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**Admissibility of Remote Deliberation and Voting in
the Polish Parliament. The Functioning of the Sejm
and Senate During the COVID-19 Pandemic**

Keywords: parliament, Poland, remote deliberations, COVID-19

Słowa kluczowe: parlament, Polska, obrady zdalne, COVID-19

Abstract

The dynamic development of the COVID-19 epidemic hampered the functioning of administrative bodies, especially those consisting of many people. In 2020, many countries had to solve the problem of how to adapt their laws to the requirements of the pandemic, while maintaining the safety requirements of members of parliaments. The introduced solutions included suspending the proceedings, modifying the quorum, or changing the voting method. Few countries (including Poland) have fully used the available technologies, deciding to allow parliaments to hold and vote remotely. The conducted analysis is aimed at identifying the systemic solutions that made it possible to introduce such solutions, as well as at determining what modifications of the legal system were necessary to establish innovative solutions.

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Streszczenie**Dopuszczalność zdalnego obradowania i głosowania w polskim parlamencie. Funkcjonowanie Sejmu i Senatu podczas pandemii COVID-19**

Dynamiczny rozwój epidemii COVID-19 utrudnił funkcjonowanie organów administracji, zwłaszcza wieloosobowych. Liczne państwa musiały w 2020 roku rozwiązać problem, jak dostosować prawo do wymogów pandemii, zachowując wymogi bezpieczeństwa członków parlamentów. Wprowadzone rozwiązania obejmowały zawieszanie obrad, modyfikację kworum, czy zmianę sposobu głosowania. Nieliczne państwa (m.in. Polska) wykorzystały w pełni dostępne technologie, decydując się na umożliwienie parlamentom zdalne obradowanie i głosowanie. Prowadzona analiza ma na celu wskazanie rozwiązań ustrojowych, które umożliwiły wprowadzenie takich rozwiązań, a także ustalenie, jakie modyfikacje systemu prawnego były niezbędne dla ustanowienia nowatorskich rozwiązań.

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The Constitution of the Republic of Poland of 1997² regulates the key principles of the functioning of the parliament. The constitutional regulations governing the organization and operation of both chambers of parliament relate to the most important issues such as competences, structure, elections, the term of office, the status of a member of parliament, organization, and operation. This solution serves to strengthen the political position and to emphasize the special role of the Sejm and the Senate but also limits the freedom of parliament members to shape their internal structure or the manner of operation³. Many issues essential for the efficient functioning of the chambers have been regulated in lower rank legal acts, i.e. in the Regulations of the Sejm⁴ and the Regulations of the Senate⁵. As for resolutions, they have a low-

² Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483).

³ J. Marszałek-Kawa, D. Plecka (eds.), *Dictionary of Political Knowledge*, Toruń 2019.

⁴ Regulations of the Sejm of the Republic of Poland of 30 July 1992 (M.P. 2020, No. 476); J. Marszałek-Kawa, *The Institutional Position of the Sejm of the Republic of Poland after the Accession to the European Union*, Toruń 2016.

⁵ Regulations of the Senate of the Republic of Poland of 23 November 1990 (M.P. 2018, No. 846).

er legal rank than statutes, however, this solution enables efficient changes to the content of the regulations, which allows reacting to current problems. The advantages of this solution became apparent in the spring of 2020 when numerous states and their constitutional bodies were paralyzed by the rapidly spreading COVID-19 pandemic.

The epidemic crisis that began in Europe at the outset of 2020 caused difficulties in the functioning of all public administration bodies, but it mostly affected multi-person bodies. Organizing parliamentary sessions, the functioning of which depended on the issuing of laws regulating the functioning of the state during a pandemic, has become particularly problematic – especially in the absence of provisions in the constitution in case of emergency or precisely regulating their announcement. European countries have applied various solutions to this situation. Parliament’s meetings have been suspended in Serbia. In Austria, it was considered that the constitutional provisions relating to parliamentary sessions exclude remote deliberations. Due to epidemic reasons, the number of stationary meetings was reduced by lowering the quorum in the Federal Republic of Germany to 25% (Bundesrat), and in Portugal to 20% of members of parliament. In Hungary and Great Britain, meetings were held as normal. In Greece, the possibility of postal voting in parliament was introduced. In Belgium, Latvia, Poland, Romania, and Slovenia, the regulations were modified to enable remote parliamentary deliberations and remote voting⁶.

During the COVID-19 pandemic, the cases of using innovative solutions enabling the parliament to deliberate and vote with the use of modern technologies are of particular scientific interest. This analysis focuses on the solutions applied in Poland and is to provide answers to the following questions: Does the current constitution allow for remote deliberations and voting in parliament? How are these issues regulated by lower-ranking laws relating to the functioning of parliament? Have the changes made contributed to the improvement of the functioning of the Sejm and Senate during the pandemic? The answers to these questions are provided due to the analysis of the le-

⁶ Senate Chancellery, Analysis and Documentation Office and Correspondence, Information of 2 June 2020, Parliamentary actions taken in connection with the COVID-19 pandemic, https://www.senat.gov.pl/gfx/senat/pl/senatopracowania/191/plik/dzialania_parlamentow_podczas_panedemii_covid-19.pdf (20.09.2020).

gal norms of the Constitution of the Republic of Poland of 1997, as well as the Regulations of the Sejm of 1992 and the Regulations of the Senate of 1990.

The answer to the question of whether the Sejm and the Senate may hold meetings and vote remotely requires, first of all, an analysis of the provisions of the binding Constitution. According to the provisions of Art. 109 para. 1 “the Sejm and the Senate deliberate in sessions”. A question should be asked – what features distinguishing from other meetings characterize a session of the Sejm or Senate? Are their joint deliberations allowing for an exchange of views and making decisions, in whatever form, or do they have to be held under strictly defined legal conditions? The provisions of the Polish Constitution of 1997 should be considered neutral in this matter. In Polish, the term “meeting” means “business meeting to discuss some matters”⁷. In the past, a meeting could only take place when two or more people were in the same room. However, for several decades there have been known solutions that enable holding meetings “face to face” at a distance (video chat, videoconference). These solutions are constantly improved and use the latest technologies, ensuring the high quality of meetings, their protection against unauthorized participation, and secretly making decisions. Therefore, it can be assumed that in 2020 no technical obstacles are preventing the holding of a meeting of a multi-member body at a distance, as well as the possibility of taking decisions safely by voting during such a meeting.

The mentioned statements are consistent with the opinions of the representatives of the legal doctrine. Ewa Gdulewicz expressed the view that “the constitutional statement that the chambers deliberate at their sessions shows that this is the only form of action of the Sejm and the Senate envisaged for the exercise of their constitutional competences, and none of their organs – without express constitutional authorization – is entitled to adopt them. The possibility for the chamber to take decisions without holding a plenary session (e.g. by circulation) is also excluded”⁸. Leszek Garlicki also drew attention to the necessity of debating the chambers of the Polish parliament only at meetings and stressed that “Neither the Marshal, nor the presidium, nor the com-

⁷ <https://sjp.pwn.pl/szukaj/spotkanie.html> (20.09.2020).

⁸ E. Gdulewicz, *Posiedzenie Sejmu (art. 109)*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, eds. W. Skrzydło, S. Grabowska, R. Grabowski, Warsaw 2009, p. 355.

mittees are empowered to act instead of the chamber sitting at the meeting of all its members”⁹. In this context, the idea of a meeting of remote chambers of the Polish parliament is not controversial – such a session is plenary, and decisions reserved for members of the parliament are taken by them, albeit with the use of previously unknown tools.

To recognize a meeting of members of the Sejm or Senate as a meeting within the meaning of the Constitution requires that the requirements of Art. 120: “The Sejm passes bills by a simple majority of votes in the presence of at least half of the statutory number of deputies unless the Constitution provides for a different majority. The Sejm shall adopt resolutions in the same manner, unless the Act or a resolution of the Sejm provides otherwise”. The regulations do not require a meeting to be held in a specific place but establish a quorum, i.e. the minimum number of deputies necessary for the validity of adopted resolutions. Passing a bill or adopting another resolution is possible in the presence of at least half of the statutory number of deputies (230 people) or senators (50 people) at the place and time of the meeting. The quorum requirements can be met during remote deliberations, but it requires the implementation of solutions enabling the active and personal participation of a member of parliament in the deliberations, as well as enabling his identification.

Conducting debates of the Polish parliament remotely makes it difficult to implement the provisions of the Art. 113 of the Constitution, according to which the sessions of the Sejm and the Senate are public, and the introduction of secrecy is an exception. The openness of deliberations usually is realized by guaranteeing the public access to the place of the meeting, which is not possible in the case of remote deliberations. It should be noted, however, that the principle of openness cannot be implemented through the participation of the public during the deliberations, if we are dealing with an epidemic threat.

Therefore, it seems natural that during an epidemic, the requirement of openness of deliberations can only be met by ensuring media broadcasts. In the case of remote deliberations, it requires appropriate technical facilities and personnel. Broadcasts of the debates of the chambers of the Polish par-

⁹ L. Garlicki, *Nota 9 do art. 109, [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warsaw 2001, p. 7.

liament have a long tradition. B. Banaszak emphasizes that thanks to direct broadcasts of parliamentary debates, the society “obtains not only information about its work, but also about the views expressed by its representatives, about their involvement in solving specific social problems, etc. It also has a specific feedback loop and enables the dissemination of socially acceptable views of parliamentarians, and as a result, forming a majority around them, sometimes different from the one that was formed as a result of the last parliamentary elections”¹⁰.

Concerns about maintaining the seriousness of the chamber’s deliberations should also be expressed – members of parliament, having the opportunity to take part in the deliberations remotely, can use it in various ways. Although the provisions of the Sejm and Senate bylaws allow the use of tools to discipline participants in the debates, the number, and type of deficiencies possible during a remote session of the chamber are difficult to predict¹¹.

The problem of admissibility of remote deliberations was solved by the adoption on March 26, 2020 of the amendment to the Regulations of the Sejm¹². Section IIIa was added to the content of the legal act, entitled “Meetings of the Sejm, committees, and subcommittees using electronic means of communication enabling remote communication”. The provisions of Art. 198a allow for meetings of the Sejm to be held with the use of electronic means of communication enabling remote communication during the state of emergency, a state of natural disaster, martial law, or an epidemic, and the decision on this matter rests with the Chairman of the Sejm. The Chancellery of the Sejm is obliged to ensure access to technical means enabling all the deputies who submit a motion to participate in a remote meeting. Similar technical means should be provided to other public authorities wishing to partic-

¹⁰ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, p. 655.

¹¹ In the Argentine parliament on September 24, 2020, a deputy who, during a remote meeting, believing that he was off-line, was playing with his mistress in a hotel room was violated. The episode as part of the parliamentary session became part of the broadcast, and as a result, the deputy was suspended and eventually resigned. <https://www.thetimes.co.uk/article/argentine-mp-suspended-after-fondling-girlfriend-during-videoconference-7jttq3rlq> (20.09.2020).

¹² M.P. item 327, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20200000327> (20.09.2020).

ipate in a sitting of the Sejm, according to the provisions of the Art. 170 sec. 1–3 of the Regulations of the Sejm¹³.

Sessions of the Sejm held remotely are, as a rule, conducted according to the usual procedure, and any differences result from the specificity of remote communication (Art. 198a (6) of the Rules of Procedure). The provisions of Art. 198b require that the means of distance communication guarantee “the possibility of identifying the person who uses them, real-time communication, in particular taking the floor, voting, submitting formal motions, and at the same time guarantee the security of the ICT system”. Importantly, the new provisions guarantee that the participation of a deputy in a remote sitting of the Sejm is equal to other forms of participation in a sitting, so it does not exclude or limit his rights (Art. 198c section 1). The problem of ensuring the implementation of the constitutional requirement of openness of the proceedings was solved by “broadcasting the meeting using an ICT network”, although the provisions of Art. 198e do not specify whether it is a transmission on the parliament’s internal network or another network.

The amendment to the Regulations of the Sejm of March 2020 refers to numerous organizational issues related to the specificity of remote meetings. For example, the provisions: “abolish the requirement for a deputy to occupy a designated seat in the meeting room” (Art. 198c (2)), require that the Deputy’s presence at a meeting be confirmed by logging in to the system and voting printouts (Art. 198c (3)), allow documents to be submitted in electronic form instead of in writing (Art. 198d), allow voting with the use of electronic means of communication enabling remote communication (Art. 198g (1)) and equate such voting with an ordinary voting (Art. 198g (1)). 2), consider the audiovisual recording as an official statement of the course of the session of the Sejm session with the use of electronic means of communication enabling communication at a distance (Art. 198h). The analyzed provisions also

¹³ The provisions list the following bodies: the President, members of the Council of Ministers, the President of the Supreme Audit Office, the Marshal of the Senate, the First President of the Supreme Court, the Ombudsman, the Ombudsman for Children, the President of the Supreme Administrative Court, the Chairman of the National Electoral Commission, the Chairman of the National Council of the Judiciary, the Public Prosecutor General, President of the National Bank of Poland, Chairman of the National Broadcasting Council, Chairman of the National Media Council, President of the Office for Personal Data Protection, Head of the President’s Office and secretaries of state in the President’s Chancellery.

allow remote meetings of the Presidium of the Sejm or the Council of Seniors (Art. 198i) and parliamentary committees (Art. 198j, Art. 198k).

The resolution entered into force upon adoption, which enabled the functioning of the Sejm during the pandemic. Initially, these provisions were to expire on June 30, 2020, but this provision was repealed by the resolution of June 19, 2020¹⁴. Perhaps the introduction of provisions allowing remote sessions of the Sejm, initially treated as temporary, will become a permanent element of Polish parliamentary law.

Actions aimed at enabling the meetings to be held were taken in the Senate, which on June 4, 2020 adopted a resolution amending the Regulations of the Senate¹⁵. This act was extended by section VIa, entitled “The participation of senators in the meetings of the Senate and Senate committees remotely”. According to the new regulations “in particularly justified cases”, during a state of emergency, epidemic or epidemic emergency, the Marshal of the Senate “may enable senators located outside the Senate seat to participate in Senate or committee meetings using electronic means of communication enabling remote communication. and ensuring the identification of senators and real-time communication (Art. 67a). The provisions regulate in detail the method of confirming the presence (authentication) of senators at the meeting and matters related to the activity during the meeting, such as submitting questions, subscribing to the floor, taking the floor, submitting motions. An interesting solution is introduced by Art. 67b para. 1 point 4, in case of a roll-call vote, orders senators to send scans of voting cards, which the Senate secretaries throw into the ballot box.

The provisions of the Regulations of the Senate are more thoughtful than those introduced by the Sejm – according to Art. 67b para. 2, a Senator who has confirmed his presence at a meeting using a remote communication device shall participate in it remotely until the end of the session on a given day. The exception is the adoption of a motion for the proceedings to be classified, which cannot be held remotely (Art. 67b section 4). The solutions intro-

¹⁴ Resolution of the Sejm of the Republic of Poland of June 19, 2020 amending the resolution on amendments to the Regulations of the Sejm of the Republic of Poland (M.P. item 558), <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20200000558> (20.09.2020).

¹⁵ Resolution of the Senate of the Republic of Poland of June 4, 2020 (M.P. item 500), <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20200000499> (20.09.2020).

duced in June 2020 also apply to meetings of Senate committees (Art. 67c). The amended provisions enabled the Presidium of the Senate to settle matters by circulation without calling a meeting (Art. 10 (5) of the Rules of the Senate), and entrusted the Marshal of the Senate with calling a meeting of the Presidium “with the use of electronic means of communication, enabling remote communication and ensuring identification of participants and communication in real-time” (Art. 10 point 6).

The conducted analysis leads to the conclusion that the Constitution of the Republic of Poland of 1997 did not require changes to introduce the remote mode of sessions of the chambers of parliament and remote voting. The authors of the Constitution opted for an open structure of regulations, without formulating strict rules for the conduct of meetings of the chambers of parliament. Adoption of such a concept enables the conduct of a session of the Sejm or Senate in a form other than a meeting of deputies held at a specific place and time. The constitution specifies the manner of voting as the only permissible method of making legally binding decisions, however, the detailed requirements are regulated in the by-laws of the chambers.

The new mode of debates of the chambers of the Polish parliament required changes in the scope of parliamentary law. Its modification was relatively easy, as the provisions of the Art. 112 of the Constitution of the Republic of Poland of 1997 guarantee the statutory autonomy of the chambers of parliament. In March 2020, the Sejm and the Senate took advantage of the possibility to freely shape the manner of exercising their competences in terms of the manner of deliberation and voting, introducing the procedure of remote deliberations. The solutions introduced to the Regulations of the Senate differ from the solutions introduced to the Regulations of the Sejm. Instruments approved for use in the first chamber are fully open to technologies enabling remote communication, while the second chamber has introduced solutions facilitating work during the pandemic, but close to the traditions of parliamentarism.

The practice of applying new regulations enabling remote deliberations of the parliament makes it possible to conclude that such a solution improves the work of the Sejm and the Senate. The initial technical difficulties were eliminated and members of parliament quickly mastered the new tools. The remote mode of deliberations is not abused – currently, deliberations are conduct-

ed traditionally, but the existence of new regulations seems to be beneficial. In the autumn of 2020, the epidemic in Europe raises concerns that citizens may once again be temporarily isolated at home. In such a situation, Poland will be in the small group of countries in which parliaments will be able to work without any obstacles.

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