OF THE SEJM FOR A NATIONWIDE REFERENDUM** by presenting proposals of questions or possible solutions to the issue to which the referendum relates.

Another task of the Senate is to **EXAMINE PETITIONS** which may be submitted by citizens who thus exercise their constitutional right. The Marshal of the Senate forwards these petitions to the Petitions Committee, which examines them or transfers them to the competent public authority. After the petition is examined, the Committee may with submit a request to the Marshal of the Senate for initiation of legislative measures.

The Senate has the **RIGHT TO CHOOSE AND CONSENT TO THE APPOINTMENT AND DISMISSAL OF STATE AUTHORITIES**. The Senate appoints and dismisses two senators to serve as members of the National Council of the Judiciary of Poland. The Chamber also appoints and dismisses a member of the National Broadcasting Council and a member of the State Commission for Pedophilia, 2 members of the Council of the Institute of National Remembrance and 3 members of the Monetary Policy Council. The consent of the Senate is required for the appointment of the Commissioner for Human Rights – such consent is given or refused after candidates for that office provide required information and answer the senators' questions. In addition, the Senate appoints the Supreme Court lay judges; appoints and dismisses the President of the Supreme Audit Office, the Ombudsman for Children, the President of Data Protection Office, the President of the Institute of National Remembrance.

The Senate **EXAMINES REPORTS OF THE NATIONAL BROADCASTING COUNCIL** – a body appointed to safeguard the freedom of speech and the right to information and to protect public interests in the broadcasting. If such a report is rejected by the Senate, it may be one of the grounds for terminating the term of office of all members of the National Broadcasting Council. Moreover, the Senate **CONSIDERS REPORTS AND INFORMATION PRESENTED BY THE CONSTITUTIONAL TRIBUNAL, THE NATIONAL COUNCIL OF THE JUDICIARY OF POLAND, THE NATIONAL MEDIA COUNCIL, THE FIRST PRESIDENT OF THE SUPREME COURT, COMMISSIONER FOR HUMAN RIGHTS, THE OMBUDSMAN FOR CHILDREN AND THE PRESIDENT OF THE INSTITUTE OF NATIONAL REMEMBRANCE. THE SENATE ALSO CONSIDERS INFORMATION FROM THE COUNCIL OF MINISTERS ON POLAND'S PARTICIPATION IN THE WORK OF THE EUROPEAN UNION AND INFORMATION REGARDING THE AFFAIRS OF THE POLISH COMMUNITY AND POLES ABROAD.**

In practical terms, the performance of constitutional tasks by the Senate entails a certain supervisory function, in particular, by requiring representatives of the government to be present and provide the information needed for the legislative work of the Senate or connected with Poland's membership in the European Union. This significant supervisory role manifests itself in different

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ways, for example, it may take the form of statements of senators, issued within the framework of their mandate, to which members of the Council of Ministers have to reply in writing.

The Senate is involved in international cooperation, in line with the tradition of the Second Republic of Poland and the current practice. This can be seen, for example, in the Senate's **COOPERATION WITH ORGANIZATIONS OF THE POLISH DIASPORA IN DIFFERENT COUNTRIES ACROSS THE WORLD.**

Ryszard Piotrowski

